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.	No. 80581 Electronically Filed Jun 10 2022 09:34 a.m. Elizabeth A. Brown Clerk of Supreme Court
SPECIAL ADMINISTRATOR SHALONDA MOLLETTE, AN INDIVIDUAL, IN PLACE AND STEAD OF JOE N. BROWN, Appellant, vs. GNL, CORP., A NEVADA CORPORATION, AND THYSSENKRUPP ELEVATOR CORP., A FOREIGN CORPORATION, Respondents.	No. 81151

APPENDIX TO APPELLANT'S OPENING BRIEF
VOLUME 10

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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 10** to be served as follows:

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

___ Pursuant to NEFCR 9, to be sent via facsimile; and/or

_X_ Pursuant to NEFCR 9, by transmitting via the Court's electronic filing services by the document(s) listed above to the Counsel set forth on the service list.

/s/ Marie-Claire Alsanjakli
An Employee of **IQBAL LAW PLLC**

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DISTRICT COURT

CLARK COUNTY, NEVADA

JOE N. BROWN, an individual, and his Wife, NETTIE J. BROWN, an individual Plaintiffs, vs. LANDRY'S, INC., a foreign corporation; GOLDEN NUGGET, INC. a Nevada corporation, d/b/a GOLDEN NUGGET LAUGHLIN; GNL, CORP., a Nevada corporation; THYSSENKRUPP ELEVATOR CORP., a foreign corporation; DOE INDIVIDUALS 1-100, ROE BUSINESS ENTITIES 1-100, Defendants. GNL, CORP., a Nevada corporation; Third-Party Plaintiff, vs. THYSSENKRUPP ELEVATOR CORPORATION a foreign corporation; DOES 1-75; ROE CORPORATION 1-75 and ROE CORPORATION 1-25, Third-Party Defendants	Case No.: A-16-739887-C Dept. No.: XXXI **ERRATA TO PLAINTIFFS' (1) OPPOSITION TO MOTION TO DISMISS AND (2) OPPOSITION TO DEFENDANT LANDRY'S AND GOLDEN NUGGET, INC.'S MOTION FOR SUMMARY JUDGMENT** **Date of hearing:** December 4, 2018 **Time of hearing:** 9:30 a.m.

ERRATA TO PLAINTIFFS' (1) OPPOSITION TO MOTION TO DISMISS AND (2) OPPOSITION TO DEFENDANT LANDRY'S AND GOLDEN NUGGET, INC.'S MOTION FOR SUMMARY JUDGMENT

ERRATA TO PLAINTIFFS' (1) OPPOSITION TO MOTION TO DISMISS AND (2) OPPOSITION TO DEFENDANT LANDRY'S AND GOLDEN NUGGET, INC.'S MOTION FOR SUMMARY JUDGMENT

PLEASE TAKE NOTICE that Plaintiffs JOE N. BROWN and NETTIE J. BROWN (collectively, "Plaintiffs"), by and through their counsel, the law firm of Iqbal Law PLLC, hereby files this Errata to Plaintiffs' (1) Opposition to Motion to Dismiss ("Opp. to MTD") and (2) Opposition to Defendant Landry's and Golden Nugget, Inc.'s Motion for Summary Judgment ("Opp. to MSJ"), to *omit* certain exhibits (asserted to be confidential by defendants) in their original filings of both oppositions on November 19, 2018.[1] Without waiving their right to challenge this designation, Plaintiffs hereby refile these oppositions – with the confidential exhibits removed – as **Attachment 1** (the Opp. to MTD) and **Attachment 2** (the Opp. to MSJ) to this Errata.

Dated November 20, 2018.

IQBAL LAW PLLC

By: */s/ Mohamed A. Iqbal Jr.*
Mohamed A. Iqbal, Jr. (NSB #10623)
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CERTIFICATE OF SERVICE

I certify that I served the foregoing Errata on all counsel of record in this matter using the Court's e-file/e-service system on November 20, 2018.

By: */s/ Kevin Williams*
An employee of IQBAL LAW PLLC

[1] Plaintiffs' Opposition to Motion to Dismiss ***Exhibits F and G*** are asserted to be confidential; and Plaintiffs' Opposition to Defendants Landry's and Golden Nugget, Inc.'s Motion for Summary Judgment ***Exhibits F, G, and J*** are asserted to be confidential.

ATTACHMENT 1

ATTACHMENT 1

OMD
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DISTRICT COURT

CLARK COUNTY, NEVADA

JOE N. BROWN, an individual, and his Wife, NETTIE J. BROWN, an individual Plaintiffs, vs. LANDRY'S, INC., a foreign corporation; GOLDEN NUGGET, INC. a Nevada corporation, d/b/a GOLDEN NUGGET LAUGHLIN; GNL, CORP., a Nevada corporation; THYSSENKRUPP ELEVATOR CORP., a foreign corporation; DOE INDIVIDUALS 1-100, ROE BUSINESS ENTITIES 1-100, Defendants.	Case No.: A-16-739887-C Dept. No.: XXXI **PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS**
GNL, CORP., a Nevada corporation; Third-Party Plaintiff, vs. THYSSENKRUPP ELEVATOR CORPORATION a foreign corporation; DOES 1-75; ROE CORPORATION 1-75 and ROE CORPORATION 1-25, Third-Party Defendants	**Date of hearing:** **Time of hearing:**

PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS

Plaintiffs Joe N. Brown and Nettie J. Brown ("Plaintiffs") hereby oppose the latest iteration of the Motion to Dismiss ("Motion") filed by Defendants Landry's, Inc. ("Landry's") and respectfully request that the Court again deny said Motion.

I. INTRODUCTION.

This is the ***fourth instance*** in which Landry's has brought the same time-worn and fatally-flawed arguments to the Court in a doomed effort to evade accountability for its conduct. As the Court is well aware, this case stems from horrific injuries to Plaintiff Joe N. Brown, who on May 12, 2015, suffered a broken neck on the obsolete and poorly-maintained escalator at the Golden Nugget hotel, resort, and casino complex in Laughlin, Nevada (the "Laughlin Nugget"). Landry's has repeatedly sought to shirk responsibility for its various actions and inactions that caused those injuries; but it has no new evidence, and the evidence against it has simply grown stronger.

In this latest repetition of its prior, failed efforts, Landry's argues it should be immune from the jurisdiction of this Court because it is a foreign corporation. The Plaintiffs, of course, have repeatedly provided evidence showing that Landry's owns and operates the Laughlin Nugget: this evidence includes Landry's own public admissions. The Court has repeatedly found that the Plaintiffs have made a *prima facie* showing that Landry's exercises ownership and control over the Laughlin Nugget, and that the Court's exercise of specific personal jurisdiction over Landry's is therefore proper.

Yet in its current Motion, Landry's pretends the Plaintiffs have made no such showing. Rather than asking the Court to reconsider its findings, Landry's relies on its own *ipse dixit* to ignore them. As set forth below, however, the *prima facie* case against Landry's remains intact – and has ***actually been strengthened by discovery***. We now know, for example, that personnel at the Laughlin Nugget answer to Landry's, and that Landry's control over operations at the Laughlin Nugget extends to the maintenance and repair of the very escalator that broke Mr. Brown's neck. To be blunt: Landry's assertion that it does not control the Laughlin Nugget is false, and Landry's has always known that it is false. The Motion should therefore be denied.

II. PROCEDURAL HISTORY.

The Plaintiffs initiated this case by filing a complaint with this Court on July 12, 2016, alleging, *inter alia*, various acts of negligence by Landry's leading to severe physical injuries to Mr. Brown at the Laughlin Nugget. Plaintiffs subsequently amended their complaint on September 1, 2016,[1] an amendment as of right because none of the defendants had yet answered. Landry's still did not respond, and on February 17, 2017, Plaintiffs noticed their intent to take its default.

Thus forced to respond, Landry's on February 22, 2017, moved to dismiss Plaintiffs' claims pursuant to Nev. R. Civ. P. 12(b)(2) – the same rule it relies on now. Then, as now, Landry's argued it is a foreign corporation lacking sufficient contacts with the State of Nevada to support an exercise of personal jurisdiction.[2] Just as it does now, Landry's relied on statements by its non-moving co-defendant, GNL Corp., regarding ownership and control of the Laughlin Nugget. The Plaintiffs countered with public statements by Landry's asserting that, together with its co-defendants, it owns and controls the Laughlin Nugget.

Following a hearing on March 28, 2017, the Court concluded the Plaintiffs had made a *prima facie* showing that Landry's exerts ownership and control of the Laughlin Nugget such that the exercise of specific personal jurisdiction is proper. The Court thus denied the motion to dismiss by order entered on April 25, 2017.

Four weeks later, Landry's renewed its quest to avoid being held to account for its faulty escalator, moving for summary judgment on May 23, 2017. That motion relied on substantially the same arguments as the failed motion to dismiss, and in addition pointed to the moving defendants' own discovery responses[3] disclaiming ownership and control of the Laughlin Nugget. In response, the Plaintiffs produced additional statements made by the moving defendants

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[1] The operative Second Amended Complaint, adding direct claims against third-party defendant Thyssenkrupp Elevator Corp., was filed September 18, 2018.

[2] Landry's initial co-defendant, Golden Nugget, Inc. ("GNI") also sought dismissal, but on different grounds. GNI has not joined in the instant Motion.

[3] As with the failed motion to dismiss, GNI joined in the motion for summary judgment.

contradicting those denials. Following yet another hearing, the Court concluded that the moving defendants had not met their burden of showing no genuine issues of material fact as to the ownership and control of the Laughlin Nugget, and by order entered July 31, 2017, denied the request for summary judgement. ***The very next day***, Landry's and its co-defendant GNI moved for reconsideration. The Court heard that motion on October 10, 2017 and denied it by order entered October 31, 2017 (*see* Order re Motion for Reconsideration (the "October 31 Order")).

The October 31 Order laid out the procedural history of the case and the various motions,[4] and included detailed findings of fact and conclusions of law. In pertinent part, the Court noted that "[t]o prevail against Defendants' motion to dismiss as to Landry's, Plaintiffs were required to make, ***and did make***, a *prima facie* showing that one or more causes of action in the FAC arose from Landry's purposeful contacts with the State of Nevada." October 31 Order at 4:4-6. (emphasis added). It went on to note that the moving defendants offered no new evidence or issues of law that would meet the standard for reconsideration; but concluded that even were it inclined to reconsider, the Court "would still find summary judgment inappropriate." *Id*. at 4:5-8.

Landry's has now filed yet another motion to dismiss. It has not asked the Court to reconsider its prior rulings; instead, it simply ignores them, falsely arguing that despite the Court's findings, "Plaintiffs have made absolutely no prima facie showing" that jurisdiction is proper. Mot. at 9:4-5.

III. LEGAL STANDARDS.

Nevada's long-arm statute, NRS 14.065, allows our courts to exercise jurisdiction to the same extent as the United States Constitution permits federal courts. *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Court*, 134 P.3d 710, 712 (Nev. 2006). Personal jurisdiction is proper where the defendant's home is in, or the cause of action arises from the defendant's contacts with, the state of Nevada. *Baker v. Eighth Judicial Dist. Court*, 999 P.2d. 1020, 1023 (Nev. 2000).

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[4] This section of Plaintiffs' brief is taken in large part from the October 31 Order, at ¶¶ 1-8.

To defeat a motion to dismiss under Rule 12(b)(2), a plaintiff need only make a *prima facie* showing that the Court's exercise of jurisdiction is proper. *Trump v. Eighth Judicial Dist. Court*, 857 P.2d 740, 743 (Nev. 1993); *see also Rio Properties, Inc. v. Rio International Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002).[5] That is the extent of the burden: if there are disputes as to the facts, "those disputes must be resolved in favor of the plaintiff." *Trump,* 857 P.2d at 744, *quoting Levinson v. District Court,* 742 P.2d 1024, 1026 (Nev. 1987).

A court may exercise general jurisdiction over a foreign company when its contacts with the forum state are so continuous and systematic as to render it essentially at home in the forum state. *Viega GmbH v. Eighth Judicial Dist. Court*, 328 P.3d 1152, 1156-57 (Nev. 2014). Specific personal jurisdiction arises when the defendant purposefully enters the forum's market or establishes contacts in the forum and affirmatively directs conduct there, and the claims arise from that purposeful contact or conduct. *Id.* at 1157. To be subject to the Court's exercise of specific jurisdiction:

> [t]he defendant must purposefully avail himself of the privilege of acting in the forum state or of causing important consequences in that state. The cause of action must arise from the consequences in the forum state of the defendant's activities, and those activities, or the consequences thereof, must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable.

Consipio Holding, BV v. Carlberg, 282 P.3d 751, 755 (Nev. 2012) (*quoting Jarstad v. Nat'l Farmers Union Prop. & Cas. Co.*, 552 P.2d 49, 53 (Nev. 1976)).

Once the plaintiff makes a *prima facie* showing of jurisdiction, the defendant "must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable." *Peccole v. Eighth Judicial Dist. Court*, 899 P.2d 568, 570 (Nev. 1995) (citations omitted). Landry's has not asserted that any such considerations exist here.

---

[5] Decisions interpreting the federal rules of civil procedure are persuasive authority in Nevada when the corresponding Nevada rule mirrors or is modeled on its federal counterpart. *Executive Mgmt. Ltd. v. Ticor Title Ins. Co.*, 38 P.3d 872, 876 (Nev. 2002); *Ford v. Branch Banking and Trust Co.*, 353 P.3d 1200, 1202 (Nev. 2015).

IV. ARGUMENT.

Although Landry's is loathe to admit it, this Court has repeatedly found that the Plaintiffs have made a *prima facie* showing that specific jurisdiction exists in this case. The Court's prior rulings were and are correct.

A. Prior Evidence Shows Landry's Calls the Shots at the Laughlin Nugget.

Landry's has held a Nevada business license for more than a decade and repeatedly designated registered agents for service of process. Declaration of Mohamed A. Iqbal, Jr., in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss ("Iqbal Decl.") Exhibits A and B. There is no plausible dispute that Landry's has purposefully availed itself of the privilege of acting in this State, or that Landry's fully understands that it may as a consequence be sued here.

The causes of action here stem from injuries caused by obsolete and faulty equipment at the Laughlin Nugget. Landry's argues it "does not 'own, operate, or control'" the Laughlin Nugget and that as a foreign corporation there is, for that reason, "no legal basis for which Plaintiffs may maintain [*sic*] a lawsuit against it." Mot. at 4:9-11. As pointed out in prior motion practice, however, Landry's claims have been repeatedly contradicted by Landry's own public statements, made both before and after Plaintiffs' injuries occurred.

Landry's publicly announced its acquisition of the Laughlin Nugget on September 27, 2005. Iqbal Decl., Exhibit C. In its press release, Landry's boasted it would run the show: "***Landry's operating skill and leadership*** will help boost" the property to "***a new level of performance*** and satisfaction." *Id*. (emphasis added). Landry's from the very beginning identified itself as the entity in charge of the Laughlin Nugget, and continued to do so throughout the years. On its corporate website, Landry's bragged "At Golden Nugget Laughlin … ***Landry's added*** three restaurants … ***and upgraded*** the breathtaking river-view rooms." Iqbal Decl., Exhibit D (emphasis added).

In 2016, well *after* the injuries to the Plaintiffs, Landry's reconfirmed its control over operations at the Laughlin Nugget, announcing on its website that in response to a recent data security breach, it implemented "[e]nhanced security measures, including end-to-end encryption"

at its properties, including the Laughlin Nugget. Iqbal Decl., Exhibit E. The new encryption system included the restaurants, coffee shops, and all of the retail areas at the Laughlin Nugget, indicating that Landry's exercised control throughout the property. *Id*. Moreover, Landry's claimed it was actively directing the changes, announcing it "***hired a leading cyber security firm*** to examine our payment card systems [and], ***implemented advanced payment processing solutions***," and was "***working closely with the payment card networks*** to identify potentially affected cards." *Id*. (emphasis added). Despite these public affirmations of responsibility and control, Landry's now seeks to portray itself as a passive investor, divorced from the operations of the Laughlin Nugget.

The pattern here is painfully clear. When there are improvements at the Laughlin Nugget, Landry's places itself front and center for public praise; yet when things go wrong – as, for example, when a guest's spine is snapped by the obsolete and shoddily-maintained down escalator at the Laughlin Nugget – Landry's pretends it has nothing to do with running the property. This transparent hypocrisy, however, cannot save Landry's from the authority of the Nevada judicial system: as this Court has already determined, the evidence obtained prior to discovery was and is sufficient for a *prima facie* showing of personal jurisdiction.

B. New Evidence *Still* Shows Landry's Calls the Shots at the Laughlin Nugget.

In fact, evidence obtained in discovery in this case show that Landry's not only had overall control of operations; it retained oversight and approval authority for repairs to the very equipment that caused Plaintiffs' injuries. The requisition approval for the parts required to retrofit the cracked steps on the down escalator at the Laughlin Nugget after it broke Plaintiff Joe Brown's neck came from Landry's. Iqbal Decl. Exhibit F. When a request for labor to install the new steps was delayed pending a local supervisor's concurrence, Landry's issued a notice to the Laughlin Nugget prompting them to act: the email was issued with the heading "Action Required." Iqbal Decl. Exhibit G.

That action was "***required***" when Landry's said so was well understood by personnel at the Laughlin Nugget. Richard L. Smith, the official responsible for risk management functions at

the Laughlin Nugget, described Landry's corporate risk manager Le Ann Lopez as "almost like … my boss." Iqbal Decl. Exhibit H at 86:19-23; 87:4-8. He further testified that whenever injury accidents occur at the Laughlin Nugget he conferred with Landry's corporate counsel for advice on how to proceed, *id*. at 118:25-119:11, and that investigation of such matters are the responsibility of Landry's staff counsel. *Id.* at 132:6-12. Similarly, Don Hartmann, Director of Facilities at the Laughlin Nugget, testified that in addition to his local supervisors, "I also report to corporate as well" – and specified that his reporting official was Chris McComas, Director of Hotels for Landry's. Iqbal Decl. Exhibit I at 30:3-31:6.

Despite its current and false protests, Landry's has made crystal clear through public and private pronouncements and its structure of operations that it controls operations at the Laughlin Nugget. The Plaintiffs have made much more than the *prima facie* showing required to defeat Landry's fourth effort to avoid accountability for its negligence there. The instant Motion is, like all of its predecessors, without merit.

V. CONCLUSION.

For all the foregoing reasons, the Motion should be DENIED.

Dated this 19th day of November 2018.

Respectfully Submitted,

IQBAL LAW PLLC

By: _____

Mohamed A. Iqbal, Jr. (NSB #10623)
Christopher Mathews (NSB #10674)

Attorneys for Plaintiffs Joe N. Brown and Nettie Brown

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of IQBAL LAW PLLC, and that on this 19th day of November 2018 I caused to be served a true and correct copy of the foregoing **PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS** to be served as follows:

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

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

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

/s/ Kevin Williams
An employee of IQBAL LAW PLLC

DECLARATION OF MOHAMED A. IQBAL, JR., IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

I, MOHAMED A. IQBAL, JR. hereby declare as follows:

1. I am over the age of 18 and competent to testify. I am counsel of record for Plaintiffs Joe N. Brown and Nettie J. Brown ("Plaintiffs") in case no. A-16-739887-C and make this declaration subject to penalty of perjury under the laws of the United States and the State of Nevada, in support of Plaintiffs' Opposition to Defendants' Motion to Dismiss, filed herewith.

2. **Exhibit A** to this Declaration is a true and correct copy of the Entity Detail listing from the Nevada Secretary of State for Landry's, Inc. ("Landry's"),[1] showing that Landry's has a business license in the State of Nevada and has held such a license since April 12, 2005.

3. **Exhibit B** to this Declaration is a true and correct copy of the Entity Actions webpage from the Nevada Secretary of State for Landry's, showing that Landry's has continuously updated its Nevada business license for the past more than 12 years.

4. **Exhibit C** to this Declaration is a true and correct copy of the press release issued by Landry's (under its former name, Landry's Restaurants, Inc.) announcing the purchase of the Laughlin Nugget.

5. **Exhibit D** to this Declaration is a true and correct copy of the Landry's corporate website page "Landry's History" as it appeared when it was first released on January 14, 2012.

6. **Exhibit E** to this Declaration is a true and correct copy of a Landry's press release dated January 29, 2016, concerning, *inter alia*, the Laughlin Nugget.

7. **Exhibit F** to this Declaration is a true and correct copy of an email from Landry's Inc. dated August 10, 2015, produced in discovery by the Defendants and bearing Bates label GNL 000877. This document was marked "Confidential" by the Defendants and without waiving their

[1] Landry's Inc. re-denominated itself "Landry's LLC" on or about July 27, 2018. The parties are aware of this change and have discussed amending the caption of the case to reflect the current naming convention. Plaintiffs anticipate a stipulation to that effect will be filed following the resolution of the current round of motions.

right to challenge this designation Plaintiffs will provide a hard copy of the document to the Court, and will provide courtesy copies to counsel for the parties upon request.

8. **Exhibit G** to this Declaration is a true and correct copy of an email from Landry's Inc. dated December 17, 2015, produced in discovery by the Defendants and bearing Bates label GNL 000897. This document was marked "Confidential" by the Defendants and without waiving their right to challenge this designation Plaintiffs will provide a hard copy of the document to the Court, and will provide courtesy copies to counsel for the parties upon request.

9. **Exhibit H** to this Declaration is a true and correct excerpt of the transcript from the deposition of Richard L. Smith, Risk Manager at the Laughlin Nugget, including pages 86, 87, 118, 119, and 132.

10. **Exhibit I** to this Declaration is a true and correct excerpt of the transcript from the deposition of Don Hartmann, Director of Facilities at the Laughlin Nugget, including pages 30 and 31.

Dated this 19th day of November 2018.

By: _____

Mohamed A. Iqbal, Jr.

EXHIBIT A

EXHIBIT A

LANDRY'S, INC.

Business Entity Information

Status:	Active	File Date:	4/12/2005
Type:	Foreign Corporation	Entity Number:	E0209872005-3
Qualifying State:	DE	List of Officers Due:	4/30/2017
Managed By:		Expiration Date:	
NV Business ID:	NV20051124480	Business License Exp:	4/30/2017

Additional Information

Central Index Key:	

Registered Agent Information

Name:	THE CORPORATION TRUST COMPANY OF NEVADA	Address 1:	701 S CARSON ST STE 200
Address 2:		City:	CARSON CITY
State:	NV	Zip Code:	89701
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Commercial Registered Agent - Corporation		
Jurisdiction:	NEVADA	Status:	Active

Financial Information

No Par Share Count:	0	Capital Amount:	$ 620,000.00
Par Share Count:	62,000,000.00	Par Share Value:	$ 0.01

Officers

☐ Include Inactive Officers

Director - KENNETH BRIMMER

Address 1:	1510 WEST LOOP S	Address 2:	
City:	HOUSTON	State:	TX
Zip Code:	77027	Country:	USA
Status:	Active	Email:	

Director - MICHAEL CHADWICK

Address 1:	1510 WEST LOOP S	Address 2:	
City:	HOUSTON	State:	TX
Zip Code:	77027	Country:	USA
Status:	Active	Email:	

President - TILMAN J FERTITTA

Address 1:	1510 WEST LOOP SOUTH	Address 2:	

City:	HOUSTON	State:	TX
Zip Code:	77027	Country:	USA
Status:	Active	Email:	

Director - TILMAN J FERTITTA

Address 1:	1510 WEST LOOP S	Address 2:	
City:	HOUSTON	State:	TX
Zip Code:	77027	Country:	USA
Status:	Active	Email:	

Treasurer - RICK LIEM

Address 1:	1510 WEST LOOP S	Address 2:	
City:	HOUSTON	State:	TX
Zip Code:	77027	Country:	USA
Status:	Active	Email:	

Director - RICK H LIEM

Address 1:	1510 WEST LOOP S	Address 2:	
City:	HOUSTON	State:	TX
Zip Code:	77027	Country:	USA
Status:	Active	Email:	

Secretary - STEVEN L SCHEINTHAL

Address 1:	1510 WEST LOOP SOUTH	Address 2:	
City:	HOUSTON	State:	TX
Zip Code:	77027	Country:	USA
Status:	Active	Email:	

Director - STEVEN L SCHEINTHAL

Address 1:	1510 WEST LOOP S	Address 2:	
City:	HOUSTON	State:	TX
Zip Code:	77027	Country:	USA
Status:	Active	Email:	

Actions\Amendments

Action Type:	Miscellaneous		
Document Number:	00000127126-99	# of Pages:	1
File Date:	4/12/2005	Effective Date:	

SUPPORTING DOCUMENT

Action Type:	Foreign Qualification		
Document Number:	00000127127-00	# of Pages:	1
File Date:	4/12/2005	Effective Date:	

FEDEX TRK 7928-9591-7414 SAE 4-13-05

Initial Stock Value: Par Value Shares: 62,000,000 Value: $ 0.01 No Par Value Shares: 0 ---------- Total Authorized Capital: $ 620,000.00

Action Type:	Initial List		
Document Number:	20050162695-36	# of Pages:	2

File Date:	5/2/2005	Effective Date:	
(No notes for this action)			

Action Type:	Annual List		
Document Number:	20060190417-80	# of Pages:	2
File Date:	3/28/2006	Effective Date:	
(No notes for this action)			

Action Type:	Annual List		
Document Number:	20070123942-50	# of Pages:	2
File Date:	2/22/2007	Effective Date:	
(No notes for this action)			

Action Type:	Registered Agent Change		
Document Number:	20070512071-65	# of Pages:	1
File Date:	7/26/2007	Effective Date:	
(No notes for this action)			

Action Type:	Annual List		
Document Number:	20080291655-48	# of Pages:	2
File Date:	4/29/2008	Effective Date:	
(No notes for this action)			

Action Type:	Annual List		
Document Number:	20090352363-33	# of Pages:	2
File Date:	4/20/2009	Effective Date:	
(No notes for this action)			

Action Type:	Annual List		
Document Number:	20100265825-01	# of Pages:	2
File Date:	4/23/2010	Effective Date:	
(No notes for this action)			

Action Type:	Annual List		
Document Number:	20110344105-91	# of Pages:	2
File Date:	5/6/2011	Effective Date:	
(No notes for this action)			

Action Type:	Amendment		
Document Number:	00003127875-83	# of Pages:	3
File Date:	5/25/2011	Effective Date:	
(No notes for this action)			

Action Type:	Annual List		
Document Number:	20120286608-55	# of Pages:	2
File Date:	4/25/2012	Effective Date:	
(No notes for this action)			

Action Type:	Annual List		
Document Number:	20130285384-46	# of Pages:	2
File Date:	4/29/2013	Effective Date:	
(No notes for this action)			

Action Type:	Annual List		
Document Number:	20140298341-24	# of Pages:	2
File Date:	4/24/2014	Effective Date:	
(No notes for this action)			

Action Type:	Annual List		
Document Number:	20150198857-56	# of Pages:	2
File Date:	4/30/2015	Effective Date:	
(No notes for this action)			

Action Type:	Annual List		
Document Number:	20160172493-35	# of Pages:	1
File Date:	4/14/2016	Effective Date:	
16/17			

Action Type:	Registered Agent Change		
Document Number:	20160189499-49	# of Pages:	1
File Date:	4/27/2016	Effective Date:	
(No notes for this action)			

EXHIBIT B

EXHIBIT B

Entity Actions for "LANDRY'S, INC."

Sort by File Date ◉ descending ○ ascending order Re-Sort

1 - 17 of 17 actions

Actions\Amendments

Action Type:	Registered Agent Change		
Document Number:	20160189499-49	# of Pages:	1
File Date:	4/27/2016	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20160172493-35	# of Pages:	1
File Date:	4/14/2016	Effective Date:	
16/17			
Action Type:	Annual List		
Document Number:	20150198857-56	# of Pages:	2
File Date:	4/30/2015	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20140298341-24	# of Pages:	2
File Date:	4/24/2014	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20130285384-46	# of Pages:	2
File Date:	4/29/2013	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20120286608-55	# of Pages:	2
File Date:	4/25/2012	Effective Date:	
(No notes for this action)			
Action Type:	Amendment		
Document Number:	00003127875-83	# of Pages:	3
File Date:	5/25/2011	Effective Date:	

(No notes for this action)			
Action Type:	Annual List		
Document Number:	20110344105-91	# of Pages:	2
File Date:	5/6/2011	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20100265825-01	# of Pages:	2
File Date:	4/23/2010	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20090352363-33	# of Pages:	2
File Date:	4/20/2009	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20080291655-48	# of Pages:	2
File Date:	4/29/2008	Effective Date:	
(No notes for this action)			
Action Type:	Registered Agent Change		
Document Number:	20070512071-65	# of Pages:	1
File Date:	7/26/2007	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20070123942-50	# of Pages:	2
File Date:	2/22/2007	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20060190417-80	# of Pages:	2
File Date:	3/28/2006	Effective Date:	
(No notes for this action)			
Action Type:	Initial List		
Document Number:	20050162695-36	# of Pages:	2
File Date:	5/2/2005	Effective Date:	
(No notes for this action)			
Action Type:	Miscellaneous		
Document Number:	00000127126-99	# of Pages:	1
File Date:	4/12/2005	Effective Date:	
SUPPORTING DOCUMENT			
Action Type:	Foreign Qualification		
Document Number:	00000127127-00	# of Pages:	1
File Date:	4/12/2005	Effective Date:	

FEDEX TRK 7928-9591-7414 SAE 4-13-05
Initial Stock Value: Par Value Shares: 62,000,000 Value: $ 0.01 No Par Value Shares: 0 ———————— Total Authorized Capital: $ 620,000.00

Return to Entity Details for "LANDRY'S, INC."

New Search

101 N Carson Street Suite 3 Carson City, NV 89701 | (775) 684-57

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EXHIBIT C

EXHIBIT C

Landry's Announces Completion of Acquisition of Golden Nugget Las Vegas and Golden Nugget Laughlin

Company Adds Premier Casinos to Restaurant,

Hospitality, Entertainment Properties

Sep 27, 2005, 01:00 ET from Landry's Restaurants, Inc.

HOUSTON, Sept. 27 /PRNewswire-FirstCall/ -- Landry's Restaurants, Inc. (NYSE: LNY), one of the nation's largest casual dining and entertainment companies, announced today it has closed the purchase of the landmark Golden Nugget Casino and Hotel in downtown Las Vegas and the Golden Nugget Casino and Hotel in Laughlin, Nevada from PB Gaming, Inc. by acquiring the stock of Poster Financial Group, Inc. ("Poster") for $140 million in cash and the assumption of $155 million of Senior Secured Notes due 2011, as well as certain working capital liabilities, including house banks in the amount of $23 million and Poster's existing credit facility.

The acquisition was subject to regulatory approvals, including the Nevada Gaming Commission, which were completed today.

"Landry's is thrilled to add casino gaming to a varied and diverse collection of entertainment offerings that already includes casual and fine dining, hospitality and aquarium properties," said Tilman Fertitta, Chairman, President and CEO of Landry's. "The Golden Nugget is the premier property in downtown Las Vegas, has outstanding brand recognition across the country, and is a perfect fit for us. In addition, the Golden Nugget in Laughlin provides us a second gaming property in an established market. Landry's operating skill and steady leadership will help boost the Golden Nugget to a new level of performance and satisfaction."

Chief Financial Officer Rick Liem said, "We believe both properties have excellent upside potential and will be accretive to our 2006 earnings."

Landry's Restaurants, Inc. is one of the nation's largest and fastest growing casual-dining and entertainment companies. Publicly traded on the New York Stock Exchange, Landry's owns and operates over 300 restaurants, including Landry's Seafood House, Joe's Crab Shack, The Crab House, Rainforest Cafe, Charley's Crab, Willie G's Seafood & Steak House, The Chart House and Saltgrass Steak House. Landry's also owns several icon developments, including Inn at the Ballpark and the Downtown Aquarium in Houston; Kemah Boardwalk, a magnificent 40-acre, family-oriented themed entertainment destination; and the 17-acre Downtown Aquarium in Denver. The company employs over 36,000 workers in 36 states.

This press release contains certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, as amended, which are intended to be covered by safe harbors created thereby. Stockholders are cautioned that all forward-looking statements are based largely on the Company's expectations and involve risks and uncertainties, some of which cannot be predicted or are beyond the Company's control. A statement containing a projection of revenues, income, earnings per share, same store sales, capital expenditures, or future economic performance are just a few examples of forward-looking statements. Some factors that could realistically cause results to differ materially from those projected in the forward-looking statements include ineffective marketing or promotions, competition, weather, store management turnover, a weak economy, negative same store sales, the Company's inability or failure to continue its expansion strategy. The Company may not update or revise any forward-looking statements made in this press release.

SOURCE Landry's Restaurants, Inc.

EXHIBIT D

EXHIBIT D

INTERNET ARCHIVE WayBack Machine
http://www.landrysinc.com/aboutUs/history.asp Go
80 captures
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DEC JAN FEB
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Help

Landry's History

While Landry's, Inc. has cemented itself as America's biggest dining, hospitality and entertainment company, that doesn't tell the entire story of our dramatic growth. Our portfolio includes over 35,000 employees at more than 300 properties, with hotels, casinos, resort destinations, restaurants and amusements. Landry's has come a long way in three decades - and we don't plan on slowing down any time soon.

First Steps

Landry's successes have multiplied rapidly since Chairman of the Board, President and CEO Tilman J. Fertitta bought his first two restaurants. Fertitta is a prominent Houston entrepreneur who grew up peeling shrimp and waiting tables at his father's surfside eatery in Galveston, Texas.

He was a partner in the first Landry's Seafood House Restaurant, which opened in 1980 in Katy, Texas, and the slightly more upscale Willie G's Seafood & Steak House that opened a year later in nearby Houston. He acquired controlling interest of both restaurants in 1986.

As economic times grew pressing around the country, banks were failing and businesses were struggling to pay their creditors. But Fertitta envisioned a national chain of Gulf Coast-style seafood restaurants that welcomed patrons with a casual, authentic and entertaining atmosphere. He created an expansion plan and stuck with it in spite of adversity.

Building the Company

Landry's Seafood House first expanded to Galveston, where its signature marquee, energetic atmosphere and great food and service made it an instant success. Soon, the chain was operating across Texas in San Antonio, Corpus Christi, Austin and Dallas. With great reviews and lines of customers, the Company grew from 2

JNB01613

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http://www.landrysinc.com/aboutUs/history.asp Go
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Help

In 1996, Landry's added the publicly traded The Crab House Restaurants, founded in Miami in 1976, to its holdings. With its traditional East Coast flair, The Crab House was a perfect complement to Landry's other seafood restaurants.

Entertaining Even Bigger Ideas

The Company added turf to its surf in 1998 when it acquired Cadillac Bar, a favorite Mexican restaurant and grill in Houston for more than 20 years. The same year, the Company completed the development of its first major specialty project, the 35-acre Kemah Boardwalk. Located about 20 miles from Houston on the edge of Galveston Bay, the Boardwalk entertains about 3 million visitors a year. Its attractions include 10 themed restaurants, retail shops, a first class hotel, a water garden, a 400-slip marina, a train, the Boardwalk FantaSea charter yacht, amusement rides and midway games. Among the eateries is Landry's first Aquarium Restaurant, featuring a 50,000 gallon tank of tropical fish.

Landry's leapt further into the specialty realm in late 2000, when it acquired the world's premier themed restaurant concept, the publicly traded Rainforest Cafe. The only full service restaurant concept operated in all Walt Disney theme parks worldwide, Rainforest Cafe offers customers a stimulating "Wild Place to Shop and Eat."

A Growing Recipe for Success

Growth accelerated in 2002, when Landry's acquired Muer Seafood Restaurants, Chart House restaurants, and Saltgrass Steak House. Muer Seafood Restaurants — located in unique, high profile and landmark locations across the nation — include Charley's Crab, Big Fish, Gandy Dancer, Grand Concourse and other fine establishments. The upscale Chart House restaurants are predominantly on the East and West coasts, in beautifully scenic locales. Saltgrass Steak House eateries throughout Texas recapture the flavor of the open campfire with char-grilled steaks, chicken and seafood. Also acquired with Saltgrass was Babin's Seafood House, which added New Orleans flair to Landry's varied seafood restaurant concepts.

Making a Splash

In 2003, the Company opened the Downtown Aquarium — a 20-acre entertainment complex in Houston with a public aquarium, two restaurants, a bar, banquet facilities, amusement rides and midway games. The attractions include a 100,000 gallon, floor-to-ceiling centerpiece aquarium, the tallest cylindrical tank in North America and a 200,000 gallon shark tank. An Aquarium Restaurant has also been developed in Nashville.

More Aquarium excitement also landed in Denver, where Landry's redeveloped the 12-acre Ocean Journey complex into Downtown Aquarium Denver. This world-class attraction houses more than 500 species of aquatic life in a three story, one-million-gallon facility.

Rooms with a View

Galveston. Landry's is a major player in the Texas hospitality industry. The Company's master-planned redevelopment of Galveston's Seawall Boulevard — which includes the new Galveston Island Convention Center — will take tourism to a new level in the island city. The Company manages the Four Diamond San Luis Resort, Spa and Conference Center and the adjacent Hilton Resort. Landry's acquired the Holiday Inn on the Beach in 2003.

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experience.

Putting Our Signature on Dining

Landry's owns a number of exceptional individual restaurants, which is known as our Signature Group. These restaurants represent the best of the Landry's best, including Houston's most superb steak houses, Vic & Anthony's and Brenner's Steakhouse, and the fine seafood restaurant Pesce. In addition, Willie G's is known for its upscale atmosphere, as well as its delivery of the finest steak and seafood around. The Signature Group welcomes more than steaks and seafood, however. Both Grotto and La Griglia complete the menu with their remarkable, authentic Italian cuisine.

Entering a Golden Era

Landry's hit the jackpot in 2005 with the acquisition of the Golden Nugget Hotel & Casinos in Las Vegas and Laughlin, Nevada. The Golden Nugget Las Vegas is the only Nevada hotel to be the proud recipient of the AAA Four Diamond Award consecutively since 1977 and now features newly remodeled first class amenities such as a luxurious lobby and grand valet entrance, VIP Lounge, High-Limit Slot Salon, two story Spa Tower Suites and tranquil Spa and Salon. Vic & Anthony's Steakhouse offers world-class upscale dining and Lillie's Asian Cuisine features a fusion of Cantonese and Szechwan cuisines. At Golden Nugget Laughlin, which is uniquely located right on the banks of the Colorado River, Landry's added three restaurants — Saltgrass Steak House, Joe's Crab Shack and Harlow's, and upgraded the breathtaking river-view rooms.

Taking Entertainment to New Heights

The newly remodeled Tower of the Americas, which Landry's reopened in summer 2006, offers the best views of San Antonio from 750 feet high. Chart House, an upscale restaurant, seats 250 people and features magnificent views of the city, and a Texas-themed 4-D, multi-sensory theater takes visitors on a high-flying trip across the Lone Star State. The view, combined with top-notch catering, creates an event space like no other in San Antonio.

A Prehistoric Family Adventure

Another original venture for Landry's was T-REX Cafe, which opened at the Legends at Village West in Kansas City, Kansas, in summer 2006. T-REX is an interactive attraction that features full-service dining and a retail store, including the opportunity to make a prehistoric friend through Build-A-Dino by Build A Bear Workshop. Designed with elements of water, fire and ice, this experience comes to life with bubbling geysers, animatronic dinosaurs, a real fossil dig site, paleontology lab activities, and an enthralling ice cave. Upon entering, visitors are transported into a prehistoric world filled with endless opportunities to educate and be entertained. Simply put, at T-REX, guests can Eat, Shop, Explore and Discover.

A Bold Direction

After going public in 1993 with a valuation of $30 million, the company had grown to an astounding $1.7 billion by 2011. In 2010, already being the majority shareholder, CEO Tilman Fertitta purchased all outstanding shares of stock and gained sole control and ownership of the company again. Now privately held, Landry's has again embarked on a journey with a new vision of the future which includes that same focus on development and growth that allowed us to prosper for the last several decades.

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craft.

The Oceanaire Seafood Room. We hoisted our sails with The Oceanaire in 2010, bringing their 12 units from great spots such as Washington, D.C. and Boston into the fold. Although they boast national acclaim for unique, finely prepared dishes, The Oceanaire is known first and foremost for flying in the freshest seafood from around the world daily. Their menu changes each day to reflect this and their servers are practiced in educating diners about the best possible choices.

Bubba Gump Shrimp Co. When Bubba Gump Shrimp Co. became part of the Landry's family, we knew we were in for something special. As the only restaurant chain based on a major motion picture, Bubba Gump is remarkable in its own right, apart even from their fun atmosphere and memorable food. Their 36 locations span the entire globe, including popular tourist spots that attract families far and wide.

Claim Jumper. What started as a simple restaurant in 1977 has turned into a powerful Western chain with 37 wonderful locations. Claim Jumper's rustic atmosphere makes one feel right at home, offering diners hearty portions, comfortable food and a great selection of beverages. The varied menu sports everything from pizza to Certified Angus Beef ® and USDA Choice steaks.

Out with the Old, in with the Gold

In 2011, Landry's further expanded the illustrious Golden Nugget Hotel & Casinos brand by bringing it back to Atlantic City after a decades-long absence. Having purchased the Trump Marina, the former mainstay that was attached to the Frank S. Farley Marina, Landry's is in position to bring the Golden Nugget back with a bang through a series of astounding transformations and renovations, each more dramatic than the last. These stunning changes include Vic & Anthony's, the 30th Chart House location, updated rooms and suites and a complete revamp of all the gaming rooms. Along with these updates, Landry's also added The Deck, a place to party out by the arena, as well as Red Room, an upscale nightclub. We are ready to make the Golden Nugget the hot spot in Atlantic City!

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EXHIBIT E

EXHIBIT E

LANDRY'S AND GOLDEN NUGGET COMPLETE INVESTIGATION AND REPORT ON PAYMENT CARD INCIDENT

January 29, 2016

California Residents, please view here

Landry's, Inc. and Golden Nugget Hotels and Casinos (collectively "the Companies") value the relationship we have with our customers. Because we understand the importance of protecting payment card information, we have been working tirelessly to complete the previously announced payment card investigation. The investigation began immediately after we received a report in early December of suspicious activity regarding cards that had been legitimately used in some of our locations. We hired a leading cyber security firm to examine our payment card systems, implemented advanced payment processing solutions, and have been working with the payment card networks and law enforcement.

Findings from the investigation show that criminal attackers were able to install a program on payment card processing devices at certain of our restaurants, food and beverage outlets, spas, entertainment destinations, and managed properties. The program was designed to search for data from the magnetic stripe of payment cards that had been swiped (cardholder name, card number, expiration date and internal verification code) as the data was being routed through affected systems. Locations were affected at different times during one or both of the following periods: from May 4, 2014 through March 15, 2015 and from May 5, 2015 through December 3, 2015. In addition, the at-risk timeframe for a small percentage of locations includes the period from March 16, 2015 through May 4, 2015. To view all of our restaurants, hotels, casinos, entertainment destinations, and managed properties, **click here**. For a list of only the affected locations and respective at-risk timeframes, **click here**.

Enhanced security measures, including end-to-end encryption, have been implemented to prevent a similar issue from occurring in the future, and we continue to support law enforcement's investigation. We are also working closely with the payment card networks to identify potentially affected cards so that the card issuers can be made aware and initiate heightened monitoring of those accounts. For those customers we can identify as having used their card at an affected location during that location's at-risk window and for whom we have a mailing address or e-mail address, we will be mailing them a letter or sending them an e-mail.

If you used a payment card at an affected location during its at-risk window, we recommend that you remain vigilant to the possibility of fraud by reviewing your payment card statements for any unauthorized activity. You should immediately report any unauthorized charges to your card issuer because payment card rules generally provide that cardholders are not responsible for

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unauthorized charges reported in a timely manner. The phone number to call is usually on the back of your payment card. Please see the section that follows this notice for additional steps you may take to protect your information.

Landry's and Golden Nugget regret any inconvenience or concern this may have caused. If you have any questions, please call (877) 238-2151 (U.S. and Canada), Monday thru Friday from 9:00 am to 7:00 pm EST.

MORE INFORMATION ON WAYS TO PROTECT YOURSELF

We recommend that you remain vigilant by reviewing your account statements and credit reports for any unauthorized activity. You may obtain a copy of your credit report, free of charge, once every 12 months from each of the three nationwide credit reporting companies. To order your annual free credit report, please visit www.annualcreditreport.com or call toll free at 1-877-322-8228. Contact information for the three nationwide credit reporting companies is as follows:

Equifax, PO Box 740256, Atlanta, GA 30374, www.equifax.com, 1-800-525-6285
Experian, PO Box 9554, Allen, TX 75013, www.experian.com,1-888-397-3742
TransUnion, PO Box 2000, Chester, PA 19022-2000, www.transunion.com, 1-800-916-8800

If you believe you are the victim of identity theft or have reason to believe your personal information has been misused, you should immediately contact the Federal Trade Commission and/or the Attorney General's office in your state. Contact information for the Federal Trade Commission is as follows:

Federal Trade Commission, Consumer Response Center, 600 Pennsylvania Avenue, NW Washington, DC 20580, 1-877-IDTHEFT (438-4338), www.ftc.gov/idtheft

You can obtain information from these sources about steps an individual can take to avoid identity theft as well as information about fraud alerts and security freezes. You should also contact your local law enforcement authorities and file a police report. Obtain a copy of the police report in case you are asked to provide copies to creditors to correct your records.

If you are a resident of Maryland, you may contact the Maryland Attorney General's Office at 200 St. Paul Place, Baltimore, MD 21202, www.oag.state.md.us, 1-888-743-0023.

If you are a resident of Massachusetts, note that pursuant to Massachusetts law, you have the right to obtain a copy of any police report.

Massachusetts law also allows consumers to request a security freeze. A security freeze prohibits a credit reporting agency from releasing any information from your credit report without written authorization. Be aware that placing a security freeze on your credit report may delay, interfere with, or prevent the timely approval of any requests you make for new loans, credit mortgages, employment, housing, or other services.

The fee for placing a security freeze on a credit report is $5.00. If you are a victim of identity theft and submit a valid investigative report or complaint with a law enforcement agency, the fee will be waived. In all other instances, a credit reporting agency may charge you up to $5.00 each to place, temporarily lift, or permanently remove a security freeze. If you have not been a victim of

identity theft, you will need to include payment to the credit reporting agency to place, lift, or remove a security freeze by check, money order, or credit card.

To place a security freeze on your credit report, you must send a written request to each of the three major reporting agencies by regular, certified, or overnight mail at the addresses below:

Equifax, PO Box 740256, Atlanta, GA 30374,www.equifax.com, 1-800-525-6285
Experian, PO Box 9554, Allen, TX 75013, www.experian.com,1-888-397-3742
TransUnion, PO Box 2000, Chester, PA 19022-2000,www.transunion.com, 1-800-680-7289

In order to request a security freeze, you will need to provide the following information:
1. Your full name (including middle initial as well as Jr., Sr., II, III, etc.)
2. Social Security number
3. Date of birth
4. If you have moved in the past five (5) years, provide the addresses where you have lived over the prior five years
5. Proof of current address such as a current utility bill or telephone bill
6. A legible photocopy of a government issued identification card (state driver's license or ID card, military identification, etc.)
7. If you are a victim of identity theft, include a copy of the police report, investigative report, or complaint to a law enforcement agency concerning identity theft

The credit reporting agencies have three (3) business days after receiving your request to place a security freeze on your credit report. The credit bureaus must also send written confirmation to you within five (5) business days and provide you with a unique personal identification number ("PIN") or password or both that can be used by you to authorize the removal or lifting of the security freeze.

To lift the security freeze in order to allow a specific entity or individual access to your credit report, you must call or send a written request to the credit reporting agencies by mail and include proper identification (name, address, and Social Security number) and the PIN number or password provided to you when you placed the security freeze as well as the identity of those entities or individuals you would like to receive your credit report or the specific period of time you want the credit report available. The credit reporting agencies have three (3) business days after receiving your request to lift the security freeze for those identified entities or for the specified period of time.

To remove the security freeze, you must send a written request to each of the three credit bureaus by mail and include proper identification (name, address, and Social Security number) and the PIN number or password provided to you when you placed the security freeze. The credit bureaus have three (3) business days after receiving your request to remove the security freeze.

If you are a resident of North Carolina, you may contact the North Carolina Attorney General's Office at 9001 Mail Service Center, Raleigh, NC 27699, www.ncdoj.gov, 1-919-716-6400.

If you are a resident of West Virginia, you also have the right to ask that nationwide consumer reporting agencies place "fraud alerts" in your file to let potential creditors and others know that you may be a victim of identity theft. A fraud alert can make it more difficult for someone to get

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credit in your name because it tells creditors to follow certain procedures to protect you. It also may delay your ability to obtain credit. You may place a fraud alert in your file by calling one of the three nationwide consumer reporting agencies. Contact information for each of the three credit reporting agencies is as follows:

Equifax, PO Box 740256, Atlanta, GA 30374,www.equifax.com, 1-800-525-6285
Experian, PO Box 9554, Allen, TX 75013, www.experian.com, 1-888-397-3742
TransUnion, PO Box 2000, Chester, PA 19022-2000, www.transunion.com, 1-800-680-7289

As soon as that agency processes your fraud alert, it will notify the other two, which then also must place fraud alerts in your file. You may choose between two types of fraud alert. An initial alert (Initial Security Alert) stays in your file for at least 90 days. An extended alert (Extended Fraud Victim Alert) stays in your file for seven years. To place either of these alerts, a consumer reporting agency will require you to provide appropriate proof of your identity, which may include your Social Security number. If you ask for an extended alert, you will have to provide an identity theft report. An identity theft report includes a copy of a report you have filed with a federal, state, or local law enforcement agency, and additional information a consumer reporting agency may require you to submit. For more detailed information about the identity theft report, visit www.ftc.gov/idtheft/.

You may also obtain a security freeze on your credit report to protect your privacy and ensure that credit is not granted in your name without your knowledge. You have a right to place a security freeze on your credit report pursuant to West Virginia law. The security freeze will prohibit a consumer reporting agency from releasing any information in your credit report without your express authorization or approval.

The security freeze is designed to prevent credit, loans and services from being approved in your name without your consent. When you place a security freeze on your credit report, within five business days you will be provided a unique personal identification number ("PIN") or password to use if you choose to remove the freeze on your credit report or to temporarily authorize the distribution of your credit report for a period of time after the freeze is in place. To provide that authorization, you must contact the consumer reporting agency and provide all of the following:

(1) The unique personal identification number ("PIN") or password provided by the consumer reporting agency;
(2) Proper identification to verify your identity; and
(3) The period of time for which the report shall be available to users of the credit report.

A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report shall comply with the request no later than three business days after receiving the request.

A security freeze does not apply to circumstances in which you have an existing account relationship and a copy of your report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control or similar activities.

If you are actively seeking credit, you should understand that the procedures involved in lifting a security freeze may slow your own applications for credit. You should plan ahead and lift a freeze, either completely if you are shopping around or specifically for a certain creditor, a few days before actually applying for new credit.

EXHIBIT F

REMOVED

EXHIBIT F

EXHIBIT G

REMOVED

EXHIBIT G

EXHIBIT H

EXHIBIT H

1 **time to time -- the corporate director of risk**
2 **management from time to time. I hear from the**
3 **attorneys.**
4 Q. Corporate risk manager, you just said?
5 **A. I misspoke. It's the director of -- associate**
6 **director of corporate risk manager. I don't even know**
7 **what that is.**
8 Q. Okay. Associate director of corporate risk
9 management?
10 **A. Of risk management. I -- I don't know what the**
11 **title is.**
12 Q. I gotcha. But as far as you know, sitting here
13 today, you're not exactly clear but it's something like
14 associate director, risk management?
15 **A. Yes.**
16 Q. Okay. Is there a director of risk management?
17 **A. I don't know. That's the thing, is that's --**
18 **the title has always mystified me. I don't know.**
19 Q. Gotcha. Now, the associate director, risk
20 management, who is that?
21 **A. Her name is Le Ann Lopez.**
22 Q. And she's with corporate?
23 **A. She's with Landry's, yeah.**
24 Q. She's with Landry's, okay. What is the scope of
25 her authority?

1 MS. McLEOD: Objection; calls for speculation.
2 BY MR. IQBAL:
3 Q. As far as you know.
4 **A. Yeah, I don't actually know. Yeah, I don't even**
5 **know how to describe the relationship. It's -- I mean,**
6 **sometimes it's almost like being my boss, except if I**
7 **choose not to do what is, you know, being presented,**
8 **then nothing happens. So it's not really a boss.**
9 Q. I gotcha so let's clarify this a little bit. So
10 Le Ann Lopez will ask you certain things, and you have
11 the freedom to either do what she asks or say no;
12 correct?
13 **A. Yeah. And, I mean, you're talking about across**
14 **time. I mean, I almost never interact with her. But**
15 **I've seen e-mails from her.**
16 Q. Okay. Are they to you?
17 **A. Yeah.**
18 Q. And typically do you read them?
19 **A. Sometimes.**
20 Q. Sometimes you don't read her e-mails?
21 **A. It just depends. If I know what it's about,**
22 **then it's -- if it doesn't, you know, concern me, then I**
23 **won't. I will eventually, but it's -- you know, I've**
24 **got to deal with stuff, so --**
25 Q. I gotcha. So some of her e-mails you ignore for

1 Q. Got it. And, if you know, do you know how long
2 Elliott's been there?
3 **A. It seems like a long time, but it's probably**
4 **been three or four years, something like that.**
5 Q. Okay. And if you know, do you know how long
6 Julie Moeller's been there?
7 **A. It's less than that. Probably two years or**
8 **something like.**
9 Q. Okay.
10 **A. And that's -- it could be longer or shorter. I**
11 **don't --**
12 Q. Okay. Now, you also said in this case that --
13 it looks like you got -- you were the first to get the
14 Complaint and the Summons in this case?
15 **A. I seem to remember that I received it, but I**
16 **couldn't swear to it.**
17 Q. No problem. No problem. Is that typical, or is
18 that unusual?
19 **A. It just depends. I mean, if it goes through**
20 **the -- what do you call it, the registered agent? --**
21 **then it's not going to come to me first. But if they,**
22 **you know, send a copy to me, you know, fax a courtesy**
23 **copy, something like that, then it could very well come**
24 **to me.**
25 Q. Okay. And when you first got this Complaint and

1 Summons, what did you do with it?
2 **A. Basically just tried to figure out who it was.**
3 **I mean, the idea, of course, would be to pass it along**
4 **to legal. But it does no good to do that until we know**
5 **who it is, so I had to figure out -- try to figure out**
6 **who it was.**
7 Q. Got it. And when you say "legal" -- you just
8 used that term -- what do you mean?
9 **A. To the staff attorneys at Landry's.**
10 Q. At Landry's?
11 **A. Yeah.**
12 Q. Okay. That's your legal department?
13 **A. Yes.**
14 Q. And how long did you take -- if you recall and
15 if you know, how long did you take to kind of figure
16 things out before you sent it along to staff at legal?
17 **A. Let me clarify. If that was the order it**
18 **occurred in, it would have been the top priority to**
19 **figure it out. If they sent it to me to begin with, it**
20 **still would have been top priority to figure it out, but**
21 **if they already had it, I would not have to send it back**
22 **to them. I would say, This is who we think it is.**
23 Q. Got it. And in this instance, it looks like you
24 were the first to get it, and so you forwarded it along
25 to legal?

1 **A. I wouldn't necessarily be aware of them.**
2 Q. Okay. As you sit here today, you don't recall
3 any investigations related to answering this
4 Supplemental Response?
5 **A. Not that I was involved in.**
6 Q. Okay. Typically, if there are investigations
7 into discovery questions or responses, who would handle
8 that, typically?
9 **A. It would typically be counsel.**
10 Q. When you say "counsel," you mean Landry's --
11 Elliott and --
12 **A. Staff counsel, yes.**
13 Q. Okay.
14 **A. Or that's my assumption, I mean.**
15 Q. Okay. Have you read the incident report that's
16 referenced here?
17 **A. If it references the incident report to this**
18 **situation, I did, yes.**
19 Q. But you're not sure?
20 **A. Well, I -- that's the thing, these numbers don't**
21 **mean anything to me. I mean, my brain doesn't go, Oh,**
22 **let me remember all these, you know, whatever these**
23 **numbers are.**
24 Q. Right.
25 **A. It just doesn't mean anything to me.**

EXHIBIT I

EXHIBIT I

1 supervisor?
2 **A. I believe Mike was here approximately one year.**
3 Q. All right. Now, is your interaction up in the
4 hierarchy limited to the vice president and general
5 manager, or do you talk to other superiors above the
6 general manager?
7 **A. I talked to people above and below, because I**
8 **also report to Vice President of Facilities in**
9 **Las Vegas.**
10 Q. And who is that?
11 **A. Clint Belka.**
12 Q. Okay. So on the corporate side, it's Alan. But
13 really with facilities, you also report to Clint?
14 **A. And I also report to corporate as well.**
15 Q. Okay. And who do you report to there?
16 **A. Chris McComas.**
17 Q. Can you spell the last name?
18 **A. M-c-C-o-m-a-s.**
19 Q. And what is Chris' title?
20 **A. He is corporate facilities, Director of Hotel --**
21 **Hotels, I believe. Again, don't hold me to the accurate**
22 **title.**
23 Q. No problem.
24 **A. It's approximate.**
25 Q. No problem at all.

1 Now Director of Hotels for Golden Nugget or
2 Landry's or --
3 **A. Landry's.**
4 Q. Now, Clint, VP of Facilities in Las Vegas for
5 Golden Nugget or for Landry's?
6 **A. Golden Nugget.**
7 Q. Clint's been around for a while; right? How
8 many years has he worked?
9 **A. Over ten, I believe.**
10 Q. Okay. And how about Chris?
11 **A. Approximately three years, maybe longer.**
12 Q. Okay. If there's a technical issue with the
13 facilities, if an accident occurs involving something on
14 the -- in the facility, who do you inform?
15 MS. McLEOD: Objection; form, assumes facts.
16 BY MR. IQBAL:
17 Q. You can answer.
18 **A. I wouldn't be involved with accidents --**
19 Q. Okay.
20 **A. -- or injuries unless it was directly -- I had**
21 **direct involvement.**
22 Q. Okay.
23 **A. Those issues would be reported to security --**
24 Q. Okay.
25 **A. -- and surveillance.**

ATTACHMENT 2

ATTACHMENT 2

OMSJ
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DISTRICT COURT

CLARK COUNTY, NEVADA

JOE N. BROWN, an individual, and his Wife, NETTIE J. BROWN, an individual Plaintiffs, vs. LANDRY'S, INC., a foreign corporation; GOLDEN NUGGET, INC. a Nevada corporation, d/b/a GOLDEN NUGGET LAUGHLIN; GNL, CORP., a Nevada corporation; THYSSENKRUPP ELEVATOR CORP., a foreign corporation; DOE INDIVIDUALS 1-100, ROE BUSINESS ENTITIES 1-100, Defendants.	Case No.: A-16-739887-C Dept. No.: XXXI **PLAINTIFFS' OPPOSITION TO DEFENDANTS' LANDRY'S AND GOLDEN NUGGET, INC.'S MOTION FOR SUMMARY JUDGMENT**
GNL, CORP., a Nevada corporation; Third-Party Plaintiff, vs. THYSSENKRUPP ELEVATOR CORPORATION a foreign corporation; DOES 1-75; ROE CORPORATION 1-75 and ROE CORPORATION 1-25, Third-Party Defendants	**Date of hearing:** **Time of hearing:**

PLAINTIFFS' OPPOSITION TO DEFENDANTS' LANDRY'S AND GOLDEN NUGGET, INC.'S MOTION FOR SUMMARY JUDGMENT

Plaintiffs Joe N. Brown and Nettie J. Brown ("Plaintiffs") hereby oppose the latest iteration of the Motion for Summary Judgment ("Motion") filed by Defendants Landry's, Inc. and Golden Nugget, Inc. ("Landry's" and "GNI" respectively, and collectively the "Defendants") and respectfully request that the Court again deny said Motion.

I. INTRODUCTION.

The Defendants are correct when they state the "history of this particular Motion is tortured at best." Mot. at 4:1. Sadly, however, little else in their recitation of facts is true.

The Defendants incorrectly claim that prior iterations of their summary judgment motion failed on narrow, technical grounds. They allege, for example, that the original motion "was denied on the basis that NRCP 7.1 disclosures had not yet been filed on behalf of the parties," Mot. at 4:3-4, and "because a typographical error was found in the body of three of Plaintiffs' Interrogatories when responses were prepared." *Id*. at 4:4-5. In fact, the only parties who failed to meet their disclosure obligations were the Defendants, and there was no error in the Plaintiffs' queries: the Defendants simply altered the interrogatories served upon them and then responded to their own edits. Despite these multiple failings, the Court heard the motion, reached the merits, and found the Defendants had "not met their burden of showing there are no genuine issues of material fact as to the ownership and control" of the Golden Nugget hotel, resort and casino in Laughlin Nevada (the "Laughlin Nugget"). *See* Order Re Motion for Reconsideration, October 31, 2017 (the "October 31 Order") at 3:13-15.

The Defendants' claims regarding their failed request for reconsideration (filed the ***day after*** the Court entered its order denying the summary judgment) are also incorrect. The Defendants contend that motion was denied "on the basis that [their] corrected discovery did not meet the standard for reconsideration." Mot. at 4:7-9. In fact, the Court actually ruled that "even if [it] were inclined to reconsider the merits of its initial ruling on the MSJ, it would still find summary judgment inappropriate." October 31 Order at 5:8-10. Thus, the Court has on multiple

occasions addressed the merits of the instant Motion and found them wanting. Yet here we are again.

The Court denied each of the prior motions because the Defendants failed to make their case. The Court issued detailed written findings of fact and conclusions of law to explain its reasoning: after reviewing the Defendants' contention that they exercise neither ownership nor control of the Laughlin Nugget, the Court cited the many "statements by Defendants to the public, the press, and the government, made via websites, statements in news articles, and filings with the U.S. Securities and Exchange commission" contradicting their position. October 31 Order at 3:4-7. "The evidence presented by the Defendants," the Court held, "was ***and is*** insufficient to meet their burden of proof" on summary judgment. *Id.* at 5:1-2 (emphasis added).

Regrettably, rather than ask the Court to reconsider its findings, the Defendants have chosen simply to ignore them. The instant Motion offers nothing new; and, as set forth below, ***the Defendants' evidentiary position has steadily worsened***. In addition to the evidence available before discovery – evidence that was and is sufficient to defeat summary judgment – discovery has revealed the Defendants:

- Supervised the work of the Laughlin Nugget risk management and facilities directors, who testified they answered to their corporate bosses at Landry's and GNI;
- Controlled the Laughlin Nugget capital equipment funds that could (and should) have been devoted to replacing the dangerous and obsolete escalator equipment there; and
- Exercised approval authority over maintenance at the Laughlin Nugget – including maintenance of the very escalator that broke Plaintiff Joe Brown's neck.

Far from showing the absence of any genuine issue of material fact, the evidence now shows even more clearly than before that summary judgment is inappropriate. The Motion should therefore be denied.

/ / /

II. PROCEDURAL HISTORY.

The Plaintiffs initiated this case by filing a complaint with this Court on July 12, 2016, alleging, *inter alia*, various acts of negligence by the Defendants leading to severe physical injuries to Plaintiff Joe Brown at the Laughlin Nugget. The Plaintiffs subsequently amended their complaint on September 1, 2016,[1] an amendment as of right because none of the defendants had yet answered. The Defendants still did not respond, and on February 17, 2017, the Plaintiffs noticed their intent to take the Defendants' default.

After receiving the notice, the Defendants abandoned their prior strategy of ignoring the Court's summons and on February 22, 2017, filed a motion to dismiss. The motion asserted, *inter alia,* that contrary to the allegations of the Complaint, the Defendants did not actually exercise any ownership or control over the Laughlin Nugget – in other words, the same basis for the instant Motion. The Court heard the motion to dismiss on March 28, 2017 and denied it by order entered April 25, 2017.

Less than a month later, the Defendants brought a motion for summary judgment again contending that, as purportedly-separate corporate entities, they cannot be held accountable for conditions at the Laughlin Nugget. In response, the Plaintiffs produced evidence of multiple public statements by the Defendants in which they asserted – to the public, the press, and the federal government – that they in fact do own and control the Laughlin Nugget. The Court held a hearing on the motion on June 27, 2017 and denied it.

The day after the Court entered its order denying summary judgment, the Defendants moved for reconsideration. The Court entertained yet another round of briefing and held yet another hearing; and by order entered October 31, 2017, it once again rejected the Defendants' efforts. The October 31 Order recounted the history of the Defendants' several motions to date;[2]

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[1] The operative Second Amended Complaint ("Complaint"), adding direct claims against third-party defendant Thyssenkrupp Elevator Corp., was filed September 18, 2018.

[2] This section of Plaintiffs' brief is taken in large part from the October 31 Order, at ¶¶ 1-8.

correctly noted that on summary judgment, "the Defendants were required to show the absence of any issue of material fact that would allow a rational trier of fact to return a verdict for the Plaintiffs, and that the Defendants are entitled to a judgment as a matter of law," October 31 Order at 4:20-22; and concluded that the Defendants failed to meet their burden. *Id.* at 5:1-2. The Court further found the Defendants failed to present any evidence warranting reconsideration; but even if they had done so, the Court "would still find summary judgment inappropriate."

The Defendants are once again seeking summary judgment, on the same grounds as before. Although they characterize the instant Motion as a continuation of their prior efforts (lamenting the tortured "history of this particular Motion," Mot. at 4:1-2), they have not elected to ask the Court for reconsideration. Instead, the Defendants have disregarded the Court's prior findings and mischaracterized the Complaint as asserting "negligence … solely by virtue of holding stock." Mot. at 9:23-24.

III. LEGAL STANDARDS.

Under Nevada law, a party can obtain summary judgment only when there is "no genuine issue as to any material fact and … the moving party is entitled to a judgment as a matter of law." Nev. R. Civ. P. 56(c). A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party. *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1031 (Nev. 2005).

On a motion for summary judgment, the burden of establishing the absence of any genuine issue of fact is on the moving party. *Butler v. Bogdanovich*, 705 P.2d 662, 663 (Nev. 1985); *Harry v. Smith*, 893 P.2d 372 (Nev. 1995). All doubts must be resolved against the movant, and their supporting documents, if any, must be "carefully scrutinized" by the Court. *Daugherty v. Wabash Life Ins. Co.*, 482 P.2d 814, 818 (Nev. 1971) (internal citations omitted). The trial court must accept as true all evidence favorable to the nonmoving party and must grant all inferences in their favor. *Hidden Wells Ranch, Inc. v. Strip Realty, Inc.*, 425 P.2d 599 (Nev. 1967); *Mullis v. Nevada*

Nat'l Bank, 654 P.2d 533 (Nev. 1982); *Jones v. First Mortgage Co. of Nevada*, 915 P.2d 883 (Nev. 1996).

IV. ARGUMENT.

In this latest iteration of their oft-defeated motion, the Defendants have stepped up their editing game: no longer content with merely re-writing Plaintiffs' discovery requests, they have instead sought to re-write the Complaint, falsely claiming that "the Plaintiffs impermissibly seek to hold the stockholders liable for the negligence of GNL, Corp. ["GNL"] solely by virtue of holding stock." Mot. at 9:23-24. This is not what the Plaintiffs have alleged, and the Defendants know it.

In fact, the Complaint alleges that the Defendants (together with co-defendant GNL) own and operate the Laughlin Nugget and so owed a duty of care to the Plaintiffs to install, operate, and maintain the premises and equipment therein in safe condition – a duty they breached through their negligence. *See* Complaint ¶¶ 6, 25-28, 31, and 34. The key issue is whether the Defendants have presented sufficient evidence to eliminate any issue of triable fact regarding their culpability. This Court has repeatedly found that the Defendants failed to meet this burden. *See e.g.*, October 31 Order at 3:13-15; 4:20-22; and 5:1-2, 7-10.

A. Pre-Discovery Evidence Shows the Defendants Run the Laughlin Nugget.

As the Court knows from the Defendants' prior failed motions, Landry's has repeatedly affirmed its control over operations at the Laughlin Nugget. When Landry's announced its acquisition of the property in 2005, it boasted that "***Landry's operating skill and leadership*** will help boost" the Laughlin Nugget to "***a new level of performance*** and satisfaction." Declaration of Mohamed A. Iqbal, Jr., in Support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment ("Iqbal Decl."), Exhibit C (emphasis added). On its corporate website in 2012, Landry's bragged "At Golden Nugget Laughlin … ***Landry's added*** three restaurants … ***and upgraded*** the breathtaking river-view rooms." Iqbal Decl., Exhibit D (emphasis added).

In 2016, after the Plaintiffs' injuries, Landry's continued to affirm its control over operations at the Laughlin Nugget, posting on its website that in response to a recent data security breach, it implemented "[e]nhanced security measures, including end-to-end encryption" at its properties, including the Laughlin Nugget. Iqbal Decl., Exhibit E. The new encryption system included the restaurants, coffee shops, and all of the retail areas at the Laughlin Nugget, indicating that Landry's exercised control throughout the property. *Id*. Moreover, Landry's claimed it was actively directing the changes, announcing it "***hired a leading cyber security firm*** to examine our payment card systems [and], ***implemented advanced payment processing solutions***," and was "***working closely with the payment card networks*** to identify potentially affected cards." *Id*. (emphasis added). Rather than the passive shareholder described in the instant Motion, Landry's repeatedly has told the world that it is actively involved in the running of the Laughlin Nugget.

GNI has similarly conceded that it shares control over operations at the Laughlin Nugget, stating in its last public 10-Q filing with the Securities and Exchange Commission that through its subsidiaries, it "owns and operates the Golden Nugget hotel, casino, and entertainment resorts in downtown Las Vegas and Laughlin, Nevada." Iqbal Decl., Exhibit B at p. 7. GNI repeated this claim throughout its SEC filings, asserting that it "owns and operates the Golden Nugget hotel, casino, and entertainment resorts which consist of two properties, one in Las Vegas and the other in Laughlin, Nevada," *id*. at p. 10, and flatly stating "***We own and operate*** the Golden Nugget—Las Vegas and ***the Golden Nugget—Laughlin*** hotel casinos." *Id*. at p. 27. GNI has produced no documents suggesting that it has relinquished this control over operations.

On the basis of these statements alone, the Court denied the Defendants' prior summary judgment motions – and it was right to do so. Indeed, it would be difficult to imagine a clearer case where the evidence presented a genuine issue of material fact, unless additional evidence obtained in discovery further demonstrated the Defendants' control.

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B. Evidence Obtained in Discovery Further Demonstrates Defendants' Control.

It should come as no surprise that additional evidence showing the Defendants' control over the Laughlin Nugget was obtained in discovery. For example, the requisition approval for parts needed to retrofit cracked steps on the Laughlin Nugget down escalator (after that escalator broke Mr. Brown's neck) came from Landry's. Iqbal Decl., Exhibit F. When a request for labor to install the new steps was delayed pending a local supervisor's concurrence, Landry's issued a notice to the Laughlin Nugget prompting them to act: the email was issued with the heading "Action Required." Iqbal Decl., Exhibit G.

That action was "***required***" when Landry's said so was well understood by personnel at the Laughlin Nugget. Richard L. Smith, the official responsible for risk management functions at the Laughlin Nugget, described Landry's corporate risk manager Le Ann Lopez as "almost like … my boss." Iqbal Decl., Exhibit H at 86:19-23; 87:4-8. He further testified that whenever injury accidents occur at the Laughlin Nugget he conferred with Landry's corporate counsel for advice on how to proceed, *id*. at 118:25-119:11, and that investigation of such matters are the responsibility of Landry's staff counsel. *Id*. at 132:6-12. Similarly, Don Hartmann, Director of Facilities at the Laughlin Nugget, testified that in addition to his local supervisors, "I also report to corporate as well" – and specified that his reporting official was Chris McComas, Director of Hotels for Landry's. Iqbal Decl., Exhibit I at 30:3-31:6.

Additionally, Mr. Hartmann testified that he also reports to Clint Belka, Vice President of Engineering at the Golden Nugget in Las Vegas ("the Las Vegas Nugget"). According to the organizational chart provided by the Defendants, the Las Vegas Nugget is a putatively-separate entity; neither Mr. Belka nor Mr. Hartmann are in each other's chain of supervision except through some other entity. Iqbal Decl., Exhibit J. The owner of both properties is GNI, *id.*; the cross-entity chain of command described by Mr. Hartmann links there. This is confirmed by the testimony of Mr. Belka, who testified that personnel from outside the Las Vegas Nugget would periodically take him to other Golden Nugget properties, including the Laughlin Nugget, to

perform random "quality check[s]" on their operations. Iqbal Decl., Exhibit K at 24:5-11; 24:22-25:3. The testimony of Mr. Belka and Mr. Hartmann confirms that GNI continues to operate the Laughlin Nugget, just as it described in its federal filings. Iqbal Decl., Exhibit B.

Mr. Belka also testified that capital budgets for all of the Golden Nugget properties are allocated at the "corporate level," meaning the general managers of all the properties "and above," and that as the smallest property the Laughlin Nugget receives the smallest slice of the pie. *Id*. at 32:16-33:10. This is particularly significant because the escalator that broke Plaintiff Joe Brown's neck was an older model whose steps were prone to cracking. Iqbal Decl., Exhibit L at 119:6-21. Indeed, Chris Dutcher, the ThyssenKrupp engineer who serviced the escalator recommended – prior to the accident that caused the Plaintiffs' injuries – that it be replaced; but this was an expensive proposal that GNI did not follow. *Id.* at 188:14-190:5.[3] A rational trier of fact could conclude that GNI's budget and supervision practices are additional evidence of its continuing control of operations and that the Plaintiffs wound up bearing the cost of GNI's decisions.

Even before discovery, the Court correctly concluded that there were genuine issues of material fact as to the ownership and control of the Laughlin Nugget. The Defendants have produced no new evidence to challenge that conclusion; on the contrary, discovery has only revealed ***additional evidence*** showing that whatever the Defendants may pretend to be true when problems arise, they are the ones who exercise control over the budget, staff, and maintenance of equipment at the Laughlin Nugget. The instant Motion is thus, like all of its predecessors, without merit.

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[3] In their companion Motion for Summary Judgment, Defendants argue that all the steps in the down escalator were replaced in 2012. In fact, Mr. Dutcher testified even though he recommended all of the stairs be replaced for safety's sake, Iqbal Decl. Exhibit K at 135:3-8, only "a few" steps on the down escalator were actually replaced. *Id.* at 138:7-20. Mr. Dutcher also testified that cracks in the remaining steps developed prior to May 7, 2015 – in other words, *before* the escalator broke Mr. Brown's neck. *Id.* at 174:12-175:5.

V. CONCLUSION.

For all the foregoing reasons, the Motion should be DENIED.

Dated this 19th day of November 2018.

Respectfully Submitted,

IQBAL LAW PLLC

By: _____

Mohamed A. Iqbal, Jr. (NSB #10623)
Christopher Mathews (NSB #10674)

Attorneys for Plaintiffs Joe N. Brown and Nettie Brown

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of IQBAL LAW PLLC, and that on this 19th day of November 2018, I caused to be served a true and correct copy of the foregoing **PLAINTIFFS' OPPOSITION TO DEFENDANTS' LANDRY'S AND GOLDEN NUGGET, INC.'S, MOTION FOR SUMMARY JUDGMENT ON LIABILITY AND PUNITIVE DAMAGES** to be served as follows:

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

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

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

/s/ Kevin Williams
An employee of IQBAL LAW PLLC

DECLARATION OF MOHAMED A. IQBAL, JR., IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I, MOHAMED A. IQBAL, JR. hereby declare as follows:

1. I am over the age of 18 and competent to testify. I am counsel of record for Plaintiffs Joe N. Brown and Nettie J. Brown ("Plaintiffs") in case no. A-16-739887-C and make this declaration subject to penalty of perjury under the laws of the United States and the State of Nevada, in support of Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, filed herewith.

2. **Exhibit A** to this Declaration is a Statement of Disputed Facts.

3. **Exhibit B** to this Declaration is a true and correct copy of GNI's last publicly-available Form 10- Q filing with the U.S. Securities and Exchange Commission, taken from the EDGAR online database.

4. **Exhibit C** to this Declaration is a true and correct copy of the press release issued by Landry's (under its former name, Landry's Restaurants, Inc.) announcing the purchase of the Laughlin Nugget.

5. **Exhibit D** to this Declaration is a true and correct copy of the Landry's corporate website page "Landry's History" as it appeared when it was first released on January 14, 2012.

6. **Exhibit E** to this Declaration is a true and correct copy of a Landry's press release dated January 29, 2016, concerning, inter alia, the Laughlin Nugget.

7. **Exhibit F** to this Declaration is a true and correct copy of an email from Landry's Inc. dated August 10, 2015, produced in discovery by the Defendants and bearing Bates label GNL 000877. This document was marked "Confidential" by the Defendants and without waiving their right to challenge this designation Plaintiffs will provide a hard copy of the document to the Court, and will provide courtesy copies to counsel for the parties upon request.

8. **Exhibit G** to this Declaration is a true and correct copy of an email from Landry's Inc. dated December 17, 2015, produced in discovery by the Defendants and bearing Bates label GNL 000897. This document was marked "Confidential" by the Defendants and without waiving their

right to challenge this designation Plaintiffs will provide a hard copy of the document to the Court, and will provide courtesy copies to counsel for the parties upon request.

9. **Exhibit H** to this Declaration is a true and correct excerpt of the transcript from the deposition of Richard L. Smith, Risk Manager at the Laughlin Nugget, including pages 86, 87, 118, 119, and 132.

10. **Exhibit I** to this Declaration is a true and correct excerpt of the transcript from the deposition of Don Hartmann, Director of Facilities at the Laughlin Nugget, including pages 30 and 31.

11. **Exhibit J** to this Declaration is a true and correct copy of an organizational chart produced in discovery by the Defendants and bearing Bates label GNL 000440. This document was marked "Confidential" by the Defendants and without waiving their right to challenge this designation Plaintiffs will provide a hard copy of the document to the Court, and will provide courtesy copies to counsel for the parties upon request.

12. **Exhibit K** to this Declaration is a true and correct excerpt of the transcript from the deposition of Vice President of Engineering at the Golden Nugget in Las Vegas, including pages 24, 25, 32, and 33.

13. **Exhibit L** to this Declaration is a true and correct excerpt of the transcript from the deposition of Chris Dutcher of Thyssenkrupp Elevator Corp., including pages 119, 188, 189, and 190.

Dated this 19th day of November 2018.

By: _____

Mohamed A. Iqbal, Jr.

EXHIBIT A

EXHIBIT A

STATEMENT OF DISPUTED FACTS RE: MOTION FOR SUMMARY JUDGMENT

PURPORTEDLY UNDISPUTED FACT	ACTUAL STATUS	SUPPORTING EVIDENCE
6. GNL owns, operates, and manages the Golden Nugget Laughlin	Disputed. Landry's, GNI, and GNL exercise control of the Laughlin Nugget together.	Exhibits B, C, D, E, F, G, H, I, J, and K to this Declaration.
7. GNL was in control on [*sic*] the escalator on the date of the Subject Incident.	Disputed. Landry's, GNI, and GNL exercised control of the escalator together.	Exhibits B, C, D, E, F, G, H, I, J, and K to this Declaration.
8. LANDRY'S does not directly, or indirectly, manage or operate GNL but is merely a stockholder.	Disputed. Landry's exercises management and operational control and authority over GNL, as admitted in its public statements and described by GNL employees.	Exhibits B, C, D, E, F, G, H, I, and K to this Declaration.
9. LANDRY'S does not directly, or indirectly, manage or operate the Golden Nugget Laughlin.	Disputed. Landry's exercises management and operational control and authority over the Laughlin Nugget, as admitted in its public statements and admitted by GNL employees.	Exhibits B, C, D, E, F, G, H, I, and K to this Declaration.
10. At the time of the incident (5-12-15), LANDRY'S INC. neither directly nor indirectly, through one or more of its subsidiaries, owned any percent of the outstanding ownership or membership interest in GNL or GNI.	Disputed. GNI informed the SEC that it was a wholly-owned subsidiary of Landry's and produced no documents purporting to accomplish a change in ownership; and Landry's continued to exercise control over the Laughlin Nugget.	Exhibits B, C, D, E, F, G, H, I, and K to this Declaration.
12. GNI does not directly, or indirectly, manage or operate GNL.	Disputed. GNI exercises management and operational control and authority over GNL, as admitted in its SEC filings and described by GNL employees and GNLV employees.	Exhibits B, H, I, J, and K to this Declaration.
13. GNI does not directly, or indirectly, manage or operate the Golden Nugget Laughlin.	Disputed. GNI exercises management and operational control and authority over the Laughlin Nugget, as admitted in its SEC filings and described by GNL employees and GNLV employees.	Exhibits B, H, I, J, and K to this Declaration.

EXHIBIT B

EXHIBIT B

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

FOR THE QUARTERLY PERIOD ENDED SEPTEMBER 30, 2006

Commission file number 333-114335

GOLDEN NUGGET, INC.
(Exact name of registrant as specified in its charter)

Nevada (State or other jurisdiction of incorporation or organization)	**56-2370836** (I.R.S. Employer Identification No.)
129 East Fremont Street **Las Vegas, Nevada** (Address of principal executive offices)	**89101** (Zip Code)

(702) 385-7111
(Registrant's telephone number, including area code)

Registrant is a wholly owned subsidiary of Landry's Restaurant's, Inc. Registrant meets the conditions set forth in General Instruction H (1)(a) and (b) of Form 10-Q and is filing this Form 10-Q with the reduced disclosure format authorized by General Instruction H.

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act. (check one):

Large Accelerated Filer ☐ Accelerated Filer ☐ Non-accelerated Filer ☒

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act.): Yes ☐ No ☒

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Common Stock, no par value, 100 outstanding shares as of November 6, 2006.

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GOLDEN NUGGET, INC.
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GOLDEN NUGGET, INC.
PART 1. FINANCIAL INFORMATION

ITEM 1. *Financial Statements*

The accompanying unaudited condensed consolidated financial statements have been prepared by us pursuant to the rules and regulations of the Securities and Exchange Commission. Accordingly, they do not include all of the information and footnotes required by generally accepted accounting principles for complete financial statements. However in our opinion, all adjustments (consisting only of normal recurring entries) necessary for a fair presentation of our results of operations, financial position and changes therein for the periods presented have been included.

The information included in this Form 10-Q should be read in conjunction with the consolidated financial statements and related notes to financial statements included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2005. Operating results for the three and nine months ended September 30, 2006 are not necessarily indicative of the results of operations that may be achieved for the entire fiscal year ending December 31, 2006.

This report contains forward-looking statements within the meaning of Section 27A of the Securities Act and Section 21E of the Securities Exchange Act of 1934. All statements other than statements of historical fact are "forward-looking statements" for purposes of federal and state securities laws. Forward-looking statements may include the words "may," "will," "plans," "believes," "estimates," "expects," "intends" and other similar expressions. Our forward-looking statements are subject to risks and uncertainty, including, without limitation, our ability to continue our expansion strategy, our ability to make projected capital expenditures, as well as general market conditions, competition, and pricing. Forward-looking statements include statements regarding:

- potential acquisitions of other gaming operations and lines of businesses in other sectors of the hospitality and entertainment industries;
- future capital expenditures, including the amount and nature thereof;
- business strategy and measures to implement such strategy;
- competitive strengths;
- goals;
- expansion and growth of our business and operations;
- future commodity prices;
- availability of products, materials and employees;
- consumer perceptions of food safety;
- changes in local, regional and national economic conditions;
- the effectiveness of our marketing efforts;
- changing demographics surrounding our hotels and casinos;
- the effect of changes in tax laws;
- actions of regulatory, legislative, executive or judicial decisions at the federal, state or local level with regard to our business and the impact of any such actions;
- our ability to maintain regulatory approvals for our existing businesses and our ability to receive regulatory approval for our new businesses;
- our expectations of the continued availability and cost of capital resources;
- same store sales;
- earnings guidance;
- the seasonality of our business;
- weather and acts of God;
- food, labor, fuel and utilities costs;
- plans; and
- references to future success.

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Although we believe that the assumptions underlying our forward-looking statements are reasonable, any of the assumptions could be inaccurate, and, therefore, we cannot assure you that the forward-looking statements included in this report will prove to be accurate. In light of the significant uncertainties inherent in our forward-looking statements, the inclusion of such information should not be regarded as a representation by us or any other person that our objectives and plans will be achieved.

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GOLDEN NUGGET, INC.
(A WHOLLY OWNED SUBSIDIARY OF LANDRY'S RESTAURANTS, INC.)
UNAUDITED CONDENSED CONSOLIDATED BALANCE SHEETS
(Dollars in thousands)

	September 30, 2006	December 31, 2005
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	$ 20,045	$ 22,534
Accounts receivable, net	3,862	4,946
Inventories	3,814	3,260
Prepaid expenses and other	6,660	5,125
Total current assets	34,381	35,865
PROPERTY AND EQUIPMENT, net	339,490	321,744
INVESTMENT IN JOINT VENTURE	5,384	5,424
DEPOSITS AND OTHER ASSETS, net	35,350	35,576
Total assets	$ 414,605	$ 398,609
LIABILITIES AND STOCKHOLDER'S EQUITY		
CURRENT LIABILITIES:		
Accounts payable	$ 7,316	$ 13,858
Accrued liabilities	40,450	29,268
Current portion of notes payable and other obligations	142	132
Amounts due affiliates	10,550	6,193
Total current liabilities	58,458	49,451
OTHER LONG-TERM LIABILITIES	4,031	1,496
NOTES PAYABLE, NET OF CURRENT PORTION	174,565	181,223
Total liabilities	237,054	232,170
COMMITMENTS AND CONTINGENCIES		
STOCKHOLDER'S EQUITY:		
Common stock (no par value, 10,000 shares authorized, 100 shares issued and outstanding)	—	—
Paid-in capital in excess of par value	163,000	163,000
Retained earnings (deficit)	14,551	3,439
Total stockholder's equity	177,551	166,439
Total liabilities and stockholder's equity	$ 414,605	$ 398,609

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

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GOLDEN NUGGET, INC.
(A WHOLLY OWNED SUBSIDIARY OF LANDRY'S RESTAURANTS, INC.)
UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Dollars in thousands)

	Successor Company			Predecessor Company	
	Three Months Ended September 30, 2006	Nine Months Ended September 30, 2006	September 27 - September 30, 2005	July 1 - September 26, 2005	January 1 - September 26, 2005
REVENUES					
Casino	$ 33,771	$ 111,229	$ 1,825	$ 36,618	$ 121,505
Rooms	13,013	42,767	601	12,307	41,139
Food and beverage	9,013	29,585	597	12,809	41,759
Other	2,424	7,117	95	2,474	8,190
Gross revenues	58,221	190,698	3,118	64,208	212,593
Promotional allowances	(6,780)	(20,460)	(411)	(8,146)	(25,812)
Net revenues	51,441	170,238	2,707	56,062	186,781
COST AND EXPENSES					
Casino	19,422	59,705	1,057	22,392	72,589
Rooms	4,611	14,076	235	5,465	16,766
Food and beverage	5,513	18,074	352	8,571	27,030
Other	1,716	5,228	92	2,141	6,863
General and administrative	12,160	36,339	471	14,061	42,974
Depreciation and amortization	3,014	8,713	202	4,076	12,972
Total cost and expense	46,436	142,135	2,409	56,706	179,194
Operating income (loss)	5,005	28,103	298	(644)	7,587
OTHER INCOME (EXPENSE):					
Equity in loss of joint venture	(287)	(744)	(14)	(312)	(826)
Interest expense, net	(3,502)	(10,459)	(169)	(4,207)	(13,279)
Gain (loss) on disposal of fixed assets	(6)	(6)	—	11	504
Total other income (expense)	(3,795)	(11,209)	(183)	(4,508)	(13,601)
Income (loss) before income taxes	1,210	16,894	115	(5,152)	(6,014)
Provision for income taxes	351	5,782	37	—	—
NET INCOME (LOSS)	$ 859	$ 11,112	$ 78	$ (5,152)	$ (6,014)

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

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GOLDEN NUGGET, INC.
(A WHOLLY OWNED SUBSIDIARY OF LANDRY'S RESTAURANTS, INC.)
UNAUDITED CONDENSED CONSOLIDATED STATEMENT OF STOCKHOLDER'S EQUITY
(Dollars in thousands except share amounts)

	Common Stock		Additional Paid in Capital	Retained Earnings	Total
	Shares	Amount			
Balance, December 31, 2006	100	$ —	$163,000	$ 3,439	$166,439
Net income	—	—	—	11,112	11,112
Balance, September 30, 2006	100	$ —	$163,000	$14,551	$177,551

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

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GOLDEN NUGGET, INC.
(A WHOLLY OWNED SUBSIDIARY OF LANDRY'S RESTAURANTS, INC.)
UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Dollars in thousands)

	Successor Company		Predecessor Company
	Nine months ended September 30, 2006	September 27, 2005 - September 30, 2005	January 1, 2005- September 26, 2005
CASH FLOWS FROM OPERATING ACTIVITIES:			
Net income (loss)	$ 11,112	$ 78	$ (6,014)
Adjustments to reconcile net income (loss) to net cash provided by operating activities -			
Depreciation and amortization	8,713	202	12,972
(Gain) loss on sale of assets	6	—	(504)
Equity in loss of joint venture	744	14	826
Changes in operating assets and liabilities	5,625	(2,376)	8,814
Net cash provided by (used in) operating activities	26,200	(2,082)	16,094
CASH FLOWS FROM INVESTING ACTIVITIES:			
Property and equipment additions	(16,615)	(3)	(6,009)
Proceeds from sale of property and equipment	16	—	1,157
Contributions to joint venture	(704)	—	(704)
Net cash used in investing activities	(17,303)	(3)	(5,556)
CASH FLOWS FROM FINANCING ACTIVITIES:			
Payments on term loan	—	(16,500)	(2,100)
Borrowings under revolving credit facility and other debt	33,854	16,500	(7,065)
Repayments under revolving credit facility and other debt	(39,986)	—	—
Distributions of equity to principal stockholder	—	—	(979)
Contributions of equity from principal stockholders	—	—	3,000
Increase (decrease) in amounts due to affiliates	(5,254)	—	—
Net cash provided by (used in) financin g activities	(11,386)	—	(7,144)
NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS	(2,489)	(2,085)	3,394
CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD	22,534	27,513	24,119
CASH AND CASH EQUIVALENTS AT END OF PERIOD	$ 20,045	$ 25,428	$ 27,513

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

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GOLDEN NUGGET, INC.
(A WHOLLY OWNED SUBSIDIARY OF LANDRY'S RESTAURANTS, INC.)
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

1. NATURE OF BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Golden Nugget, Inc. (Golden Nugget) is a Nevada corporation, which through two wholly owned subsidiaries, owns and operates the Golden Nugget hotel, casino, and entertainment resorts in downtown Las Vegas and Laughlin, Nevada. We are a wholly owned subsidiary of Landry's Restaurants, Inc. (Landry's or the Parent). Unless otherwise stated, all dollars are in thousands.

On September 27, 2005, Landry's Gaming Inc., an unrestricted subsidiary of Landry's, completed the acquisition of the capital stock of Golden Nugget, including $27.5 million in cash, for $163.0 million in cash plus the assumption of $155.0 million of senior secured notes and $27.0 million of bank debt. (See Note 2 for further discussion.) Subsequent to the acquisition, on December 9, 2005, Golden Nugget, formerly Poster Financial Group, Inc., changed its name. A new basis of accounting resulting from the acquisition has been reflected in our Condensed Consolidated Financial Statements. The results of operations and cash flows have been segregated to present post-acquisition activity as the "Successor Company" and pre-acquisition activity as the "Predecessor Company" in the financial statements and accompanying footnotes.

Principles of Consolidation

The accompanying financial statements include the consolidated accounts of Golden Nugget, Inc. and it's wholly and majority owned subsidiaries. All intercompany accounts and transac tions have been eliminated in consolidation.

We hold 17.65% of the voting units and 50.0% of the non-voting units of the Fremont Street Experience (FSE), and account for our investment utilizing the equity method of accounting. FSE is owned by a group of unrelated casino operators in downtown Las Vegas, and operates retail malls, parking garages, entertainment venues and a pedestrian mall that encloses Fremont Street, located adjacent to the Golden Nugget – Las Vegas.

Basis of Presentation

The consolidated financial statements included herein have been prepared without audit. Certain information and footnote disclosures normally included in financial statements prepared in accordance with generally accepted accounting principles have been condensed or omitted. In the opinion of management, all adjustments, consisting of normal recurring items and estimates necessary for a fair presentation of the results for interim periods, have been made. These consolidated financial statements should be read in conjunction with the financial statements and notes thereto included in the 2005 Form 10-K, filed with the Securities and Exchange Commission.

Certain prior period amounts have been reclassified to conform to the presentation in the current year.

Revenue Recognition and Promotional Allowances

Casino revenue is the aggregate net difference between gaming wins and losses, with liabilities recognized for funds deposited by customers before gaming play occurs ("casino front money") and for chips in the customer's possession ("outstanding chip liability"). Casino revenues are recognized net of certain sales incentives, which are recorded as a reduction of revenue. In addition, accruals for the cost of cash-back points in point-loyalty programs, such as points earned in slot players clubs, are recorded as a reduction of revenue.

Hotel, food and beverage, entertainment and other operating revenues are recognized as services are performed. Advance deposits on rooms and advance ticket sales are recorded as accrued liabilities until services are provided to the customer. The retail value of accommodations, food and beverage, and other services furnished to hotel-casino guests without charge is included in gross revenue and then deducted as promotional allowances.

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NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS-CONTINUED

The estimated retail value of such promotional allowances is included in operating revenues as follows:

	Successor Company			Predecessor Company	
	Three Months Ended September 30, 2006	Nine Months Ended September 30, 2006	September 27 - September 30, 2005	July 1 - September 26, 2005	January 1 - September 26, 2005
Rooms	$ 2,909	$ 8,669	$ 164	$ 2,857	$ 9,007
Food & Beverage	3,680	11,172	236	4,909	15,665
Other	191	619	11	380	1,140
	$ 6,780	$ 20,460	$ 411	$ 8,146	$ 25,812

The estimated cost of providing such promotional allowances is primarily included in casino expenses as follows:

	Successor Company			Predecessor Company	
	Three Months Ended September 30, 2006	Nine Months Ended September 30, 2006	September 27 - September 30, 2005	July 1 - September 26, 2005	January 1 - September 26, 2005
Rooms	$ 1,748	$ 5,223	$ 106	$ 1,848	$ 5,856
Food & Beverage	3,863	11,800	260	5,404	17,121
Other	220	874	16	628	1,898
	$ 5,831	$ 17,897	$ 382	$ 7,880	$ 24,875

Recent Accounting Pronouncements

In June 2006, the Financial Accounting Standards Board (FASB) issued Interpretation No. 48, *Accounting for Uncertainty in Income Taxes-an interpretation of FASB Statement No. 109.* This Interpretation prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return, and provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. This Interpretation is effective for fiscal years beginning after December 15, 2006. We are currently assessing the impact of this Interpretation on our financial statements.

In September 2006, the FASB issued Staff Accounting Bulletin No. 108 (SAB 108), *Considering the Effects of Prior Year Misstatements When Quantifying Misstatements in Current Year Financial Statements.* SAB 108 addresses the diversity in practice of quantifying and assessing materiality of financial statement errors. It is effective for fiscal years ending after November 15, 2006 and allows for a one-time transitional cumulative effect adjustment to the opening balance of retained earnings for errors that were not previously deemed material. We are currently evaluating the impact of adoption on our financial statements

In September 2006, the FASB issued SFAS 157 *Fair Value Measurements*, which defines fair value, establishes a framework for measuring fair value and expands disclosures regarding fair value measurements. SFAS 157 is effective for fiscal years ending after December 15, 2006. We are currently evaluating the impact of adoption on our financial statements.

Segment Reporting

Golden Nugget owns and operates the Golden Nugget hotel, casino, and entertainment resorts which consist of two properties, one in Las Vegas and the other in Laughlin, Nevada. Both properties include gaming, hotel, dining, entertainment, retail and other related amenities. Management believes that these two properties meet all of the criteria for aggregating operating segments with similar economic characteristics, products and services, production processes, class of customers, distribution methods, and regulatory environment as defined in SFAS No. 131. As such the Golden Nugget is comprised of one reportable segment.

Supplemental Cash Flow Information

Cash paid for interest expense was $7.7 million and $9.0 million for the nine months ended September 30, 2006 and the period from January 1, 2005 to September 26, 2005, respectively. No cash was paid for income taxes for the nine months ended September 30, 2006, while $1.0 million was paid for the period from January 1, 2005 to September 26, 2005.

Non-cash investing and financing activities include $9.6 million in capital expenditures funded by an increase in amounts due to Landry's.

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GOLDEN NUGGET, INC.
(A WHOLLY OWNED SUBSIDIARY OF LANDRY'S RESTAURANTS, INC.)
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS-CONTINUED

2. CHANGE OF CONTROL

On September 27, 2005, Landry's completed the acquisition of the capital stock of the Golden Nugget, including $27.5 million in cash, for $163.0 million plus the assumption of $155.0 million of senior secured notes due 2011 and $27.0 million in bank debt. The following summarizes the allocation of purchase price based on estimated fair values of the assets acquired and liabilities assumed. These fair values were determined using appraised values and management's estimates from available information as well as preliminary plans for future operations.

Estimated fair value of assets acquired	$ 403,144
Liabilities assumed or created	(240,144)
Allocated purchase price	163,000
Less: Cash acquired and debt assumed	(27,513)
Net cash paid	$ 135,487

As a result of the acquisition, we have recorded direct acquisition costs included in accrued liabilities for the estimated incremental costs to rationalize activities at the two locations and for estimated contract termination and severance costs. Accounting principles generally accepted in the United States, provide that these direct acquisition expenses, which are not associated with the generation of future revenues and have no future economic benefit, be reflected as assumed liabilities in the allocation of the purchase price. The acquisition liabilities included in the purchase price allocation aggregate approximately $4.9 million of which $3.8 million have been paid as of September 30, 2006.

The following pro forma financial information presents the consolidated results of operations as if the acquisition occurred on January 1, 2005, after including certain pro forma adjustments for interest expense, depreciation and amortization, and income taxes.

	Predecessor	
	July 1, 2005 - September 26, 2005	January 1, 2005 - September 26, 2005
Revenue	$ 56,062	$ 186,781
Net income (loss)	$ (2,068)	$ 82

The pro forma financial information is not necessarily indicative of the combined results of operations had the transaction occurred on January 1, 2005 or the results of operations that may be obtained in the future.

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GOLDEN NUGGET, INC.
(A WHOLLY OWNED SUBSIDIARY OF LANDRY'S RESTAURANTS, INC.)
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS-CONTINUED

3. ACCRUED LIABILITIES

Accrued liabilities consisted of the following:

	September 30, 2006	December 31, 2005
Salaries and related benefits	$ 13,060	$ 11,829
Gaming related, excluding taxes	12,133	11,182
Taxes, other than income taxes	1,904	2,061
Interest payable and other	6,552	1,919
Income taxes payable, net	5,753	349
Merger costs	1,048	1,928
Total accrued liabilities	$ 40,450	$ 29,268

4. LONG-TERM DEBT

Debt Issuance

In December 2003, we issued $155.0 million of 8 3/4% senior secured notes due 2011 to finance a portion of the purchase price of the acquisition of the Golden Nugget from MGM Mirage. All payments are fully, unconditionally and irrevocably guaranteed, jointly and severally, by all our current and future restricted subsidiaries on a senior secured basis. The senior notes and the guarantees are secured by a pledge of capital stock of our restricted subsidiaries and a security interest in substantially all of our and the guarantors' current and future assets. Such security interest is junior to the security interest granted to the lenders under our credit facility. Interest on the notes is payable in June and December of each year.

The $155.0 million of 8 3/4% senior secured notes due 2011 remained outstanding following Landry's purchase of the Golden Nugget. As a result of the change of control, we were required to commence an offer to purchase all outstanding senior notes for 101% of the aggregate principal amount plus any accrued and unpaid interest. The offer commenced in accordance with the indenture and expired on November 28, 2005. No notes were tendered under the offer.

Bank Credit Agreement

In January 2004, we entered into a $35.0 million senior secured credit facility consisting of a $20.0 million amortizing term loan and a $15.0 million revolver. The senior secured credit facility was later amended, expanding the revolver to $25.0 million. Under the credit facility, we are subject to various financial covenants, including among other things, limitations on the disposal of assets, mergers and acquisitions, liens or indebtedness, and transactions with affiliates. Our obligations under the credit facility are guaranteed, jointly and severally, by all our subsidiaries. Our obligations under the credit facility are also secured by a pledge of capital stock of our restricted subsidiaries and our interest in FSE, as well as a first priority lien on substantially all of our and the guarantors' current and future assets.

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NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS-CONTINUED

At March 31, 2005, we failed to satisfy the financial covenants under the loan and security agreement. On March 31, 2005, we entered into a commitment letter arrangement with our lender, which on May 2, 2005, was formalized into an amendment to the loan and security agreement relating to its credit facility. The amendment modifies financial ratios and covenants to resolve certain defaults (which had been previously waived by the lenders) and to permit the sale of the Golden Nugget — Laughlin. On August 10, 2005, we entered into an amendment to the loan and security agreement relating to the senior secured credit facility. The amendment modified the financial covenants to include the results of operations of the Laughlin properties.

In connection with the September 27, 2005 acquisition by Landry's, we amended the senior secured credit facility whereby the outstanding balance of the term loan plus accrued interest was repaid; the revolver was increased to $43.0 million; certain financial covenants were adjusted; and the financing spread was reduced to Libor plus 1.75% or base rate plus 0.75% as of June 30, 2006, plus a commitment fee. The financing spread and commitment fee increases or decreases based on a financial leverage ratio as defined in the credit agreement. As of September 30, 2006, the average interest rate on the credit facility was 7.17%, $2.5 million in letters of credit were outstanding with $24.5 million of available borrowing capacity.

Long-term debt is comprised of the following:

	September 30, 2006	December 31, 2005
$43.0 million senior secured credit facility, Libor + 1.75%, due January 2009	$ 16,000	$ 22,002
$155.0 million senior secured note, 8 3/4% interest only, due 2011	158,565	159,081
Other long-term notes payable with various interest rates, principal and interest	142	272
Total debt	174,707	181,355
Less current portion	(142)	(132)
Long-term debt	$ 174,565	$ 181,223

5. FREMONT STREET EXPERIENCE

We indirectly own 17.65% of the voting units and 50.0% of the non-voting units of the Fremont Street Experience. This investment is accounted for under the equity method of accounting whereby the carrying value of the investment is adjusted by our share of earnings, losses, capital contributions and distributions.

Activity relating to our investment in the Fremont Street Experience is as follows:

Investment balance - December 31, 2005	$5,424
Contributions	704
Equity in loss of joint venture	(744)
Investment balance - September 30, 2006	$5,384

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NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS-CONTINUED

The investment balance reflects the estimated fair value of our member's equity in FSE at the acquisition date, including an additional $1.5 million contribution made by the Golden Nugget in 1995 on a voluntary basis, and used by the FSE to acquire additional fixed assets used in its operations.

The additional contribution of $1.5 million represents a non-voting interest which has been treated as a redeemable preferred member contribution of the FSE. The redeemable preferred member contribution is not allocated profit or loss distribution and must be repaid before any distributions are made on voting interests.

The allocation of purchase price based on the fair values of assets acquired and liabilities assumed, arising from the September 27, 2005 acquisition of the Golden Nugget by Landry's, resulted in a difference of approximately $3.4 million between the carrying value of the company's investment in FSE and its proportionate share of FSE's net assets. This difference primarily relates to deferred grant revenue, associated with assets contributed to FSE, which is being recognized as income by FSE over a thirty year period. We are amortizing this difference as a charge to equity in loss of joint venture over the remaining amortization period of the related deferred grant revenue.

Summarized financial information of FSE is as follows:

	September 30, 2006	December 31, 2005
Current assets	$ 12,000	$ 2,379
Non-current assets	38,560	40,368
Total assets	$ 50,560	$ 42,747
Current liabilities	$ 403	$ 4,683
Non-current liabilities	43,757	32,148
Preferred member contribution	3,040	3,040
Members' capital	3,360	2,876
Total liabilities and members' capital	$ 50,560	$ 42,747

	Nine months ended September 30, 2006	Nine months ended September 30, 2005
Total revenues	$ 4,694	$ 4,539
Costs and expenses	8,044	9,300
Net loss	$ (3,350)	$ (4,761)

6. EMPLOYEE BENEFIT PLANS

Our employees, who are members of various unions, are covered by union-sponsored, collective bargained, multi-employer health and welfare and defined benefit pension plans. Under such plans we recorded an expense of $2.9 million and $7.2 million for the three and nine months ended September 30, 2006, respectively, and $0.1 million for the period from September 27, 2005 through September 30, 2005, $7.8 million for the period from January 1, 2005 through September 26, 2005. The plans' sponsors have not provided sufficient information to permit us to determine our share of unfunded vested benefits, if any. However, based on available information, we do not believe that unfunded amounts attributable to our casino operation are material.

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GOLDEN NUGGET, INC.
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NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS-CONTINUED

We are self-insured up to certain limits for most health care benefits for our non-union employees. The liability for claims filed and estimates of claims incurred but not reported is included in the accrued liabilities caption in the accompanying consolidated balance sheets.

We sponsor a retirement savings plan under Section 401(k) of the Internal Revenue Code covering our non-union employees. The plan is available to certain employees with at least three months of service. The plan allows eligible employees to defer, within prescribed limits, up to 20 percent of their income on a pre-tax basis through contributions to the plan. We match, within prescribed limits, a portion of eligible employees' contributions up to a maximum of 2 percent of an employees' eligible compensation. We recorded charges for matching contributions of approximately $0.2 million and $0.4 million for the three months and nine months ended September 30, 2006, respectively, and approximately $7,000 for the period from September 27, 2005 through September 30, 2005, $551,000 for the period from January 1, 2005 through September 26, 2005.

7. COMMITMENTS AND CONTINGENCIES

General Litigation

We are subject to legal proceedings and claims that arise in the ordinary course of business. We do not believe that the outcome of any of these matters will have a material adverse effect on our financial position, results of operations or cash flows.

8. TRANSACTIONS WITH AFFILIATES

We have entered into a management agreement with Landry's whereby our parent provides resources, expertise and negotiating leverage, primarily in the areas of advertising, purchasing, event management and financing. We have also entered into certain lease agreements with Landry's wherein they operate restaurants in our casino properties and we receive rental payments based on the restaurant performance. Moreover, we routinely enter into certain transactions with affiliated companies of Landry's. These transactions have been entered into between related parties and are not the result of arm's-length negotiations. Accordingly, the terms of the transactions may have been more or less favorable to us than might have been obtained from unaffiliated third parties. Landry's is currently funding several renovation projects which may be transferred, contributed, or leased to the Golden Nugget upon completion. As of September 30, 2006, the in progress construction projects total approximately $43.6 million.

9. SUMMARIZED FINANCIAL INFORMATION

All payments with respect to our 8 3/4% senior secured Notes due 2011 are guaranteed, jointly and severally, by all of our subsidiaries. The notes are also collateralized by a pledge of capital stock of our subsidiaries and a security interest in substantially all of our and the guarantors' current and future assets. Such security interest is junior to the security interest granted to the lenders under the Senior Credit Facility.

The following condensed consolidating financial statements present separately the financial position, results of operations and cash flows of our Guarantor Subsidiaries on a combined basis with eliminating entries:

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NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS-CONTINUED

CONDENSED CONSOLIDATING BALANCE SHEETS
September 30, 2006

	Golden Nugget, Inc.	Guarantor Subsidiaries	Consolidating/ Eliminating Entries	Total
Assets				
Current Assets				
Cash and cash equivalents	$ —	$ 20,045	$ —	$ 20,045
Accounts receivable, net	—	3,862	—	3,862
Inventories	—	3,814	—	3,814
Prepaid expenses and other	—	6,660	—	6,660
Total current assets	—	34,381	—	34,381
Property and equipment, net	—	339,490	—	339,490
Investment in and advances to subsidiaries	369,600	18,540	(388,140)(a)	—
Investment in joint venture	—	5,384	—	5,384
Deposits and other assets, net	456	34,894	—	35,350
Total assets	$ 370,056	$ 432,689	$ (388,140)	$414,605
Liabilities and Stockholder's Equity				
Current Liabilities				
Accounts payable	$ —	$ 7,316	$ —	$ 7,316
Accrued liabilities	7,390	33,060	—	40,450
Current portion of notes payable and other obligations	—	142	—	142
Amounts due to parent	10,550	—	—	10,550
Total current liabilities	17,940	40,518	—	58,458
Other long-term liabilities	—	4,031	—	4,031
Notes payable including amounts pushed down from parent company	174,565	174,565	(174,565)(b)	174,565
Total liabilities	192,505	219,114	(174,565)	237,054
Contingencies and Commitments				
Stockholder's equity	177,551	213,575	(213,575)	177,551
Total liabilities and stockholder's equity	$ 370,056	$ 432,689	$ (388,140)	$414,605

(a) To eliminate investment in subsidiaries in consolidation.
(b) To eliminate notes payable pushed down to the guarantor subsidiaries.

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GOLDEN NUGGET, INC.
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NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS-CONTINUED

CONDENSED CONSOLIDATING BALANCE SHEETS
December 31, 2005

	Golden Nugget, Inc.	Guarantor Subsidiaries	Consolidating/ Eliminating Entries	Total
Assets				
Current Assets				
Cash and cash equivalents	$ —	$ 22,534	$ —	$ 22,534
Accounts receivable, net	—	4,946	—	4,946
Inventories	—	3,260	—	3,260
Prepaid expenses and other	54	5,071	—	5,125
Total current assets	54	35,811	—	35,865
Property and equipment, net	—	321,744	—	321,744
Investment in and advances to subsidiaries	355,163	9,666	(364,829)(a)	—
Investment in joint venture	—	5,424	—	5,424
Deposits and other assets, net	234	35,342	—	35,576
Total assets	$ 355,451	$ 407,987	$ (364,829)	$398,609
Liabilities and Stockholder's Equity				
Current Liabilities				
Accounts payable	$ 13	$ 13,845	$ —	$ 13,858
Accrued liabilities	1,723	27,545	—	29,268
Current portion of notes payable and other obligations	2	132	(2) (b)	132
Amounts due to parent	6,193	—	—	6,193
Total current liabilities	7,931	41,522	(2)	49,451
Other long-term liabilities	—	1,496	—	1,496
Notes payable including amounts pushed down from parent company	181,081	181,223	(181,081)(b)	181,223
Total liabilities	189,012	224,241	(181,083)	232,170
Contingencies and Commitments				
Stockholder's equity	166,439	183,746	(183,746)	166,439
Total liabilities and stockholder's equity	$ 355,451	$ 407,987	$ (364,829)	$398,609

(a) To eliminate investment in subsidiaries in consolidation.
(b) To eliminate notes payable pushed down to the guarantor subsidiaries.

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GOLDEN NUGGET, INC.
(A WHOLLY OWNED SUBSIDIARY OF LANDRY'S RESTAURANTS, INC.)
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS-CONTINUED

CONDENSED CONSOLIDATING STATEMENTS OF OPERATIONS
For the three months ended September 30, 2006

	Successor Company			
	Golden Nugget, Inc.	Guarantor Subsidiaries	Consolidating/ Eliminating Entries	Total
Net revenues	$ —	$ 51,441	$ —	$51,441
Cost and expenses				
Casino-hotel operations	—	31,262	—	31,262
General and administrative	—	12,160	—	12,160
Depreciation and amortization	—	3,014	—	3,014
Total cost and expenses	—	46,436	—	46,436
Operating income	—	5,005	—	5,005
Other income (expense)				
Equity in loss of joint venture	—	(287)	—	(287)
Equity in income (loss) of subsidiaries	6,328	—	(6,328)(a)	-
Interest expense, net	(3,399)	(103)	—	(3,502)
Gain (loss) on disposal of fixed assets	—	(6)	—	(6)
Interest expense associated with pushed down indebtedness	—	(3,399)	3,399(b)	—
Total other income (expense)	2,929	(3,795)	(2,929)	(3,795)
Income (loss) before income taxes	2,929	1,210	(2,929)	1,210
Provision for income taxes	2,070	351	(2,070)(c)	351
Net income (loss)	$ 859	$ 859	$ (859)	$ 859

(a) To eliminate equity in the income of subsidiaries in consolidation.
(b) To eliminate interest expense on the notes and term loan pushed down to the guarantor subsidiaries.
(c) To eliminate taxes in consolidation.

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GOLDEN NUGGET, INC.
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NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS-CONTINUED

CONDENSED CONSOLIDATING STATEMENTS OF OPERATIONS
For the nine months ended September 30, 2006

	Successor Company			
	Golden Nugget, Inc.	Guarantor Subsidiaries	Consolidating/ Eliminating Entries	Total
Net revenues	$ —	$ 170,238	$ —	$ 170,238
Cost and expenses				
Casino-hotel operations	—	97,083	—	97,083
General and administrative	—	36,339	—	36,339
Depreciation and amortization	—	8,713	—	8,713
Total cost and expenses	—	142,135	—	142,135
Operating income	—	28,103	—	28,103
Other income (expense)				
Equity in loss of joint venture	—	(744)	—	(744)
Equity in income (loss) of subsidiaries	25,219	—	(25,219)(a)	—
Interest expense, net	(10,440)	(19)	—	(10,459)
Gain (loss) on disposal of fixed assets	—	(6)	—	(6)
Interest expense associated with pushed down indebtedness	—	(10,440)	10,440(b)	—
Total other income (expense)	14,779	(11,209)	(14,779)	(11,209)
Income (loss) before income taxes	14,779	16,894	(14,779)	16,894
Provision for income taxes	3,667	5,782	(3,667)(c)	5,782
Net income (loss)	$ 11,112	$ 11,112	$ (11,112)	$ 11,112

(a) To eliminate equity in the income of subsidiaries in consolidation.
(b) To eliminate interest expense on the notes and term loan pushed down to the guarantor subsidiaries.
(c) To eliminate taxes in consolidation.

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GOLDEN NUGGET, INC.
(A WHOLLY OWNED SUBSIDIARY OF LANDRY'S RESTAURANTS, INC.)
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS-CONTINUED

CONDENSED CONSOLIDATING STATEMENTS OF OPERATIONS
For the period from September 27, 2005 through September 30, 2005

	Successor Company			
	Golden Nugget, Inc.	Guarantor Subsidiaries	Consolidating/ Eliminating Entries	Total
Net revenues	$ —	$ 2,707	$ —	$2,707
Cost and expenses				
Casino-hotel operations	—	1,736	—	1,736
General and administrative	—	471	—	471
Depreciation and amortization	—	202	—	202
Total cost and expenses	—	2,409	—	2,409
Operating income	—	298	—	298
Other income (expense)				
Equity in loss of joint venture	—	(14)	—	(14)
Equity in income (loss) of subsidiaries	194	—	(194)(a)	—
Interest expense, net	(169)	—	—	(169)
Interest expense associated with pushed down indebtedness	—	(169)	169(b)	—
Total other income (expense)	25	(183)	(25)	(183)
Income (loss) before income taxes	25	115	(25)	115
Provision for income taxes	(53)	90	—	37
Net income (loss)	$ 78	$ 25	$ (25)	$ 78

(a) To eliminate equity in the income of subsidiaries in consolidation.
(b) To eliminate interest expense on the notes and term loan pushed down to the guarantor subsidiaries.

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GOLDEN NUGGET, INC.
(A WHOLLY OWNED SUBSIDIARY OF LANDRY'S RESTAURANTS, INC.)
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS-CONTINUED

CONDENSED CONSOLIDATING STATEMENTS OF OPERATIONS
For the period from January 1, 2005 through September 26, 2005

	Predecessor Company			
	Golden Nugget, Inc.	Guarantor Subsidiaries	Consolidating/ Eliminating Entries	Total
Net revenues	$ —	$ 186,781	$ —	$ 186,781
Cost and expenses				
Casino-hotel operations	—	123,248	—	123,248
General and administrative	925	42,049	—	42,974
Depreciation and amortization	—	12,972	—	12,972
Total cost and expenses	925	178,269	—	179,194
Operating income	(925)	8,512	—	7,587
Other income (expense)				
Equity in loss of joint venture	—	(826)	—	(826)
Equity in income (loss) of subsidiaries	8,190	—	(8,190)(a)	—
Interest expense, net	(13,279)	—	—	(13,279)
Gain (loss) on disposal of Fixed Assets	—	504	—	504
Interest expense associated with pushed down indebtedness	—	(13,279)	13,279(b)	—
Total other income (expense)	(5,089)	(13,601)	5,089	(13,601)
Income (loss) before income taxes	(6,014)	(5,089)	5,089	(6,014)
Provision for income taxes	—	—	—	—
Net income (loss)	$ (6,014)	$ (5,089)	$ 5,089	$ (6,014)

(a) To eliminate equity in the income of subsidiaries in consolidation.
(b) To eliminate interest expense on the notes and term loan pushed down to the guarantor subsidiaries.

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CONDENSED CONSOLIDATING STATEMENTS OF OPERATIONS
For the period from July 1, 2005 through September 26, 2005

	Predecessor Company			
	Golden Nugget, Inc.	Guarantor Subsidiaries	Consolidating/ Eliminating Entries	Total
Net revenues	$ —	$ 56,062	$ —	$56,062
Cost and expenses				
Casino-hotel operations	—	38,569	—	38,569
General and administrative	412	13,649	—	14,061
Depreciation and amortization	—	4,076	—	4,076
Total cost and expenses	412	56,294	—	56,706
Operating income	(412)	(232)	—	(644)
Other income (expense)				
Equity in loss of joint venture	—	(312)	—	(312)
Equity in income (loss) of subsidiaries	(534)	—	534(a)	—
Interest expense, net	(4,206)	(1)	—	(4,207)
Gain (loss) on a disposal of fixed assets	—	11	—	11
Interest expense associated with pushed down indebtedness	—	(4,206)	4,206(b)	—
Total other income (expense)	(4,740)	(4,508)	4,740	(4,508)
Income (loss) before income taxes	(5,152)	(4,740)	4,740	(5,152)
Provision for income taxes	—	—	—	—
Net income (loss)	$ (5,152)	$ (4,740)	$ 4,740	$ (5,152)

(a) To eliminate equity in the income of subsidiaries in consolidation.
(b) To eliminate interest expense on the notes and term loan pushed down to the guarantor subsidiaries.

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GOLDEN NUGGET, INC.
(A WHOLLY OWNED SUBSIDIARY OF LANDRY'S RESTAURANTS, INC.)
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS-CONTINUED

CONDENSED CONSOLIDATING STATEMENT OF CASH FLOWS
For the nine months ended September 30, 2006

	Golden Nugget, Inc.	Guarantor Subsidiaries	Consolidating/ Eliminating Entries	Total
Cash flows from operating activities	$ 11,386	$ 14,814	$ —	$ 26,200
Cash flows from investing activities				
Property and equipment additions	—	(16,615)	—	(16,615)
Proceeds from sale of property and equipment	—	16	—	16
Contributions to joint venture	—	(704)	—	(704)
Net cash used in investing activities	—	(17,303)	—	(17,303)
Cash flows from financing activities				
Payments on term loan	—	—	—	—
Net borrowings (repayments) under revolving credit facility	(6,132)	—	—	(6,132)
Increase (decrease) in amounts due to affiliates	(5,254)	—	—	(5,254)
Net cash provided by financing activities	(11,386)	—	—	(11,386)
Net increase in cash and cash equivalents	—	(2,489)	—	(2,489)
Cash and cash equivalents, beginning of period	—	22,534	—	22,534
Cash and cash equivalents, end of period	$ —	$ 20,045	$ —	$ 20,045

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GOLDEN NUGGET, INC.
(A WHOLLY OWNED SUBSIDIARY OF LANDRY'S RESTAURANTS, INC.)
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS-CONTINUED

CONDENSED CONSOLIDATING STATEMENT OF CASH FLOWS
For the period from January 1, 2005 through September 26, 2005

	Predecessor Company			
	Golden Nugget, Inc.	Guarantor Subsidiaries	Consolidating/ Eliminating Entries	Total
Cash flows from operating activities	$ 7,144	$ 8,950	$ —	$16,094
Cash flows from investing activities				
Acquisition of property and equipment	—	(6,009)	—	(6,009)
Proceeds from the sale of equipment	—	1,157	—	1,157
Contributions to joint venture	—	(704)	—	(704)
Net cash used in investing activities	—	(5,556)	—	(5,556)
Cash flows from financing activities				
Payments on term loan	(2,100)	—	—	(2,100)
Net borrowings (repayments) under revolving credit facility	(7,065)	—	—	(7,065)
Additional contribution of equity from parent	3,000	—	—	3,000
Distributions to Parent	(979)	—	—	(979)
Net cash provided by financing activities	(7,144)	—	—	(7,144)
Net increase in cash and cash equivalents	—	3,394	—	3,394
Cash and cash equivalents, beginning of period	—	24,119	—	24,119
Cash and cash equivalents, end of period	$ —	$ 27,513	$ —	$27,513

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CONDENSED CONSOLIDATING STATEMENT OF CASH FLOWS
For the period from September 27, 2005 through September 30, 2005

	Successor Company			
	Golden Nugget, Inc.	Guarantor Subsidiaries	Consolidating/ Eliminating Entries	Total
Cash flows from operating activities	$ —	$ (2,082)	$ —	$ (2,082)
Cash flows from investing activities				
Acquisition of property and equipment	—	(3)	—	(3)
Net cash used in investing activities	—	(3)	—	(3)
Cash flows from financing activities				
Payments on term loan	(16,500)	—	—	(16,500)
Net borrowings (repayments) under revolving credit facility	16,500	—	—	16,500
Net cash provided by financing activities	—	—	—	—
Net increase in cash and cash equivalents	—	(2,085)	—	(2,085)
Cash and cash equivalents, beginning of period	—	27,513	—	27,513
Cash and cash equivalents, end of period	$ —	$ 25,428	$ —	$ 25,428

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GOLDEN NUGGET, INC.
(A WHOLLY OWNED SUBSIDIARY OF LANDRY'S RESTAURANTS, INC.)

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

We own and operate the Golden Nugget—Las Vegas and the Golden Nugget—Laughlin hotel casinos. The following table sets forth information about each of the Golden Nugget properties as of September 30, 2006:

	Casino			
Property	Slot Machines	Table Games	Space (sq. ft.)	Hotel Rooms
Golden Nugget - Las Vegas	1,001	50	38,000	1,907
Golden Nugget - Laughlin	970	14	32,000	300
	1,971	64	70,000	2,207

We believe that the Golden Nugget brand name is one of the most recognized in the gaming industry and we expect to continue to capitalize on the strong name recognition and high level of quality and value associated with it. Our business strategy is to create the best possible gaming, hospitality, and entertainment experience for our customers by providing a combination of comfortable and attractive surroundings with attentive service from friendly experienced employees. We target out-of-town customers at both of our properties while also catering to the local customer base. We believe that the Golden Nugget—Las Vegas is the leading downtown destination for out-of-town customers. The property offers the same complement of services as our Las Vegas Strip competitors, but we believe that our customers prefer the boutique experience we offer and the downtown environment. We emphasize the property's wide selection of high-quality amenities to complement guests' gaming experience and provide a luxury room product and personalized services at an attractive value. At the Golden Nugget—Laughlin, we focus on providing a high level of customer service, a quality dining experience at an appealing value, a slot product with highly competitive pay tables and a superior player rewards program.

We also have an investment in the Fremont Street Experience, LLC, the entity which owns and operates the Fremont Street Experience ("FSE"). FSE is a unique entertainment attraction located in the center of downtown Las Vegas on Fremont Street, where the Golden Nugget—Las Vegas is located.

Following the acquisition described below, we initiated an extensive renovation program which includes upgrading the porte cochere, race and sports book area, poker room, pool area, lobby, lounge, buffet, showroom and public areas. In addition, we have added a new VIP check-in area, Vic and Anthony's Steakhouse, and Grotto Italian Restaurant. We anticipate completing the majority of the renovations in 2006.

The gaming industry is intensely competitive and affected by changes in consumer tastes and by national, regional and local economic conditions and demographic trends. The performance of the individual casinos may be affected by factors such as: traffic patterns, demographic considerations, marketing, weather conditions, and the type, number and location of competing casinos.

Recent Developments

Purchase of Golden Nugget, Inc.

On September 27, 2005, Landry's completed the acquisition of the capital stock of Golden Nugget, Inc. ("Golden Nugget"), including $27.5 million in cash, for $163.0 million plus the assumption of $155.0 million of senior secured notes due 2011 and $27.0 million in bank debt. Based on this event, we have reported operating results and financial position for all periods presented from January 1, 2005 through September 26, 2005 as those of the Predecessor Company and for all periods from and after September 27, 2005 as those of the Successor Company. Each period has a different basis of accounting and as a result they are not comparable. For purposes of presenting a comparison of our 2006 results to prior periods, we have presented our 2005 results as the mathematical addition of the Predecessor Company and Successor Company periods. We believe that this presentation provides the most meaningful information about our results of operations. This approach is not consistent with GAAP, may yield results that are not strictly comparable on a period to period basis, and may not reflect the actual results we would have achieved.

Seasonality and Quarterly Results

Historically, the financial performance and revenues of the Golden Nugget properties are higher during the first and fourth quarters of each year. Accordingly, our results of operations are expected to fluctuate from quarter to quarter, and the results for any fiscal quarter may not be indicative of results for future fiscal quarters.

Results of Operations

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Three months ended September 30, 2006 Compared to Three months ended September 30, 2005

Net revenues for the three months ended September 30, 2006 were $51.4 million, a decrease of $7.3 million, or 12.5% compared to the three months ended September 30, 2005. The decrease in net revenues was primarily attributable to decreases in casino revenues and food and beverage revenues offset by a decrease in promotional allowances. These decreases in revenues were more than offset by the positive impact of reducing casino, food and beverage, and general and administrative expenses as well as cost savings from lower interest rates on outstanding debt. Overall, net income increased to $0.9 million in the three months ended September 30, 2006 compared to a loss of $5.1 million in the three months ended September 30, 2005.

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Revenues

Casino revenues during the three months ended September 30, 2006 totaled $33.8 million, a decrease of $4.7 million or 12.2% over the three months ended September 30, 2005. The decline is primarily the result of changes in table game limits and credit policy which reduced table games drop as well as a decline in slot play which reduced overall slot win in the three months ended September 30, 2006 compared to the three months ended September 30, 2005. Casino revenues were also adversely impacted by the disruption resulting from the renovation.

Room revenues increased 0.8% during the three months ended September 30, 2006 to $13.0 million. This increase is primarily the result of an increase in the average daily rate. This increase was offset by reduced hotel occupancy due to the disruption arising from the renovation.

Food and beverage revenues decreased $4.4 million or 32.8% during the three months ended September 30, 2006 compared to the three months ended September 30, 2005. This decrease is attributed to fewer available restaurants as a result of restaurant renovations and closures subsequent to the acquisition as well as upgrading certain restaurants to Landry's operated concepts.

Promotional allowances provided to gaming patrons decreased $1.8 million to $6.8 million for the three months ended September 30, 2006 compared to the three months ended September 30, 2005. This decrease is primarily related to the decrease in casino revenues associated with the change in table game limits and credit policy as well as the decreased slot play compared to the prior year period.

Operating Expenses

Casino operating expenses for the three months ended September 30, 2006 totaled $19.4 million compared to $23.4 million for the three months ended September 30, 2005. The decrease is primarily due to decreases in gaming taxes, payroll expenses, and casino marketing expenses.

Food and beverage expenses for the three months ended September 30, 2006 were $5.5 million compared to $8.9 million for the three months ended September 30, 2005. The decrease is due to lower costs associated with operating fewer restaurants.

General and administrative expenses for the three months ended September 30, 2006 were $12.2 million, or 23.6% of net revenues, compared to $14.5 million, or 24.7% of net revenues for the three months ended September 30, 2005. The decrease in general and administrative expenses is primarily attributed to reductions in payroll expense and reduced bad debt allowance associated with better than anticipated collections of casino receivables.

Other Income and Expense

Other income and expense consists principally of interest expense on the senior notes and the credit facility and our equity in the loss of FSE. Interest expense decreased $0.9 million in the three months ended September 30, 2006 to $3.5 million compared to $4.4 million in three months ended September 30, 2005 as a result of lower average borrowings and a lower average interest rate from amending the credit facility. FSE is primarily designed to increase visitation to downtown Las Vegas and it is expected to continue to incur losses. Golden Nugget - Las Vegas has a 17.65% interest in FSE, consistent throughout 2005 and 2006.

Income Taxes

The provision for income taxes for the three months ended September 30, 2006 was $0.35 million or 29.0%. Prior to the acquisition by Landry's, Golden Nugget and its subsidiaries were a qualified sub chapter S corporation and as a result, the owners were taxed on income at a personal level not at the corporate level.

Nine months ended September 30, 2006 Compared to Nine months ended September 30, 2005

Net revenues for the nine months ended September 30, 2006 were $170.2 million, a decrease of $19.3 million, or 10.2% over the nine months ended September 30, 2005. The decrease in net revenues was primarily attributable to decreases in casino revenues and food and beverage revenues offset by a decrease in promotional allowances as well as an increase in rooms revenue.

Overall, net income increased to $11.1 million in the nine months ended September 30, 2006 compared to a loss of $5.9 million in the nine months ended September 30, 2005.

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Revenues

Casino revenues during the nine months ended September 30, 2006 totaled $111.2 million, a decrease of $12.1 million or 9.8% over the nine months ended September 30, 2005. The decline is primarily the result of changes in table game limits and credit policy which reduced table games drop, as well as a decline in slot play which reduced overall slot win in the nine months ended September 30, 2006. Casino revenues were adversely impacted by the disruption resulting from the Golden Nugget—Las Vegas renovation.

Room revenues increased 2.5% in the nine months ended September 30, 2006 to $42.8 million. This increase is primarily the result of higher average daily rates.

Food and beverage revenues decreased $12.8 million or 30.2% in the nine months ended September 30, 2006 compared to the nine months ended September 30, 2005. This decrease is attributed to fewer available restaurants resulting from restaurant renovations and closures subsequent to the acquisition as well as upgrading certain restaurants to Landry's operated concepts.

Promotional allowances provided to gaming patrons decreased $5.8 million to $20.5 million in the nine months ended September 30, 2006 compared to the nine months ended September 30, 2005. This decrease is primarily related to the decrease in casino revenues associated with the change in table game limits and credit policy as well as the decreased slot play.

Operating Expenses

Casino operating expenses for the nine months ended September 30, 2006 totaled $59.7 million compared to $73.6 million for the nine months ended September 30, 2005. The decrease is primarily due to decreases in gaming taxes, payroll expenses, and casino marketing expenses.

Food and Beverage expense decreased $9.3 million for the nine months ended September 30, 2006. The decrease is attributable to lower costs associated with operating fewer restaurants.

General and administrative expenses for the nine months ended September 30, 2006 were $36.4 million or 21.3% of net revenues, compared to $43.4 million or 22.9% of net revenues for the nine months ended September 30, 2005. The decrease in general and administrative expenses is primarily attributed to reductions in payroll expense and reduced bad debt allowance associated with better than anticipated collections of casino receivables.

Other Income and Expense

Other income and expense consists principally of interest expense on the senior notes and the credit facility and the equity in the loss of our joint venture investment in FSE. Interest expense decreased $2.9 million in the nine months ended September 30, 2006 to $10.6 million compared to $13.5 million in nine months ended September 30, 2005 as a result of lower average borrowings and a lower average interest rate that resulted from amending the credit facility. The joint venture is primarily designed to increase visitation to downtown Las Vegas and it is expected to continue to incur losses. Golden Nugget—Las Vegas has a 17.65% interest in FSE, consistent throughout 2005 and 2006.

Income Taxes

The provision for income taxes for the nine months ended September 30, 2006 was $5.8 million or 34.2%. Prior to the acquisition by Landry's, we were a qualified sub chapter S corporation and as a result, the owners were taxed on the income at a personal level not at the corporate level.

Liquidity and Capital Resources

In connection with the acquisition, we entered into an amended loan and security agreement whereby the remaining balance of the existing term loan plus accrued interest was repaid; the existing revolving credit facility was increased to $43.0 million; certain financial covenants were adjusted; and the financing spread was reduced to Libor plus 1.75% or the bank's base rate plus 0.75% as of September 30, 2006, plus a commitment fee. The financing spread and commitment fee increases or decreases based on a financial leverage ratio as defined in the credit agreement.

At September 30, 2006, we had cash and cash equivalents of $20.0 million, approximately $16.0 million outstanding under our revolving credit facility, and $2.5 million drawn under letters of credit with remaining availability under the credit facility of approximately $24.5 million.

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We anticipate capital expenditures associated with the Golden Nugget – Las Vegas renovation to approximate $90.1 million in 2006, with additional expenditures for an expansion in 2007. As of September 30, 2006, we have spent $16.6 million for capital expenditures in connection with the renovation in the current year. Our Parent has expended approximately $43.6 million for in progress construction related to the renovation which may be transferred, contributed or leased to us upon completion.

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We believe our existing cash on hand, cash flow from operations and funds available under our existing bank credit facility will be sufficient to fund operations and maintain existing properties, while incremental funding will be necessary to complete the planned renovation and expansion. The amount of such incremental funding is dependent on, among other things, future cash flows, debt service requirements and additional capital investment activity.

We believe our Parent has capacity under its credit agreements to fund a significant portion of the anticipated expenditures and that we will be able to access additional sources of capital for any remaining funding requirements; however, there can be no assurances such funds will be available, and if so, on terms acceptable to us.

Critical Accounting Policies

Revenue Recognition. Casino revenues represent the net win from gaming activities, which is the difference between gaming wins and losses. Hotel and other revenues are recognized at the time the related service is performed.

Property and Equipment. At September 30, 2006, we had approximately $339.5 million of net property and equipment recorded on our balance sheet. We depreciate our assets on a straight-line basis over their estimated useful lives. The estimate of the useful lives is based on the nature of the asset as well as our current operating strategy. Future events, such as property expansions, new competition and new regulations, could result in a change in the manner in which we use certain assets, which could require a change in the estimated useful lives of such assets. In assessing the recoverability of the carrying value of property and equipment, we must make assumptions regarding estimated future cash flows and other factors. If these estimates or the related assumptions change in the future, we may be required to record impairment charges for these assets.

Slot Club Liability. We offer a program whereby participants can accumulate points for casino wagering that can currently be redeemed for cash, lodging, food and beverages and merchandise. A liability is recorded for the estimate of unredeemed points based upon redemption history at our casinos. Changes in the program, increases in membership and changes in the redemption patterns of the participants can impact this liability.

Self-Insurance. We are self-insured to certain limits for costs associated with workers compensation, general liability, and employee medical claims. Estimated costs to settle unpaid claims and estimated incurred but not reported claims are included in Other Accrued Liabilities based on historical results and projected trends.

ITEM 4. DISCLOSURE CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has evaluated the effectiveness of our disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) as of the end of the period covered by this report. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer have concluded that, as of the end of such period, our disclosure controls and procedures are effective.

Changes in Internal Control over Financial Reporting

There have not been any changes in our internal control over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the last fiscal quarter to which this report relates that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II - OTHER INFORMATION

Item 1. Legal Proceedings - None.

Item 5. Other Information - None.

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Item 6. Exhibits

No. 31.1	-	Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
No. 31.2	-	Certification pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
No. 32	-	Certification pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Golden Nugget, Inc.,
Registrant

/s/ Tilman J. Fertitta

Tilman J. Fertitta
Chairman of the Board of Directors,
President and Chief Executive Officer for
Registrant and Landry's Restaurants, Inc.
(Principal Executive Officer)

/s/ Rick H. Liem

Rick H. Liem
Senior Vice President and
Chief Financial Officer for Registrant and
Landry's Restaurants, Inc.
(Principal Financial and Accounting Officer)

Dated: November 14, 2006

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EXHIBIT C

EXHIBIT C

Landry's Announces Completion of Acquisition of Golden Nugget Las Vegas and Golden Nugget Laughlin

Company Adds Premier Casinos to Restaurant,

Hospitality, Entertainment Properties

Sep 27, 2005, 01:00 ET from Landry's Restaurants, Inc.

HOUSTON, Sept. 27 /PRNewswire-FirstCall/ -- Landry's Restaurants, Inc. (NYSE: LNY), one of the nation's largest casual dining and entertainment companies, announced today it has closed the purchase of the landmark Golden Nugget Casino and Hotel in downtown Las Vegas and the Golden Nugget Casino and Hotel in Laughlin, Nevada from PB Gaming, Inc. by acquiring the stock of Poster Financial Group, Inc. ("Poster") for $140 million in cash and the assumption of $155 million of Senior Secured Notes due 2011, as well as certain working capital liabilities, including house banks in the amount of $23 million and Poster's existing credit facility.

The acquisition was subject to regulatory approvals, including the Nevada Gaming Commission, which were completed today.

"Landry's is thrilled to add casino gaming to a varied and diverse collection of entertainment offerings that already includes casual and fine dining, hospitality and aquarium properties," said Tilman Fertitta, Chairman, President and CEO of Landry's. "The Golden Nugget is the premier property in downtown Las Vegas, has outstanding brand recognition across the country, and is a perfect fit for us. In addition, the Golden Nugget in Laughlin provides us a second gaming property in an established market. Landry's operating skill and steady leadership will help boost the Golden Nugget to a new level of performance and satisfaction."

Chief Financial Officer Rick Liem said, "We believe both properties have excellent upside potential and will be accretive to our 2006 earnings."

Landry's Restaurants, Inc. is one of the nation's largest and fastest growing casual-dining and entertainment companies. Publicly traded on the New York Stock Exchange, Landry's owns and operates over 300 restaurants, including Landry's Seafood House, Joe's Crab Shack, The Crab House, Rainforest Cafe, Charley's Crab, Willie G's Seafood & Steak House, The Chart House and Saltgrass Steak House. Landry's also owns several icon developments, including Inn at the Ballpark and the Downtown Aquarium in Houston; Kemah Boardwalk, a magnificent 40-acre, family-oriented themed entertainment destination; and the 17-acre Downtown Aquarium in Denver. The company employs over 36,000 workers in 36 states.

This press release contains certain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934, as amended, which are intended to be covered by safe harbors created thereby. Stockholders are cautioned that all forward-looking statements are based largely on the Company's expectations and involve risks and uncertainties, some of which cannot be predicted or are beyond the Company's control. A statement containing a projection of revenues, income, earnings per share, same store sales, capital expenditures, or future economic performance are just a few examples of forward-looking statements. Some factors that could realistically cause results to differ materially from those projected in the forward-looking statements include ineffective marketing or promotions, competition, weather, store management turnover, a weak economy, negative same store sales, the Company's inability or failure to continue its expansion strategy. The Company may not update or revise any forward-looking statements made in this press release.

SOURCE Landry's Restaurants, Inc.

EXHIBIT D

EXHIBIT D

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Landry's History

While Landry's, Inc. has cemented itself as America's biggest dining, hospitality and entertainment company, that doesn't tell the entire story of our dramatic growth. Our portfolio includes over 35,000 employees at more than 300 properties, with hotels, casinos, resort destinations, restaurants and amusements. Landry's has come a long way in three decades - and we don't plan on slowing down any time soon.

First Steps

Landry's successes have multiplied rapidly since Chairman of the Board, President and CEO Tilman J. Fertitta bought his first two restaurants. Fertitta is a prominent Houston entrepreneur who grew up peeling shrimp and waiting tables at his father's surfside eatery in Galveston, Texas.

He was a partner in the first Landry's Seafood House Restaurant, which opened in 1980 in Katy, Texas, and the slightly more upscale Willie G's Seafood & Steak House that opened a year later in nearby Houston. He acquired controlling interest of both restaurants in 1986.

As economic times grew pressing around the country, banks were failing and businesses were struggling to pay their creditors. But Fertitta envisioned a national chain of Gulf Coast-style seafood restaurants that welcomed patrons with a casual, authentic and entertaining atmosphere. He created an expansion plan and stuck with it in spite of adversity.

Building the Company

Landry's Seafood House first expanded to Galveston, where its signature marquee, energetic atmosphere and great food and service made it an instant success. Soon, the chain was operating across Texas in San Antonio, Corpus Christi, Austin and Dallas. With great reviews and lines of customers, the Company grew from 2

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In 1996, Landry's added the publicly traded The Crab House Restaurants, founded in Miami in 1976, to its holdings. With its traditional East Coast flair, The Crab House was a perfect complement to Landry's other seafood restaurants.

Entertaining Even Bigger Ideas

The Company added turf to its surf in 1998 when it acquired Cadillac Bar, a favorite Mexican restaurant and grill in Houston for more than 20 years. The same year, the Company completed the development of its first major specialty project, the 35-acre Kemah Boardwalk. Located about 20 miles from Houston on the edge of Galveston Bay, the Boardwalk entertains about 3 million visitors a year. Its attractions include 10 themed restaurants, retail shops, a first class hotel, a water garden, a 400-slip marina, a train, the Boardwalk FantaSea charter yacht, amusement rides and midway games. Among the eateries is Landry's first Aquarium Restaurant, featuring a 50,000 gallon tank of tropical fish.

Landry's leapt further into the specialty realm in late 2000, when it acquired the world's premier themed restaurant concept, the publicly traded Rainforest Cafe. The only full service restaurant concept operated in all Walt Disney theme parks worldwide, Rainforest Cafe offers customers a stimulating "Wild Place to Shop and Eat."

A Growing Recipe for Success

Growth accelerated in 2002, when Landry's acquired Muer Seafood Restaurants, Chart House restaurants, and Saltgrass Steak House. Muer Seafood Restaurants — located in unique, high profile and landmark locations across the nation — include Charley's Crab, Big Fish, Gandy Dancer, Grand Concourse and other fine establishments. The upscale Chart House restaurants are predominantly on the East and West coasts, in beautifully scenic locales. Saltgrass Steak House eateries throughout Texas recapture the flavor of the open campfire with char-grilled steaks, chicken and seafood. Also acquired with Saltgrass was Babin's Seafood House, which added New Orleans flair to Landry's varied seafood restaurant concepts.

Making a Splash

In 2003, the Company opened the Downtown Aquarium — a 20-acre entertainment complex in Houston with a public aquarium, two restaurants, a bar, banquet facilities, amusement rides and midway games. The attractions include a 100,000 gallon, floor-to-ceiling centerpiece aquarium, the tallest cylindrical tank in North America and a 200,000 gallon shark tank. An Aquarium Restaurant has also been developed in Nashville.

More Aquarium excitement also landed in Denver, where Landry's redeveloped the 12-acre Ocean Journey complex into Downtown Aquarium Denver. This world-class attraction houses more than 500 species of aquatic life in a three story, one-million-gallon facility.

Rooms with a View

Galveston. Landry's is a major player in the Texas hospitality industry. The Company's master-planned redevelopment of Galveston's Seawall Boulevard — which includes the new Galveston Island Convention Center — will take tourism to a new level in the island city. The Company manages the Four Diamond San Luis Resort, Spa and Conference Center and the adjacent Hilton Resort. Landry's acquired the Holiday Inn on the Beach in 2003.

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Putting Our Signature on Dining

Landry's owns a number of exceptional individual restaurants, which is known as our Signature Group. These restaurants represent the best of the Landry's best, including Houston's most superb steak houses, Vic & Anthony's and Brenner's Steakhouse, and the fine seafood restaurant Pesce. In addition, Willie G's is known for its upscale atmosphere, as well as its delivery of the finest steak and seafood around. The Signature Group welcomes more than steaks and seafood, however. Both Grotto and La Griglia complete the menu with their remarkable, authentic Italian cuisine.

Entering a Golden Era

Landry's hit the jackpot in 2005 with the acquisition of the Golden Nugget Hotel & Casinos in Las Vegas and Laughlin, Nevada. The Golden Nugget Las Vegas is the only Nevada hotel to be the proud recipient of the AAA Four Diamond Award consecutively since 1977 and now features newly remodeled first class amenities such as a luxurious lobby and grand valet entrance, VIP Lounge, High-Limit Slot Salon, two story Spa Tower Suites and tranquil Spa and Salon. Vic & Anthony's Steakhouse offers world-class upscale dining and Lillie's Asian Cuisine features a fusion of Cantonese and Szechwan cuisines. At Golden Nugget Laughlin, which is uniquely located right on the banks of the Colorado River, Landry's added three restaurants — Saltgrass Steak House, Joe's Crab Shack and Harlow's, and upgraded the breathtaking river-view rooms.

Taking Entertainment to New Heights

The newly remodeled Tower of the Americas, which Landry's reopened in summer 2006, offers the best views of San Antonio from 750 feet high. Chart House, an upscale restaurant, seats 250 people and features magnificent views of the city, and a Texas-themed 4-D, multi-sensory theater takes visitors on a high-flying trip across the Lone Star State. The view, combined with top-notch catering, creates an event space like no other in San Antonio.

A Prehistoric Family Adventure

Another original venture for Landry's was T-REX Cafe, which opened at the Legends at Village West in Kansas City, Kansas, in summer 2006. T-REX is an interactive attraction that features full-service dining and a retail store, including the opportunity to make a prehistoric friend through Build-A-Dino by Build A Bear Workshop. Designed with elements of water, fire and ice, this experience comes to life with bubbling geysers, animatronic dinosaurs, a real fossil dig site, paleontology lab activities, and an enthralling ice cave. Upon entering, visitors are transported into a prehistoric world filled with endless opportunities to educate and be entertained. Simply put, at T-REX, guests can Eat, Shop, Explore and Discover.

A Bold Direction

After going public in 1993 with a valuation of $30 million, the company had grown to an astounding $1.7 billion by 2011. In 2010, already being the majority shareholder, CEO Tilman Fertitta purchased all outstanding shares of stock and gained sole control and ownership of the company again. Now privately held, Landry's has again embarked on a journey with a new vision of the future which includes that same focus on development and growth that allowed us to prosper for the last several decades.

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The Oceanaire Seafood Room. We hoisted our sails with The Oceanaire in 2010, bringing their 12 units from great spots such as Washington, D.C. and Boston into the fold. Although they boast national acclaim for unique, finely prepared dishes, The Oceanaire is known first and foremost for flying in the freshest seafood from around the world daily. Their menu changes each day to reflect this and their servers are practiced in educating diners about the best possible choices.

Bubba Gump Shrimp Co. When Bubba Gump Shrimp Co. became part of the Landry's family, we knew we were in for something special. As the only restaurant chain based on a major motion picture, Bubba Gump is remarkable in its own right, apart even from their fun atmosphere and memorable food. Their 36 locations span the entire globe, including popular tourist spots that attract families far and wide.

Claim Jumper. What started as a simple restaurant in 1977 has turned into a powerful Western chain with 37 wonderful locations. Claim Jumper's rustic atmosphere makes one feel right at home, offering diners hearty portions, comfortable food and a great selection of beverages. The varied menu sports everything from pizza to Certified Angus Beef ® and USDA Choice steaks.

Out with the Old, in with the Gold

In 2011, Landry's further expanded the illustrious Golden Nugget Hotel & Casinos brand by bringing it back to Atlantic City after a decades-long absence. Having purchased the Trump Marina, the former mainstay that was attached to the Frank S. Farley Marina, Landry's is in position to bring the Golden Nugget back with a bang through a series of astounding transformations and renovations, each more dramatic than the last. These stunning changes include Vic & Anthony's, the 30th Chart House location, updated rooms and suites and a complete revamp of all the gaming rooms. Along with these updates, Landry's also added The Deck, a place to party out by the arena, as well as Red Room, an upscale nightclub. We are ready to make the Golden Nugget the hot spot in Atlantic City!

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EXHIBIT E

EXHIBIT E

LANDRY'S AND GOLDEN NUGGET COMPLETE INVESTIGATION AND REPORT ON PAYMENT CARD INCIDENT

January 29, 2016

California Residents, please view here

Landry's, Inc. and Golden Nugget Hotels and Casinos (collectively "the Companies") value the relationship we have with our customers. Because we understand the importance of protecting payment card information, we have been working tirelessly to complete the previously announced payment card investigation. The investigation began immediately after we received a report in early December of suspicious activity regarding cards that had been legitimately used in some of our locations. We hired a leading cyber security firm to examine our payment card systems, implemented advanced payment processing solutions, and have been working with the payment card networks and law enforcement.

Findings from the investigation show that criminal attackers were able to install a program on payment card processing devices at certain of our restaurants, food and beverage outlets, spas, entertainment destinations, and managed properties. The program was designed to search for data from the magnetic stripe of payment cards that had been swiped (cardholder name, card number, expiration date and internal verification code) as the data was being routed through affected systems. Locations were affected at different times during one or both of the following periods: from May 4, 2014 through March 15, 2015 and from May 5, 2015 through December 3, 2015. In addition, the at-risk timeframe for a small percentage of locations includes the period from March 16, 2015 through May 4, 2015. To view all of our restaurants, hotels, casinos, entertainment destinations, and managed properties, click here. For a list of only the affected locations and respective at-risk timeframes, click here.

Enhanced security measures, including end-to-end encryption, have been implemented to prevent a similar issue from occurring in the future, and we continue to support law enforcement's investigation. We are also working closely with the payment card networks to identify potentially affected cards so that the card issuers can be made aware and initiate heightened monitoring of those accounts. For those customers we can identify as having used their card at an affected location during that location's at-risk window and for whom we have a mailing address or e-mail address, we will be mailing them a letter or sending them an e-mail.

If you used a payment card at an affected location during its at-risk window, we recommend that you remain vigilant to the possibility of fraud by reviewing your payment card statements for any unauthorized activity. You should immediately report any unauthorized charges to your card issuer because payment card rules generally provide that cardholders are not responsible for

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unauthorized charges reported in a timely manner. The phone number to call is usually on the back of your payment card. Please see the section that follows this notice for additional steps you may take to protect your information.

Landry's and Golden Nugget regret any inconvenience or concern this may have caused. If you have any questions, please call (877) 238-2151 (U.S. and Canada), Monday thru Friday from 9:00 am to 7:00 pm EST.

MORE INFORMATION ON WAYS TO PROTECT YOURSELF

We recommend that you remain vigilant by reviewing your account statements and credit reports for any unauthorized activity. You may obtain a copy of your credit report, free of charge, once every 12 months from each of the three nationwide credit reporting companies. To order your annual free credit report, please visit www.annualcreditreport.com or call toll free at 1-877-322-8228. Contact information for the three nationwide credit reporting companies is as follows:

Equifax, PO Box 740256, Atlanta, GA 30374, www.equifax.com, 1-800-525-6285
Experian, PO Box 9554, Allen, TX 75013, www.experian.com,1-888-397-3742
TransUnion, PO Box 2000, Chester, PA 19022-2000, www.transunion.com, 1-800-916-8800

If you believe you are the victim of identity theft or have reason to believe your personal information has been misused, you should immediately contact the Federal Trade Commission and/or the Attorney General's office in your state. Contact information for the Federal Trade Commission is as follows:

Federal Trade Commission, Consumer Response Center, 600 Pennsylvania Avenue, NW Washington, DC 20580, 1-877-IDTHEFT (438-4338), www.ftc.gov/idtheft

You can obtain information from these sources about steps an individual can take to avoid identity theft as well as information about fraud alerts and security freezes. You should also contact your local law enforcement authorities and file a police report. Obtain a copy of the police report in case you are asked to provide copies to creditors to correct your records.

If you are a resident of Maryland, you may contact the Maryland Attorney General's Office at 200 St. Paul Place, Baltimore, MD 21202, www.oag.state.md.us, 1-888-743-0023.

If you are a resident of Massachusetts, note that pursuant to Massachusetts law, you have the right to obtain a copy of any police report.

Massachusetts law also allows consumers to request a security freeze. A security freeze prohibits a credit reporting agency from releasing any information from your credit report without written authorization. Be aware that placing a security freeze on your credit report may delay, interfere with, or prevent the timely approval of any requests you make for new loans, credit mortgages, employment, housing, or other services.

The fee for placing a security freeze on a credit report is $5.00. If you are a victim of identity theft and submit a valid investigative report or complaint with a law enforcement agency, the fee will be waived. In all other instances, a credit reporting agency may charge you up to $5.00 each to place, temporarily lift, or permanently remove a security freeze. If you have not been a victim of

identity theft, you will need to include payment to the credit reporting agency to place, lift, or remove a security freeze by check, money order, or credit card.

To place a security freeze on your credit report, you must send a written request to each of the three major reporting agencies by regular, certified, or overnight mail at the addresses below:

Equifax, PO Box 740256, Atlanta, GA 30374,www.equifax.com, 1-800-525-6285
Experian, PO Box 9554, Allen, TX 75013, www.experian.com,1-888-397-3742
TransUnion, PO Box 2000, Chester, PA 19022-2000,www.transunion.com, 1-800-680-7289

In order to request a security freeze, you will need to provide the following information:
1. Your full name (including middle initial as well as Jr., Sr., II, III, etc.)
2. Social Security number
3. Date of birth
4. If you have moved in the past five (5) years, provide the addresses where you have lived over the prior five years
5. Proof of current address such as a current utility bill or telephone bill
6. A legible photocopy of a government issued identification card (state driver's license or ID card, military identification, etc.)
7. If you are a victim of identity theft, include a copy of the police report, investigative report, or complaint to a law enforcement agency concerning identity theft

The credit reporting agencies have three (3) business days after receiving your request to place a security freeze on your credit report. The credit bureaus must also send written confirmation to you within five (5) business days and provide you with a unique personal identification number ("PIN") or password or both that can be used by you to authorize the removal or lifting of the security freeze.

To lift the security freeze in order to allow a specific entity or individual access to your credit report, you must call or send a written request to the credit reporting agencies by mail and include proper identification (name, address, and Social Security number) and the PIN number or password provided to you when you placed the security freeze as well as the identity of those entities or individuals you would like to receive your credit report or the specific period of time you want the credit report available. The credit reporting agencies have three (3) business days after receiving your request to lift the security freeze for those identified entities or for the specified period of time.

To remove the security freeze, you must send a written request to each of the three credit bureaus by mail and include proper identification (name, address, and Social Security number) and the PIN number or password provided to you when you placed the security freeze. The credit bureaus have three (3) business days after receiving your request to remove the security freeze.

If you are a resident of North Carolina, you may contact the North Carolina Attorney General's Office at 9001 Mail Service Center, Raleigh, NC 27699, www.ncdoj.gov, 1-919-716-6400.

If you are a resident of West Virginia, you also have the right to ask that nationwide consumer reporting agencies place "fraud alerts" in your file to let potential creditors and others know that you may be a victim of identity theft. A fraud alert can make it more difficult for someone to get

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credit in your name because it tells creditors to follow certain procedures to protect you. It also may delay your ability to obtain credit. You may place a fraud alert in your file by calling one of the three nationwide consumer reporting agencies. Contact information for each of the three credit reporting agencies is as follows:

Equifax, PO Box 740256, Atlanta, GA 30374,www.equifax.com, 1-800-525-6285
Experian, PO Box 9554, Allen, TX 75013, www.experian.com, 1-888-397-3742
TransUnion, PO Box 2000, Chester, PA 19022-2000, www.transunion.com, 1-800-680-7289

As soon as that agency processes your fraud alert, it will notify the other two, which then also must place fraud alerts in your file. You may choose between two types of fraud alert. An initial alert (Initial Security Alert) stays in your file for at least 90 days. An extended alert (Extended Fraud Victim Alert) stays in your file for seven years. To place either of these alerts, a consumer reporting agency will require you to provide appropriate proof of your identity, which may include your Social Security number. If you ask for an extended alert, you will have to provide an identity theft report. An identity theft report includes a copy of a report you have filed with a federal, state, or local law enforcement agency, and additional information a consumer reporting agency may require you to submit. For more detailed information about the identity theft report, visit www.ftc.gov/idtheft/.

You may also obtain a security freeze on your credit report to protect your privacy and ensure that credit is not granted in your name without your knowledge. You have a right to place a security freeze on your credit report pursuant to West Virginia law. The security freeze will prohibit a consumer reporting agency from releasing any information in your credit report without your express authorization or approval.

The security freeze is designed to prevent credit, loans and services from being approved in your name without your consent. When you place a security freeze on your credit report, within five business days you will be provided a unique personal identification number ("PIN") or password to use if you choose to remove the freeze on your credit report or to temporarily authorize the distribution of your credit report for a period of time after the freeze is in place. To provide that authorization, you must contact the consumer reporting agency and provide all of the following:

(1) The unique personal identification number ("PIN") or password provided by the consumer reporting agency;
(2) Proper identification to verify your identity; and
(3) The period of time for which the report shall be available to users of the credit report.

A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report shall comply with the request no later than three business days after receiving the request.

A security freeze does not apply to circumstances in which you have an existing account relationship and a copy of your report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control or similar activities.

If you are actively seeking credit, you should understand that the procedures involved in lifting a security freeze may slow your own applications for credit. You should plan ahead and lift a freeze, either completely if you are shopping around or specifically for a certain creditor, a few days before actually applying for new credit.

EXHIBIT F

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EXHIBIT F

EXHIBIT G

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EXHIBIT G

EXHIBIT H

EXHIBIT H

1 **time to time -- the corporate director of risk**
2 **management from time to time. I hear from the**
3 **attorneys.**
4 Q. Corporate risk manager, you just said?
5 **A. I misspoke. It's the director of -- associate**
6 **director of corporate risk manager. I don't even know**
7 **what that is.**
8 Q. Okay. Associate director of corporate risk
9 management?
10 **A. Of risk management. I -- I don't know what the**
11 **title is.**
12 Q. I gotcha. But as far as you know, sitting here
13 today, you're not exactly clear but it's something like
14 associate director, risk management?
15 **A. Yes.**
16 Q. Okay. Is there a director of risk management?
17 **A. I don't know. That's the thing, is that's --**
18 **the title has always mystified me. I don't know.**
19 Q. Gotcha. Now, the associate director, risk
20 management, who is that?
21 **A. Her name is Le Ann Lopez.**
22 Q. And she's with corporate?
23 **A. She's with Landry's, yeah.**
24 Q. She's with Landry's, okay. What is the scope of
25 her authority?

1 MS. McLEOD: Objection; calls for speculation.
2 BY MR. IQBAL:
3 Q. As far as you know.
4 **A. Yeah, I don't actually know. Yeah, I don't even**
5 **know how to describe the relationship. It's -- I mean,**
6 **sometimes it's almost like being my boss, except if I**
7 **choose not to do what is, you know, being presented,**
8 **then nothing happens. So it's not really a boss.**
9 Q. I gotcha so let's clarify this a little bit. So
10 Le Ann Lopez will ask you certain things, and you have
11 the freedom to either do what she asks or say no;
12 correct?
13 **A. Yeah. And, I mean, you're talking about across**
14 **time. I mean, I almost never interact with her. But**
15 **I've seen e-mails from her.**
16 Q. Okay. Are they to you?
17 **A. Yeah.**
18 Q. And typically do you read them?
19 **A. Sometimes.**
20 Q. Sometimes you don't read her e-mails?
21 **A. It just depends. If I know what it's about,**
22 **then it's -- if it doesn't, you know, concern me, then I**
23 **won't. I will eventually, but it's -- you know, I've**
24 **got to deal with stuff, so --**
25 Q. I gotcha. So some of her e-mails you ignore for

1 Q. Got it. And, if you know, do you know how long
2 Elliott's been there?
3 **A. It seems like a long time, but it's probably**
4 **been three or four years, something like that.**
5 Q. Okay. And if you know, do you know how long
6 Julie Moeller's been there?
7 **A. It's less than that. Probably two years or**
8 **something like.**
9 Q. Okay.
10 **A. And that's -- it could be longer or shorter. I**
11 **don't --**
12 Q. Okay. Now, you also said in this case that --
13 it looks like you got -- you were the first to get the
14 Complaint and the Summons in this case?
15 **A. I seem to remember that I received it, but I**
16 **couldn't swear to it.**
17 Q. No problem. No problem. Is that typical, or is
18 that unusual?
19 **A. It just depends. I mean, if it goes through**
20 **the -- what do you call it, the registered agent? --**
21 **then it's not going to come to me first. But if they,**
22 **you know, send a copy to me, you know, fax a courtesy**
23 **copy, something like that, then it could very well come**
24 **to me.**
25 Q. Okay. And when you first got this Complaint and

1 Summons, what did you do with it?
2 **A. Basically just tried to figure out who it was.**
3 **I mean, the idea, of course, would be to pass it along**
4 **to legal. But it does no good to do that until we know**
5 **who it is, so I had to figure out -- try to figure out**
6 **who it was.**
7 Q. Got it. And when you say "legal" -- you just
8 used that term -- what do you mean?
9 **A. To the staff attorneys at Landry's.**
10 Q. At Landry's?
11 **A. Yeah.**
12 Q. Okay. That's your legal department?
13 **A. Yes.**
14 Q. And how long did you take -- if you recall and
15 if you know, how long did you take to kind of figure
16 things out before you sent it along to staff at legal?
17 **A. Let me clarify. If that was the order it**
18 **occurred in, it would have been the top priority to**
19 **figure it out. If they sent it to me to begin with, it**
20 **still would have been top priority to figure it out, but**
21 **if they already had it, I would not have to send it back**
22 **to them. I would say, This is who we think it is.**
23 Q. Got it. And in this instance, it looks like you
24 were the first to get it, and so you forwarded it along
25 to legal?

1 **A. I wouldn't necessarily be aware of them.**
2 Q. Okay. As you sit here today, you don't recall
3 any investigations related to answering this
4 Supplemental Response?
5 **A. Not that I was involved in.**
6 Q. Okay. Typically, if there are investigations
7 into discovery questions or responses, who would handle
8 that, typically?
9 **A. It would typically be counsel.**
10 Q. When you say "counsel," you mean Landry's --
11 Elliott and --
12 **A. Staff counsel, yes.**
13 Q. Okay.
14 **A. Or that's my assumption, I mean.**
15 Q. Okay. Have you read the incident report that's
16 referenced here?
17 **A. If it references the incident report to this**
18 **situation, I did, yes.**
19 Q. But you're not sure?
20 **A. Well, I -- that's the thing, these numbers don't**
21 **mean anything to me. I mean, my brain doesn't go, Oh,**
22 **let me remember all these, you know, whatever these**
23 **numbers are.**
24 Q. Right.
25 **A. It just doesn't mean anything to me.**

EXHIBIT I

EXHIBIT I

1 supervisor?
2 **A. I believe Mike was here approximately one year.**
3 Q. All right. Now, is your interaction up in the
4 hierarchy limited to the vice president and general
5 manager, or do you talk to other superiors above the
6 general manager?
7 **A. I talked to people above and below, because I**
8 **also report to Vice President of Facilities in**
9 **Las Vegas.**
10 Q. And who is that?
11 **A. Clint Belka.**
12 Q. Okay. So on the corporate side, it's Alan. But
13 really with facilities, you also report to Clint?
14 **A. And I also report to corporate as well.**
15 Q. Okay. And who do you report to there?
16 **A. Chris McComas.**
17 Q. Can you spell the last name?
18 **A. M-c-C-o-m-a-s.**
19 Q. And what is Chris' title?
20 **A. He is corporate facilities, Director of Hotel --**
21 **Hotels, I believe. Again, don't hold me to the accurate**
22 **title.**
23 Q. No problem.
24 **A. It's approximate.**
25 Q. No problem at all.

1 Now Director of Hotels for Golden Nugget or
2 Landry's or --
3 **A. Landry's.**
4 Q. Now, Clint, VP of Facilities in Las Vegas for
5 Golden Nugget or for Landry's?
6 **A. Golden Nugget.**
7 Q. Clint's been around for a while; right? How
8 many years has he worked?
9 **A. Over ten, I believe.**
10 Q. Okay. And how about Chris?
11 **A. Approximately three years, maybe longer.**
12 Q. Okay. If there's a technical issue with the
13 facilities, if an accident occurs involving something on
14 the -- in the facility, who do you inform?
15 MS. McLEOD: Objection; form, assumes facts.
16 BY MR. IQBAL:
17 Q. You can answer.
18 **A. I wouldn't be involved with accidents --**
19 Q. Okay.
20 **A. -- or injuries unless it was directly -- I had**
21 **direct involvement.**
22 Q. Okay.
23 **A. Those issues would be reported to security --**
24 Q. Okay.
25 **A. -- and surveillance.**

EXHIBIT J

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EXHIBIT J

EXHIBIT K

EXHIBIT K

1 **it later.**
2 Q. That makes sense, instead of waiting for the
3 requisition.
4 **A. Yeah. Yeah.**
5 Q. Okay. And when you -- and you indicated in 2012
6 that you're -- that you were involved in the process at
7 the Laughlin Nugget, but outside of that you can't
8 recall too many instances where you gave either advice
9 or a recommendation on Laughlin matters?
10 **A. Not for the most part. I mean, we've done some**
11 **property visits just to see how things are going.**
12 Q. Uh-huh.
13 **A. But, no, Don and his team down there and the GMs**
14 **are responsible for the upkeep and everything on the**
15 **property.**
16 Q. Your property visits, are they routine or
17 random?
18 **A. Very random. I mean, I think I've been down**
19 **there once in, like, the last three years.**
20 Q. Okay.
21 **A. So --**
22 Q. Is there a reason to go, I mean, considering
23 it's not within the scope of your duties?
24 **A. It's more or less just to go for a quality**
25 **check, just to see how things are going. Sometimes**

1 **someone from corporate will come in and say, Let's take**
2 **a trip and go down and see how they're doing it; and you**
3 **go down there, and they're doing fine.**
4 Q. Okay. So do you know how decisions are made at
5 the Laughlin Nugget on whether to repair equipment or
6 replace it?
7 **A. I would assume they have the same processes that**
8 **we do.**
9 Q. Okay. But you're not sure?
10 **A. I'm not 100 percent sure.**
11 Q. Okay. But you would assume that the same
12 processes in place for the Las Vegas property would --
13 is your assumption would generally be in place for other
14 properties?
15 **A. It would make sense that it would.**
16 Q. Okay. Do you have any reason to believe that
17 there would be other processes?
18 **A. No.**
19 Q. How often do you have communications or
20 correspondence with Don?
21 **A. Couple times a year, maybe.**
22 Q. Via e-mails or phone calls?
23 **A. Mostly would start with an e-mail, but -- you**
24 **know, and then if a phone call is needed, a phone call**
25 **is needed. But there's very few correspondence that**

1 **on Las Vegas.**
2 Q. Okay. Is that the flagship property?
3 **A. It's the largest.**
4 Q. Okay. How many rooms in Vegas?
5 **A. Approximately 2,400.**
6 Q. Hence, the staff of 85, I guess?
7 **A. And hence my sole focus on that property.**
8 Q. Gotcha. If you know -- and it's totally fine if
9 you don't -- what's the second largest property in the
10 Nugget system?
11 **A. I would say Lake Charles.**
12 Q. Lake Charles, Louisiana?
13 **A. Yeah.**
14 Q. Do you know roughly how many rooms they have?
15 **A. I think they are at 1,000 rooms.**
16 Q. Okay. I think Nugget Laughlin has 300 rooms.
17 Would that make it one of the smaller properties in the
18 Nugget?
19 **A. It probably makes it the smallest.**
20 Q. Okay. And then would that also, in your
21 experience and to your knowledge, would that make its
22 budget also the smallest for capital projects and things
23 like that?
24 **A. No. Percentagewise to the size of the property,**
25 **probably not. I think everyone probably gets a fair**

1 **allocation for budget money --**
2 Q. Okay.
3 **A. -- based on size.**
4 Q. Who makes those decisions on the budgets for the
5 capital projects, this is how much Nugget Las Vegas is
6 going to receive this year, this is how much Nugget
7 Lake Charles is going to receive, and this is how much
8 Nugget Laughlin is going to receive?
9 **A. Well, I would imagine that decision is made at a**
10 **corporate level.**
11 Q. Okay. When you mean "corporate," you mean your
12 GM and the GMs of the other properties and above?
13 **A. Correct.**
14 Q. Okay. Do the GMs of all -- to your knowledge,
15 if you know, like your direct boss, Chris Latil, does he
16 report to anyone specific?
17 **A. I don't want to speak for who he exactly reports**
18 **to, because I would imagine he talks to several people.**
19 **But I believe they have a gentleman that's kind of over,**
20 **like, the gaming division --**
21 Q. Okay.
22 **A. -- that works with the general managers.**
23 Q. Okay. All right. So what role does customer
24 safety play in deciding, you know, what repairs or
25 replacements will be made to equipment at the Golden

EXHIBIT L

EXHIBIT L

1 that if approximately one-third of the steps are
2 cracked on a particular unit, then all of the
3 steps should be replaced, closed quote.
4 Do you see that?
5 **A. Yes.**
6 Q. What can cause escalator steps to
7 crack?
8 **A. Do you have the piece of paper**
9 **regarding the KONE step cracks?**
10 Q. Yes (handing).
11 MS. MASTRANGELO: No. I have it if you
12 want to use it. He's talking about the OEM --
13 **A. It's a known condition --**
14 MS. MASTRANGELO: -- product bulletin.
15 **A. -- of a Montgomery escalator, that**
16 **their stairs will crack.**
17 BY MR. IQBAL:
18 Q. You just said it -- it's a known
19 condition?
20 **A. It's a known condition by the**
21 **manufacturer that built the escalator.**
22 Q. Okay.
23 MS. MASTRANGELO: You can use this if you
24 want it. I don't want to show it to him if you
25 don't want him to see it.

1 Q. Okay.
2 **A. Other than that, I'm not sure, beyond**
3 **that scope.**
4 Q. And with Platinum Premiere -- would you
5 say the Platinum Premiere coverage is -- is more
6 broad than the Gold coverage?
7 **A. Broad? What do you mean?**
8 Q. Does it cover more than --
9 **A. I'm sure it does, as it says "Platinum"**
10 **on it.**
11 Q. Okay. But other than the names,
12 Platinum and Gold, you don't really know?
13 **A. No. They're not discussed.**
14 Q. Okay. Do you ever recommend that the
15 escalator itself be replaced?
16 **A. For modernization?**
17 Q. Right.
18 **A. The company likes to modernize**
19 **equipment --**
20 Q. Right.
21 **A. -- and get up to new codes.**
22 Q. Right.
23 **A. But it's a huge expense.**
24 Q. Right. That's -- I guess -- that's not
25 my question.

1 Did you personally ever recommend, either
2 to Larry or Scott with your company, or Don or
3 anyone at Golden Nugget -- did you ever recommend
4 replacing the overall escalator?
5 **A. Yes. With all the escalators in**
6 **Laughlin, I do the same thing.**
7 Q. Okay. When did you first recommend
8 full replacement of the Laughlin escalators?
9 **A. I don't remember the exact date.**
10 Q. Was it years ago?
11 **A. Years ago.**
12 Q. Was it closer to when you started,
13 around 2010?
14 **A. It was between that and 2015; I know**
15 **that.**
16 Q. How many times did you recommend full
17 replacement of the escalator?
18 **A. Once.**
19 Q. Okay.
20 **A. And then the company forward -- follows**
21 **up with that.**
22 Q. Okay. So you recommended it only once?
23 **A. Yes.**
24 Q. And what was the result of your
25 recommendation?

1 **A. They gave him a quote and a bid. And**
2 **that's as far as it went, as far as I know.**
3 Q. Okay. So --
4 **A. Obviously, there are still old**
5 **escalators.**
6 Q. Right. Right. We saw the repair quote
7 from September 12, 2012, where you recommended
8 replacement of all 114 steps.
9 Do you remember that?
10 **A. Yes.**
11 Q. Okay. Did you, after that point in
12 September 2012, ever recommend replacing all 114
13 steps?
14 **A. In what date, 2012?**
15 Q. Yes, after 2012.
16 In 2013, 2014, 2015, 2016, 2017, 2018 --
17 after that date in September of 2012, did you ever
18 recommend replacement of all 114 steps?
19 **A. Yeah, replacement steps, yes.**
20 Q. Okay. How many times did you recommend
21 that?
22 **A. Well, it states on the information here**
23 **that every time I talked to Don about the**
24 **proposals.**
25 Q. Okay. So every time you talked to Don,

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Steven D. Grierson
CLERK OF THE COURT

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

DISTRICT COURT

CLARK COUNTY, NEVADA

JOE N. BROWN, an individual, and his Wife, NETTIE J. BROWN, an individual, Plaintiffs, vs. LANDRY'S, INC., a foreign corporation; GOLDEN NUGGET, INC. a Nevada corporation, d/b/a GOLDEN NUGGET LAUGHLIN; GNL, CORP., a Nevada corporation; THYSSENKRUPP ELEVATOR CORP., a foreign corporation; DOE INDIVIDUALS 1-100, ROE BUSINESS ENTITIES 1-100, Defendants.	**Case No.: A-16-739887-C** **Dept. No.: XXXI** **REPLY IN SUPPORT OF LANDRY'S, INC.'S MOTION TO DISMISS FOR LACK OF GENERAL OR PERSONAL JURISDICTION**
GNL, CORP., a Nevada corporation; Third-Party Plaintiff, vs. THYSSENKRUPP ELEVATOR CORPORATION a foreign corporation; DOES 1-75; ROE CORPORATION 1-75 and ROE CORPORATION 1-25, Third-Party Defendants	**Date of hearing: Dec 4, 2018** **Time of hearing: 9:00 a.m.**

COMES NOW Defendant, LANDRY'S, INC. (hereinafter "LANDRY'S" or "Defendant"), by and through its counsel of record, ALEXANDRA B. M^C^LEOD, ESQ., of the law firm of **GRANT & ASSOCIATES**, and hereby submit the instant Reply in Support of Landry's,

JNB01719

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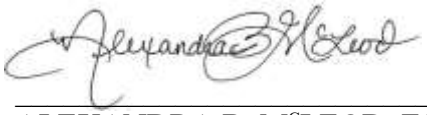
Inc.'s Motion to Dismiss for Lack of General or Personal Jurisdiction in the above-entitled action, pursuant to Nevada Rule of Civil Procedure 12(b)(2).

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

RESPECTFULLY SUBMITTED this 27th day of November, 2018.

GRANT & ASSOCIATES



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Attorney for Defendants GNL, LANDRY'S, & GNI

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POINTS & AUTHORITIES

I. INTRODUCTION

This case involved an elderly man, Plaintiff Joe Brown, who fell after stepping onto a down escalator on May 12, 2015 at the Golden Nugget Laughlin while intoxicated and using a cane. His wife, Nettie, claims loss of consortium. The discrete question before the Court on this Motion to Dismiss is whether there is jurisdiction over LANDRY'S, INC. Plaintiffs have failed to establish the legal sufficiency of their allegations of jurisdiction found in the Second Amended Complaint (or any iteration thereof), and further disregarded the legal arguments of *MGM Grand, Inc., Viega GmbH,* or *Fullbright & Jaworski* cases cited in the underlying Motion.

It is well established that "jurisdiction over a nonresident corporation [cannot] be premised upon that corporation's status as parent to a Nevada corporation." *Sands China Ltd. v. Eighth Jud. Dist. Ct. of State ex rel. County of Clark*, 127 Nev. 1173, 373 P.3d 958 (2011) (*citing MGM Grand, Inc. v. Eighth Jud. Dist. Ct*, 107 Nev. 65, 807 P.2d 201 [1991]). In an attempt to overcome this directive, Plaintiffs were called upon to introduce some ***admissible*** evidence and not simply rely on the allegations of the complaint to establish personal jurisdiction. *Trump v. Eighth Judicial Dist. Ct.*, 109 Nev. 687, 693, 857 P.2d 740 (1993).[1] Yet, Plaintiffs submitted only inadmissible documentary evidence and testimony which, even when considered, fail to establish minimum contacts with the State of Nevada or to comply with the limits imposed by federal due process.

Plaintiffs assert that this issue has already been determined and that "the Court concluded the Plaintiffs had made a *prima facie* showing that Landry's exerts ownership and control of the Laughlin Nugget such that the exercise of specific personal jurisdiction is proper. The Court thus denied the motion to dismiss by order entered on April 25, 2017." Opposition at

[1] Again Defendant points out that, ironically, GNLV, Corp., the entity that owns and operates the Golden Nugget Las Vegas hotel and casino, was a Real Party in Interest in the *Trump* matter. Instructively, neither LANDRY'S nor GNI were parties to that case, because they do not own or operate the Golden Nugget Las Vegas Nugget. Likewise, they have no involvement in the Golden Nugget Laughlin to support Plaintiffs' claims against them in the instant case.

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3:14-17. However, both the Court Minutes from the March 28, 2017 hearing as well as the April 25, 2017 order are silent as to the Court's reasoning or any finding that Plaintiffs made a *prima facie* showing. *See* **EXHIBITS A** (Minutes) and **B** (April 25, 2017 Order). The finding was only subsequently included in a backhanded Order Denying Reconsideration on October 31, 2017, self-servingly drafted by Plaintiffs and not approved as to form and content by the defense. Assuming *arguendo* that the Court did state any such finding, the Plaintiffs must trial prove personal jurisdiction at trial by preponderance of the evidence, *Trump, supra,* 109 Nev. at 693, which they cannot do on the basis of documents lacking in foundation or inadmissible testimony.

II. BECAUSE PLAINTIFFS CANNOT ESTABLISH THE REQUISITE FOUNDATION FOR THEIR PROFFERED EVIDENCE, THEY IMPROPERLY ASK THIS COURT TO EXERCISE JURISDICTION OVER A FOREIGN COMPANY ON BASIS OF SPECULATION AND HEARSAY

Plaintiffs Opposition relies on documents and deposition testimony which lack sufficient foundation to justify the introduction of this purported evidence at trial, or to justify the Court's consideration of the documents and testimony in determining the instant Motion to Dismiss. In performing its gatekeeper function, the Trial Court is guided by NRS 48.025(1), which provides that only "relevant evidence" is admissible. In addition, documentary evidence must be shown to comport with three evidentiary doctrines: authentication, best evidence, and hearsay. On the other hand, in the case of witness testimony, the party offering the testimony must establish witness competency or proof of personal knowledge. The evidence offered by Plaintiffs is not demonstrably admissible under any of these guidelines and should not be considered in opposition to this Motion. However, even if the Court were to reach the merits of the proffered documents and testimony, Plaintiffs' proof of jurisdiction over LANDRY'S, INC.'S is still lacking for the reasons explained below.

A. Filings with the Nevada Secretary of State

These documents have not been established as authentic and have been submitted without custodian of records affidavits or declarations under NRS 52.260 and 52.265. Furthermore, the substantive contents of those documents are inadmissible hearsay. Merely

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printing documents off the internet carries no guarantees of genuineness, authenticity, or reliability.

Even so, the question of whether a business license is sufficient to confer jurisdiction has been resolved and repeatedly found to be woefully inadequate. For example, in *Glater v. Eli Lilly & Co.,* 744 F.2d 213 (1st Cir.1984), the defendant corporation not only advertised its wares within the forum state (New Hampshire), but also employed eight sales representatives within the state, three of whom were residents. *Id.* at 215. Although the defendant did business within New Hampshire, the court nonetheless held that its contacts were too fragmentary to satisfy the constitutional standard for the exercise of general jurisdiction.

To much the same effect is *Seymour v. Parke, Davis & Co.,* 423 F.2d 584 (1st Cir.1970). In that situation, the defendant employed several salesmen who transacted business in the forum state, disseminating product information and taking orders. *Id.* at 585. Defendant also advertised in the forum by mail and otherwise. *Id.* Still, we ruled that the Constitution would not permit a state to assume general jurisdiction in such circumstances. *Id.* at 587; *see also Helicopteros,* 466 U.S. at 417–18, 104 S.Ct. at 1873–74 (regular course of purchases within state not enough to warrant assertion of general personal jurisdiction); *Dalmau Rodriguez v. Hughes Aircraft Co.,* 781 F.2d 9, 14–15 (1st Cir.1986) (submission of bid and trips into forum by defendant's employees to render technical assistance and make sales call "too attenuated" to ground personal jurisdiction); *cf. American Express Int'l, Inc. v. Mendez–Capellan,* 889 F.2d 1175, 1179–81 (1st Cir.1989) (maintenance of bank accounts in forum, payment of bills from those accounts, and sending of employees into forum for training sessions not enough to permit exercise of personal jurisdiction).

B. Press Release dated 9-27-05 & Website posted 1-14-12

In addition to the foundational objections discussed above, this press release is outdated. The timeliness of the press release is significant here because LANDRY'S, INC. and its parent and subsidiary companies have been through at least two restructurings since 2005. This is readily apparent as both documents on their faces refer not to LANDRY'S, INC. but to "Landry's Restaurants, Inc."

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Further, as verified by Steve Scheinthal, Executive Vice President and General Counsel for LANDRY'S INC., on September 30, 2013, Landry's, Inc. declared a stock dividend divesting of all of its shares in Landry's Gaming, Inc., including all of Landry's Gaming, Inc.'s subsidiaries, which resulted in Fertitta Entertainment, Inc., owning all outstanding shares of Landry's Gaming, Inc., and all of its subsidiaries. Since September 30, 2013, Landry's, Inc. neither directly nor indirectly, through one or more of its subsidiaries, owns any percent of the outstanding ownership or membership interest in Landry's Gaming, Inc., Golden Nugget, Inc. or any of Golden Nugget, Inc.'s subsidiaries. Therefore, at the time Plaintiffs' lawsuit commenced (July 12, 2016), LANDRY'S no longer had even remote ownership interest in GNL, Corp. or the Golden Nugget Laughlin.[2] These documents are of no help in determining the question of jurisdiction here.

C. Press Release dated 1-29-16

Although this press release post-dates the 2013 restructuring, it is subject to the same foundational deficiencies. This press release was issued in response to the data breach referenced in Plaintiffs' opposition to the Motion to Dismiss. However, the press release is issued by Landry's, Inc. and "Golden Nugget Hotels and Casinos" and then collectively refer to themselves as the "Companies." These companies would include GNL.

Without regurgitating all of the legal authority set forth in the Motion, there is to be expected some sharing of professional service such as a cyber-security firm between subsidiaries of a corporate family without giving rise to joint liability or *de facto* piercing of the corporate veil. *See*, *F. Hoffman-La Roche, Inc. v. Superior Court*, 30 Cal. Rptr. 3d 407, 418 (2005); *cited by Viega GmbH v. Eighth Jud. Dist. Ct.*, 328 P.3d 1152, 1160 (2014). Such cooperation and oversight would be part and parcel of exercising "no more control over its subsidiaries than is appropriate for [a] shareholder of a corporation." *MGM Grand, Inc, supra*, 107 Nev. at 68–69. Additionally, Landry's has subsidiaries of subsidiaries (***not*** including GNL)

[2] Moreover, earlier this year, another corporate restructuring converted GNL, Corp. to a limited liability company; so that what was formerly GNL, Corp. is now GNL, LLC. Additionally, Golden Nugget, Inc. was converted to a limited liability company and is now known as Golden Nugget, LLC.

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in its corporate chain which operate businesses within the premises of the Laughlin Nugget for which it would make sense to issue a general announcement.

D. Emails/Requisition Approvals

Assuming Plaintiffs can overcome foundational objections to these documents, they have failed to even identify who Codi Gibson is or with which entity he is associated. Regardless, the documents' substantive contents only establish a process of oversight and approval of expenditures. Plaintiffs make assumptions about the meaning of the note "action required" without even establishing the authorship of that phrase on the email heading. Some oversight by a parent or shareholder corporation is to be expected, *see generally*, *MGM Grand, Inc, supra*, 107 Nev. at 68–69, and the burden is on Plaintiffs to prove that LANDRY'S, INC. exercise of control is unusual, unreasonable, and pervasive enough to establish personal jurisdiction here.

E. Excerpts of Smith deposition testimony

The excerpts of testimony to which Plaintiffs refer fail to establish Richard Smith as a competent witness on the issue of the hierarchy of corporate risk management for LANDRY'S, INC. First and foremost, the question of the scope of authority for corporate risk management was met with an objection during the deposition that the question called for speculation. **EXHIBIT H** to Plaintiff's Opposition at 87:1. More importantly, however, this portion of Mr. Smith's testimony is peppered with "I don't know" responses, clearly signaling his lack of personal knowledge. The testimony was as follows:

> Q. Corporate risk manager, you just said?
> A. I misspoke. It's the director of -- associate director of corporate risk manager. **I don't even know what that is.**
> Q. Okay. Associate director of corporate risk management?
> A. Of risk management. I -- **I don't know what the title is.**
> Q. I gotcha. But as far as you know, sitting here today, **you're not exactly clear** but it's something like associate director, risk management?
> A. Yes.
> Q. Okay. Is there a director of risk management?
> A. **I don't know.** That's the thing, is that's -- the title has always mystified me. **I don't know.**
> Q. Gotcha. Now, the associate director, risk management, who is that?
> A. Her name is Le Ann Lopez.
> Q. And she's with corporate?
> A. She's with Landry's, yeah.

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> Q. She's with Landry's, okay. What is the scope of her authority?
> **MS. McLEOD: Objection; calls for speculation.**
> BY MR. IQBAL:
> Q. As far as you know.
> A. Yeah, **I don't actually know**. Yeah, I don't even know how to describe the relationship. It's -- I mean, sometimes it's almost like being my boss, except if I choose not to do what is, you know, being presented, then nothing happens. **So it's not really a boss.**
> Q. I gotcha so let's clarify this a little bit. So Le Ann Lopez will ask you certain things, and you have the freedom to either do what she asks or say no; correct?
> A. Yeah. And, I mean, you're talking about across time. I mean, **I almost never interact with her**. But I've seen e-mails from her.
> **EXHIBIT H** to Plaintiff's Opposition at 86:4-87:15 (emphasis added.)

Even if Plaintiffs could overcome the foundational objection of personal knowledge in light of the five "I don't know" responses, Mr. Smith's testimony hardly establishes the LANDRY'S, INC. controls the day to day operations of the Golden Nugget Laughlin. Rather, Mr. Smith explained further that Ms. Lopez was "not really a boss" and that he "almost never interact[s] with her." *Id*. at 87:8, 14. Occasional interaction with someone who is "not really a boss" again demonstrates the exercise of minimal control over a subsidiary which is appropriate for a parent corporation. *See generally*, *MGM Grand, Inc, supra*, 107 Nev. at 68–69. Infrequent interaction with an employee of a parent company is insufficient to establish personal jurisdiction over LANDRY'S, INC. in Nevada.

F. Excerpts of Hartmann deposition testimony

The excerpt of Mr. Hartmann's testimony only serves to establish that he reports to and interacts with several people within GNL and its parent and sibling companies. Not to belabor the point, but oversight by a parent or shareholder corporation does not rise to the level necessary to exercise jurisdiction over a foreign corporation.

. . .

. . .

. . .

. . .

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V. CONCLUSION

Because Plaintiffs have not introduced **competent, admissible evidence** establishing that any of the traditional bases for exercising personal jurisdiction are present in this case, Nevada's continued exercise of jurisdiction over LANDRY'S, INC. under the circumstances here would be unreasonable. LANDRY'S, INC. must be dismissed before trial and should be deleted from the case caption.

RESPECTFULLY SUBMITTED this 27th day of November, 2018.

GRANT & ASSOCIATES

ALEXANDRA B. MCLEOD, ESQ.
Nevada Bar No. 8185
7455 Arroyo Crossing Parkway, Suite 300
Las Vegas, Nevada 89113
Attorney for Defendants/Third-Party Plaintiffs, GNL, CORP., LANDRY'S, INC. & GOLDEN NUGGET, INC.

CERTIFICATE OF SERVICE

I certify that I am an employee of GRANT & ASSOCIATES and that on this 27th day of November, 2018 I caused a true and correct copy of the foregoing **REPLY IN SUPPORT OF LANDRY'S, INC.'S MOTION TO DISMISS FOR LACK OF GENERAL OR PERSONAL JURISDICTION** to be served as follows:

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

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

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

/s/ Alexandra B. McLeod

An Employee of GRANT & ASSOCIATES

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EXHIBIT A

REGISTER OF ACTIONS
CASE NO. A-16-739887-C

Joe Brown, Plaintiff(s) vs. Landry's Inc., Defendant(s)	§	Case Type:	**Negligence - Premises Liability**
	§	Date Filed:	**07/12/2016**
	§	Location:	**Department 31**
	§	Cross-Reference Case Number:	**A739887**
	§		
	§		

PARTY INFORMATION

		Lead Attorneys
Defendant	**GNL Corp**	**Lee J Grant** *Retained* 702-940-3529(W)
Defendant	**Golden Nugget Inc *Doing Business As* Golden Nugget Laughlin**	**Annalisa N Grant** *Retained* 702-940-3529(W)
Defendant	**Landry's Inc.**	**Annalisa N Grant** *Retained* 702-940-3529(W)
Defendant	**Thyssenkrupp Elevator Corporation**	**Rebecca L. Mastrangelo** *Retained* 702-383-3400(W)
Plaintiff	**Brown, Joe N.**	**Mohamed A. Iqbal** *Retained* 702-750-2950(W)
Plaintiff	**Brown, Nettie J**	**Mohamed A. Iqbal** *Retained* 702-750-2950(W)
Third Party Defendant	**Thyssenkrupp Elevator Corporation**	**Rebecca L. Mastrangelo** *Retained* 702-383-3400(W)
Third Party Plaintiff	**GNL Corp**	**Lee J Grant** *Retained* 702-940-3529(W)

EVENTS & ORDERS OF THE COURT

03/28/2017 **Motion to Dismiss** (9:30 AM) (Judicial Officer Kishner, Joanna S.)
Defendants Golden Nugget, Inc. and Landry's, Inc. Motion to Dismiss

Minutes
03/28/2017 9:30 AM
- Matter argued and submitted. Court stated its findings, and ORDERED, Defendants Golden Nugget, Inc. and Landry's, Inc.'s Motion to Dismiss is DENIED WITHOUT PREJUDICE. Counsel for Plaintiff to prepare the Order, circulating to all counsel for approval as to form and content in accordance with EDCR 7.21.

Parties Present
Return to Register of Actions

JNB01729

EXHIBIT B

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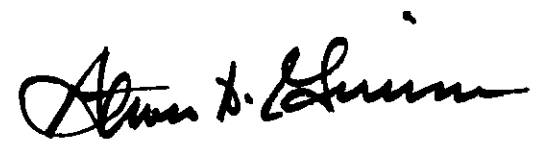

CLERK OF THE COURT

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

DISTRICT COURT
CLARK COUNTY, NEVADA

JOE N. BROWN, an individual, and his Wife, NETTIE J. BROWN, an individual Plaintiffs, vs. LANDRY'S, INC., a foreign corporation; GOLDEN NUGGET, INC, a Nevada corporation, d/b/a GOLDEN NUGGET LAUGHLIN; GNL, CORP.; DOE INDIVIDUALS 1-100; ROE BUSINESS ENTITIES 1-100, Defendants. AND ASSOCIATED CASES	Case No.: A-16-739887-C Dept. No.: XXXI **NOTICE OF ENTRY OF ORDER DENYING DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT**

PLEASE TAKE NOTICE that on the 24th day of April, 2017, the *Order Denying Defendants' Motion to Dismiss Plaintiffs' Complaint* was entered in the above-entitled action, a copy of which is attached hereto as Exhibit "1".

Dated this 25th day of April, 2017.

Respectfully Submitted,

IQBAL LAW PLLC

By: /s/ Mohamed A. Iqbal, Jr.
Mohamed A. Iqbal, Jr. (NSB# 10623)
Christopher Mathews (NSB #10674)

Attorneys for Plaintiffs Joe N. Brown and Nettie Brown

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of IQBAL LAW PLLC, and that on this 25th day of April 2017, I caused to be served a true and correct copy of foregoing **NOTICE OF ENTRY OF ORDER DENYING DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT** in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

Grant & Associates

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EXHIBIT 1

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

DISTRICT COURT

CLARK COUNTY, NEVADA

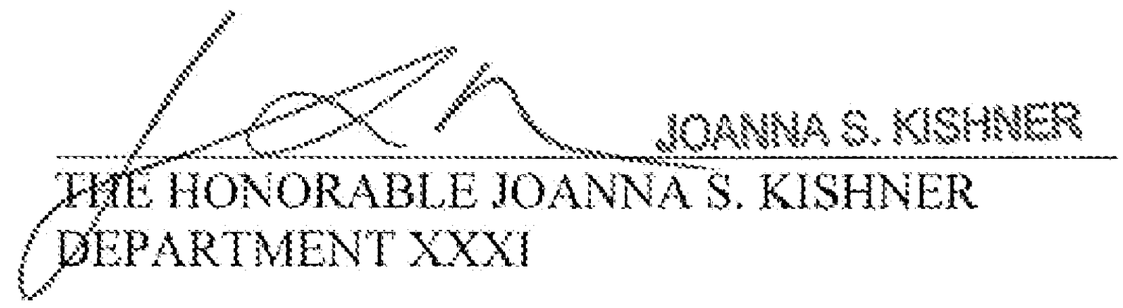
JOE N. BROWN, an individual, and his Wife, NETTIE J. BROWN, an individual Plaintiffs, vs. LANDRY'S, INC., a foreign corporation; GOLDEN NUGGET, INC., a Nevada corporation, d/b/a GOLDEN NUGGET LAUGHLIN; GNL, CORP.; DOE INDIVIDUALS 1-100; ROE BUSINESS ENTITIES 1-100, Defendants. AND ALL RELATED ACTIONS.	Case No.: A-16-739887-C Dept. No.: XXXI **ORDER DENYING DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT**

Defendants Golden Nugget, Inc. and Landry's, Inc.'s ("Defendants") Motion to Dismiss Plaintiffs Joe Brown and Nettie Brown's ("Plaintiffs") Complaint came on for hearing on March 28, 2017 at 9:30 a.m. in Department 31 before the Honorable Joanna S. Kishner, with Mohamed A. Iqbal, Jr. of the law firm of Iqbal Law PLLC appearing on behalf of the Plaintiffs, Lee J. Grant II of the law firm of Grant & Associates appearing on behalf of the Defendants, and Charles Michalek of the law firm of Rogers Mastrangelo, Carvalho & Mitchell appearing on behalf of Third-Party Defendant Thyssenkrupp Elevator Corporation.

With the Court having read and considered the Motion to Dismiss, the Opposition to the Motion to Dismiss, and the Reply in Support of the Motion to Dismiss, and having heard the

arguments of counsel for the Defendants and the Plaintiffs, and good cause appearing, it is hereby ORDERED that Defendants' Motion to Dismiss is denied without prejudice.

Dated this 17 day of April 2017



JOANNA S. KISHNER

THE HONORABLE JOANNA S. KISHNER
DEPARTMENT XXXI

Respectfully submitted after circulation to all counsel appearing at the above-referenced Hearing:

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By: _____

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DISTRICT COURT

CLARK COUNTY, NEVADA

JOE N. BROWN, an individual, and his Wife, NETTIE J. BROWN, an individual, Plaintiffs, vs. LANDRY'S, INC., a foreign corporation; GOLDEN NUGGET, INC. a Nevada corporation, d/b/a GOLDEN NUGGET LAUGHLIN; GNL, CORP., a Nevada corporation; THYSSENKRUPP ELEVATOR CORP., a foreign corporation; DOE INDIVIDUALS 1-100, ROE BUSINESS ENTITIES 1-100, Defendants.	**Case No.: A-16-739887-C** **Dept. No.: XXXI** **REPLY IN SUPPORT OF DEFENDANTS', LANDRY'S AND GOLDEN NUGGET, INC.'S, MOTION FOR SUMMARY JUDGMENT**
GNL, CORP., a Nevada corporation; Third-Party Plaintiff, vs. THYSSENKRUPP ELEVATOR CORPORATION a foreign corporation; DOES 1-75; ROE CORPORATION 1-75 and ROE CORPORATION 1-25, Third-Party Defendants	**Date of hearing: Dec 4, 2018** **Time of hearing: 9:00 a.m.**

COME NOW Defendants, LANDRY'S, INC. (hereinafter "LANDRY'S") & GOLDEN NUGGET, INC. (hereinafter "GNI"), by and through their counsel of record, ALEXANDRA B. M^C^LEOD, ESQ., of the law firm of **GRANT & ASSOCIATES**, and hereby submit the instant

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Motion for Summary Judgment in the above-entitled action, pursuant to Nevada Rule of Civil Procedure 56 and Nevada Revised Statutes 78.225 and 78.747.

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

RESPECTFULLY SUBMITTED this 28th day of November, 2018.

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POINTS & AUTHORITIES

I. INTRODUCTION

This case involves an elderly man, Plaintiff Joe Brown, who fell after stepping onto a down escalator on May 12, 2015 at the Golden Nugget Laughlin while intoxicated and using a cane. His wife, Nettie, claims loss of consortium. The discrete question before the Court in this Motion for Summary Judgment is whether there are genuine issues of material fact, supported by competent, admissible evidence, as to the ownership and control of the Golden Nugget Laughlin.

It is well established that the actions of a subsidiary company are generally not attributable to its parent corporation and, further that the amount of control typical in a parent-subsidiary relationship is insufficient to demonstrate agency. *Viega GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev. 368, 380, 328 P.3d 1152, 1161 (2014). In an attempt to overcome this imperative, Plaintiffs have submitted incompetent evidence alluding to the parent-subsidiary relationship between these companies. However, Plaintiffs cannot manufacture a material issue of fact with evidence that would not qualify for admission at trial.

Plaintiffs summarize their Complaint as alleging that Defendants LANDRY'S and GNI (together with co-defendant GNL) own and operate the Golden Nugget Laughlin and "so owed a duty of care to the Plaintiffs to install, operate, and maintain the premises and equipment therein in safe condition – a duty they breached through their negligence." *See* Plaintiffs' Opposition at 6:10-13, *citing* Complaint ¶¶ 6, 25-28, 31, and 34. Yet, the undisputed facts and legal relationship between the Defendant entities eliminate any dispute over the issue of ownership. The deed to actual premises of the Golden Nugget Laughlin is held by GNL, Corp. (*see* **EXHIBIT H** to the underlying Motion); there can be no remaining question of ***ownership***. Therefore, the only allegations of ownership are due to GNI's status as stockholder and parent company of GNL, and LANDRY'S relationship in the corporate "family." Plaintiffs further allege the LANDRY'S and GNI ***operate*** the Golden Nugget Laughlin via the corporate oversight of GNL, Corp. The verified answers to discovery and the corporate documents submitted refute this allegation, and, for the reasons explained more fully below, Plaintiffs'

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purported evidence cannot bear out the existence of any genuine issue for trial in order to defeat summary judgment in the case at bar.

II. PROCEDURAL HURDLE REGARDING SUBMISSION OF CONFIDENTIAL DOCUMENTS

The Court has not yet had the opportunity to review Defendants' **EXHIBITS H**, **I**, and **J** to the underlying Motion. These documents are subject to a Stipulated Protective Order, and are intended to be supplemented pending a SRCR 3 Motion to File Under Seal. However, the SRCR 3 Motion is not set to be heard until January 8, 2019 (notably a day after the trial stack will begin). Counsel may reschedule the hearing of this Motion, the SRCR 3 Motion, or both, by stipulation. **EXHIBITS H**, **I**, and **J** will be made available at the time of hearing for submission per further instruction from the Court.

III. PLAINTIFFS CANNOT OVERCOME SUMMARY JUDGMENT BASED UPON MANUFACTURED DOUBT AS TO THE OPERATIVE FACTS

Rule 56 must no longer be regarded as a "disfavored procedural shortcut," *Wood v. Safeway, Inc.*, 121 Nev.724, 121 P.3d 1026, 1031 (2005). Summary judgment proceedings promote judicial economy and reduce litigation expense associated with actions clearly lacking in merit. *Elizabeth E. v. A.D.T. Sec. Sys. W.,* 108 Nev. 889, 839 P.2d 1308 (1992). In *Wood*, the Nevada Supreme Court clarified the summary judgment standard and, most importantly, dispelled the notion that only the "slightest doubt as to the operative facts" can preclude summary judgment by explicitly abrogating the slightest doubt standard from Nevada jurisprudence because it unduly limited the use of summary judgment. *Id* at 1031. Rather, the opposing party must do more than simply show that there is some "metaphysical" doubt to the operative facts in order to avoid summary judgment but must set forth concrete facts demonstrating the existence of a genuine issue for trial. *Id*. (emphasis added); *see also Bird v. Casa Royale W.*, 97 Nev. 67, 624 P.2d 17 (1981).

In opposing such a motion for summary judgment, "the opponent must... show he can produce evidence at the trial to support his claim." *Van Cleave v. Kietz-Mill Minit Mart*, 97 Nev. 414, 415, 417, 633 P.2d 1220, 1221, 1222 (1981) (*citing Thomas v. Bokelman*, 86 Nev. 10,

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14, 462 P.2d 1020, 1023 (1970). Again, *Wood* is instructive: "The non-moving party must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him." *Wood,* 121 P.3d at 1031 (internal citations omitted). Furthermore, that evidence must be admissible and sufficient to overcome an NRCP 56(e) objection.

IV. SUMMARY JUDGMENT IS WARRANTED AS TO LANDRY'S AND GNI BECAUSE PLAINTIFFS' EVIDENCE LACKS FOUNDATION AND DOES NOT COMPORT WITH NRCP 56(e)

Like the accompanying Opposition to LANDRY'S Motion to Dismiss, Plaintiffs' Opposition here relies on documents and deposition testimony which lack sufficient foundation to justify the introduction of this purported evidence at trial, or to justify the Court's consideration of the documents and testimony to defeat summary judgment in the case at trial. In performing its gatekeeper function, the Trial Court is guided by NRS 48.025(1), which provides that only "relevant evidence" is admissible. In addition, documentary evidence must be shown to comport with three evidentiary doctrines: authentication, best evidence, and hearsay. On the other hand, in the case of witness testimony, the party offering the testimony must establish witness competency or proof of personal knowledge. The evidence offered by Plaintiffs is not demonstrably admissible under any of these guidelines and should not be considered in opposition to this Motion. However, even if the Court were to reach the merits of the proffered documents and testimony, Plaintiffs' fall short of proving that LANDRY'S or GNI are proper Defendants here as demonstrated below.

A. SEC Filings dated 9-30-06, Press Release dated 9-27-05, & Website posted 1-14-12

In addition to the foundational objections discussed above, these documents are outdated. The timeliness of the documents is significant here because LANDRY'S, GNI and their family of companies have been through at least two restructurings since 2005. This is readily apparent as both documents on their faces refer not to LANDRY'S, INC. but to "Landry's Restaurants, Inc."

Plaintiff cites to SEC filings and specifically a Form 10-Q from 2005/2006, indicating that Defendant GNI was a subsidiary of Landry's Restaurant's, Inc. *See* Opposition at **EXHIBIT**

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B. However, as explained below and noted in LANDRY'S discovery responses, the current corporate structure has been in place since September 30, 2013. It is also noteworthy that LANDRY'S was a public company in 2006, but was purchased and became a privately held company in or around 2010. As indicated in Defendant's discovery responses, its corporate structure changed thereafter.

Further, as verified by Steve Scheinthal, Executive Vice President and General Counsel for LANDRY'S INC., on September 30, 2013, Landry's, Inc. declared a stock dividend divesting of all of its shares in Landry's Gaming, Inc., including all of Landry's Gaming, Inc.'s subsidiaries, which resulted in Fertitta Entertainment, Inc., owning all outstanding shares of Landry's Gaming, Inc., and all of its subsidiaries. Since September 30, 2013, Landry's, Inc. neither directly nor indirectly, through one or more of its subsidiaries, owns any percent of the outstanding ownership or membership interest in Landry's Gaming, Inc., Golden Nugget, Inc. or any of Golden Nugget, Inc.'s subsidiaries. Therefore, at the time Plaintiffs' lawsuit commenced (July 12, 2016), LANDRY'S no longer had even remote ownership interest in GNL, Corp. or the Golden Nugget Laughlin.[1] These documents are of no help in determining the question of day to day operations in the Golden Nugget Laughlin at the time of Plaintiff's fall in 2015.

B. Press Release dated 1-29-16

Although this press release post-dates the 2013 restructuring, it is subject to the same foundational deficiencies. This press release was issued in response to the data breach referenced in Plaintiffs' Opposition. However, the press release was issued by Landry's, Inc. <u>and</u> "Golden Nugget Hotels and Casinos" and then collectively refers to all three entities as the "Companies." These companies would include GNL and a joint press-release hardly establishes ownership or control of one company over the other.

. . .

[1] Moreover, earlier this year, another corporate restructuring converted GNL, Corp. to a limited liability company; so that what was formerly GNL, Corp. is now GNL, LLC. Additionally, Golden Nugget, Inc. was converted to a limited liability company and is now known as Golden Nugget, LLC.

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Without regurgitating all of the legal authority set forth in the Motion, there is to be expected some sharing of professional service such as a cyber-security firm between subsidiaries of a corporate family without giving rise to joint liability or *de facto* piercing of the corporate veil. *See F. Hoffman-La Roche, Inc. v. Superior Court*, 30 Cal. Rptr. 3d 407, 418 (2005); *cited by Viega GmbH v. Eighth Jud. Dist. Ct.*, 328 P.3d 1152, 1160 (2014). Such cooperation and oversight would be part and parcel of exercising "no more control over its subsidiaries than is appropriate for [a] shareholder of a corporation." *MGM Grand, Inc, supra*, 107 Nev. at 68–69. Additionally, LANDRY'S has subsidiaries of subsidiaries (***not*** including GNL) in its corporate chain which operate businesses within the premises of the Laughlin Nugget for which it would make sense to issue a general announcement.

C. Emails/Requisition Approvals

Assuming Plaintiffs can overcome foundational objections to these documents, they have failed to even identify who Alan Trantina or Codi Gibson are or with which entity they are associated. Regardless, the documents' substantive contents only establish a process of oversight and approval of expenditures. Plaintiffs make assumptions about the meaning of the note "action required" without even establishing the authorship of that phrase on the email heading. Some oversight by a parent or shareholder corporation is to be expected, *see generally*, *MGM Grand, Inc, supra*, 107 Nev. at 68–69, and the burden is on Plaintiffs to prove that LANDRY'S or GNI'S exercise of control is unusual, unreasonable, and pervasive enough to demonstrate responsibility for day to day operations and to establish a duty to Plaintiffs.

D. Excerpts of Smith deposition testimony

The excerpts of testimony to which Plaintiffs refer fail to establish Richard Smith as a competent witness on the issue of the hierarchy of corporate risk management for LANDRY'S. First and foremost, the question of the scope of authority for corporate risk management was met with an objection during the deposition that the question called for speculation. **EXHIBIT H** to Plaintiff's Opposition at 87:1. More importantly, however, this portion of Mr. Smith's testimony is peppered with "I don't know" responses, clearly signaling his lack of personal knowledge. The testimony was as follows:

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Q. Corporate risk manager, you just said?
A. I misspoke. It's the director of -- associate director of corporate risk manager. **I don't even know what that is.**
Q. Okay. Associate director of corporate risk management?
A. Of risk management. I -- **I don't know what the title is.**
Q. I gotcha. But as far as you know, sitting here today, **you're not exactly clear** but it's something like associate director, risk management?
A. Yes.
Q. Okay. Is there a director of risk management?
A. **I don't know.** That's the thing, is that's -- the title has always mystified me. **I don't know.**
Q. Gotcha. Now, the associate director, risk management, who is that?
A. Her name is Le Ann Lopez.
Q. And she's with corporate?
A. She's with Landry's, yeah.
Q. She's with Landry's, okay. What is the scope of her authority?
MS. McLEOD: Objection; calls for speculation.
BY MR. IQBAL:
Q. As far as you know.
A. Yeah, **I don't actually know**. Yeah, I don't even know how to describe the relationship. It's -- I mean, sometimes it's almost like being my boss, except if I choose not to do what is, you know, being presented, then nothing happens. **So it's not really a boss.**
Q. I gotcha so let's clarify this a little bit. So Le Ann Lopez will ask you certain things, and you have the freedom to either do what she asks or say no; correct?
A. Yeah. And, I mean, you're talking about across time. I mean, **I almost never interact with her**. But I've seen e-mails from her.
EXHIBIT H to Plaintiff's Opposition at 86:4-87:15 (emphasis added.)

Even if Plaintiffs could overcome the foundational objection of personal knowledge in light of the five "I don't know" responses, Mr. Smith's testimony hardly establishes the LANDRY'S controls the day to day operations of the Golden Nugget Laughlin. Rather, Mr. Smith explained further that Ms. Lopez was "not really a boss" and that he "almost never interact[s] with her." *Id*. at 87:8, 14. Occasional interaction with someone who is "not really a boss" again demonstrates the exercise of minimal control over a subsidiary which is appropriate for a parent corporation. *See generally*, *MGM Grand, Inc., supra*, 107 Nev. at 68–69. Infrequent interaction with an employee of another company in the corporate "family" is insufficient to prove control of that company or to support the allegation LANDRY'S owes some duty to patrons of the Golden Nugget Laughlin.

E. Excerpts of Hartmann deposition testimony

The excerpt of Mr. Hartmann's testimony only serves to establish that he reports to and interacts with several people within GNL and its parent and sibling companies. Not to belabor

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the point, but oversight by a parent or shareholder corporation does not rise to the level necessary to exercise jurisdiction over a foreign corporation.

F. Organizational Chart

Defendants do not dispute the authenticity of this document they produced (confidentially) in discovery. However, the organizational chart shows that GNL, Corp. and GNLV, Corp. are "siblings" under the parent company/stockholder, Golden Nugget, Inc. (GNI). LANDRY'S is at best a corporate "cousin," a few times removed.

G. Excerpts of Belka deposition testimony

Clint Belka is the Vice President of Engineering at "sister" company, GNLV, Corp., the entity that owns and operates the Golden Nugget Las Vegas. He is not employed by nor authorized to testify for either GNI or GNL. Regardless, like Smith's infrequent interactions with Ms. Lopez in corporate risk management, Clint Belka's testimony establishes only that he rarely is involved with or asked for advice or recommendations on Laughlin matters (*see* **EXHIBIT K** to Plaintiff's Opposition at 24:5-11), seldom assists with "random" property visits (24:10-19), and communicates with the Laughlin facilities director only "a couple times a year, maybe" (25:19-21). At best, such testimony establishes cooperation between sister companies but lacks foundation to prove control of operations by GNI over GNL.

H. Excerpts of Dutcher deposition testimony

Mr. Dutcher, a ThyssenKrupp employee, has no personal knowledge bearing on either the questions of ownership or operation of the Golden Nugget Laughlin, or the parent-subsidiary or corporate "sibling" relationships of these companies.

. . .

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V. CONCLUSION

WHEREFORE, Plaintiffs have failed to prove that either LANDRY'S or GNI operate the Golden Nugget Laughlin over and above mere corporate oversight. Further, NRS 78.225 and 78.747 protect GNI from liability simply due to its shareholder status and Plaintiffs have made no alter ego allegations in any version of their Complaint. As for LANDRY'S, the undisputed facts establish it is not in the direct chain of ownership of GNL. For all of these reasons, summary judgment in favor of LANDRY'S and GNI is warranted, and both entities should be dismissed prior to trial and removed from the case caption.

RESPECTFULLY SUBMITTED this 28th day of November, 2018.

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CERTIFICATE OF SERVICE

I certify that I am an employee of GRANT & ASSOCIATES and that on this 28th day of November, 2018 I caused a true and correct copy of the foregoing **REPLY IN SUPPORT OF DEFENDANTS', LANDRY'S AND GOLDEN NUGGET, INC.'S, MOTION FOR SUMMARY JUDGMENT** to be served as follows:

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

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

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

/s/ Camie DeVoge

An Employee of GRANT & ASSOCIATES

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DISTRICT COURT

CLARK COUNTY, NEVADA

JOE N. BROWN, an individual, and his Wife, NETTIE J. BROWN, an individual, Plaintiffs, vs. LANDRY'S, INC., a foreign corporation; GOLDEN NUGGET, INC. a Nevada corporation, d/b/a GOLDEN NUGGET LAUGHLIN; GNL, CORP., a Nevada corporation; THYSSENKRUPP ELEVATOR CORP., a foreign corporation; DOE INDIVIDUALS 1-100, ROE BUSINESS ENTITIES 1-100, Defendants.	**Case No.: A-16-739887-C** **Dept. No.: XXXI** **REPLY IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON LIABILITY AND PUNITIVE DAMAGES**
GNL, CORP., a Nevada corporation; Third-Party Plaintiff, vs. THYSSENKRUPP ELEVATOR CORPORATION a foreign corporation; DOES 1-75; ROE CORPORATION 1-75 and ROE CORPORATION 1-25, Third-Party Defendants	**Date of hearing: Dec 4, 2018** **Time of hearing: 9:00 a.m.**

COME NOW Defendants, LANDRY'S, INC. (hereinafter "LANDRY'S") & GOLDEN NUGGET, INC. (hereinafter "GNI"), by and through their counsel of record, ALEXANDRA B.

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M^C^LEOD, ESQ., of the law firm of **GRANT & ASSOCIATES**, and hereby submit the instant Motion for Summary Judgment in the above-entitled action, pursuant to NRCP 56 and NRS 42.005.

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

RESPECTFULLY SUBMITTED this 28th day of November, 2018.

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POINTS & AUTHORITIES

I. INTRODUCTION

Elderly Plaintiff, Joe Brown, fell after stepping onto a down escalator on May 12, 2015 at the Golden Nugget Laughlin (GNL) while intoxicated and using a cane. His wife, Nettie, claims loss of consortium. Plaintiffs' operative Second Amended Complaint sounds solely in negligence. The discrete question before the Court in this Motion for Summary Judgment is whether there are genuine issues of material fact, supported by competent evidence, as to both liability and punitive damages.

Plaintiffs allege that the cracked steps were present on the down escalator due to negligence maintenance by Golden Nugget Laughlin and its service company, Thyssenkrupp Elevator Corporation (TKE). Plaintiffs further claim that the cracked escalator steps made the escalator "shaky" and caused Joe Brown to fall. Even considering the testimony from the TKE mechanic that all of the steps were not replaced in 2012, Plaintiffs' Opposition misses the mark because they must prove more than the mere presence of a cracked step or steps at the time of Brown's fall, but that GNL had actual notice that the steps were cracked but failed to reasonably correct them.

Even assuming *arguendo* that all the down escalator steps were not replaced in 2012-2013 or that maintenance of the subject escalator may be found to be lacking, punitive damages are not recoverable for negligent conduct or even grossly negligent or reckless conduct.

II. PLAINTIFFS CANNOT OVERCOME SUMMARY JUDGMENT BASED UPON MANUFACTURED DOUBT AS TO THE OPERATIVE FACTS

Rule 56 must no longer be regarded as a "disfavored procedural shortcut," *Wood v. Safeway, Inc.*, 121 Nev.724, 121 P.3d 1026, 1031 (2005). Summary judgment proceedings promote judicial economy and reduce litigation expense associated with actions clearly lacking in merit. *Elizabeth E. v. A.D.T. Sec. Sys. W.,* 108 Nev. 889, 839 P.2d 1308 (1992). In *Wood*, the Nevada Supreme Court clarified the summary judgement standard and, most importantly, dispelled the notion that only the "slightest doubt as to the operative facts" can preclude summary judgment by explicitly abrogating the slightest doubt standard from Nevada

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jurisprudence because it unduly limited the use of summary judgment. Id at 1031. Rather, the opposing party must do more than simply show that there is some "metaphysical" doubt to the operative facts in order to avoid summary judgment but must set forth concrete facts demonstrating the existence of a genuine issue for trial. *Id*. (emphasis added); *see also Bird v. Casa Royale W.*, 97 Nev. 67, 624 P.2d 17 (1981).

In opposing such a motion for summary judgment, "the opponent must... show he can produce evidence at the trial to support his claim." *Van Cleave v. Kietz-Mill Minit Mart*, 97 Nev. 414, 415, 417, 633 P.2d 1220, 1221, 1222 (1981) (*citing Thomas v. Bokelman*, 86 Nev. 10, 14, 462 P.2d 1020, 1023 (1970). Again, *Wood* is instructive: "The non-moving party must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him." *Wood,* 121 P.3d at 1031 (internal citations omitted). Furthermore, that evidence must be admissible and sufficient to overcome an NRCP 56(e) objection.

III. PLAINTIFFS' DISPUTED FACTS DO NOT ESTABLISH NOTICE AND CANNOT SUPPORT A CLAIM FOR NEGLIGENT MAINTENANCE AS A MATTER OF LAW

The undisputed facts in the case at bar demonstrate that GNL approved and paid for replacement steps for the down escalator between October 24, 2012 and February 1, 2013. *See* Defendants' **EXHIBIT G** to MSJ. Although Plaintiffs rely on the memory of the TKE mechanic Chris Dutcher that not all steps on the down escalator were replaced in 2012, there is no evidence that GNL was ever notified that the work it ordered and for which it paid was not actually completed. (Indeed, Defendants believe the work was completed and all steps on the down escalator replaced, but recognize that for purposes of summary judgment the Court must consider Plaintiffs' evidence as true.) GNL had no notice of any ongoing repair issue or cracked steps on the down escalator between the time of the 2012/2013 repair and Brown's fall.

The concession by Dutcher that the work may not have been performed is insufficient to prove up liability against GNL, because Plaintiffs must prove that GNL had notice *after* it paid for the repairs and *before* Brown's fall that the down escalator still had cracked steps that posed a danger. The documentary evidence demonstrates that GNL was not notified of cracked steps

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again until after Brown's incident, not before. *See* Defendants' **EXHIBIT M** to MSJ. The references to steps cracking on this model of escalator being a "known issue" is insufficient to establish actual notice; any argument that GNL should have been on constructive notice is rebutted by the fact that it had an ongoing contract for maintenance of the escalator which would logically including inspecting for such cracks.

Although GNL had prior knowledge in 2012 of the steps cracking, it took reasonable steps to correct them. GNL further used reasonable care in hiring TKE to maintain the escalator to discovery and correct any future problems. As such, GNL exercised the degree of care that an ordinary, prudent owner of escalators would exercise under the same or similar conditions, as a matter of law.

IV. BECAUSE EVEN UNCONSCIONABLE IRRESPONSIBILITY WILL NOT SUPPORT A PUNITIVE DAMAGES AWARD, THE CIRCUMSTANCES LEADING TO PLAINTIFF'S INJURY DO NOT WARRANT PUNITIVE DAMAGES

Plaintiffs' Opposition on the issue of punitive damages is erroneous for two reasons: (1) the prior ruling from this Court allowed (a second) amendment of their Complaint, but did not necessarily find that there was sufficient evidence for the claims to be submitted to a jury at trial; and (2) a culpable state of mind, or intent, is required under Nevada law. Here, Plaintiffs allege that they are entitled to recover punitive damages for Defendants' express and implied malice (*see* Second Amended Complaint at ¶18) and their "conscious disregard of the rights and safety of the riding public, and willfully and deliberately failed to act to make the escalator safe and avoid injuring the public, including Plaintiffs." (*Id*. at ¶19). "Conscious disregard" is defined in NRS 42.001 as "the knowledge of the probable harmful consequences of a wrongful act ***and*** a willful and deliberate failure to act to avoid those consequences." (Emphasis added) Thus, statute requires actual knowledge, actual consciousness of probable harm, and willfulness.

Even if Plaintiffs could prove their theory of liability and demonstrate that both GNL and TKE were negligent or even reckless, they still would not be entitled to recover punitive damages because the punitive damages statutes in Nevada require conduct ***exceeding*** recklessness or gross negligence. *Wyeth v. Rowatt,* 244 P.3d 765, 126 Nev. Adv. Rep. 44

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(2010); *Countrywide Home Loans, Inc. v. Thitchener,* 124 Nev. 725, 743, 192 P.3d 243, 255 (2008). The Nevada Supreme Court has made it clear repeatedly that "conscious disregard" in the punitive damages statute, NRS 42.005, requires a **"culpable state of mind** that must exceed mere recklessness or gross negligence." *Countrywide,* 124 Nev. at 725; *First Nat. Bank of Ely v. Progressive Cas. Ins.* Co., 2012 WL 5944847 (D. Nev. Nov. 27, 2012) (emphasis added). "Even unconscionable irresponsibility will not support a punitive damages award." *Maduike v. Agency Rent-A-Car*, 114 Nev. 1, 5, 953 P.2d 24, 26 (1998), *citing First Interstate Bank v. Jafbros Auto Body,* 106 Nev. 54, 57, 787 P.2d 765, 767 (1990).

Plaintiffs defend their punitive damages claims by providing the Court with an incomplete quote from the *Wyeth v. Rowatt* case, 244 P.3d at 783 n. 11. (Opposition at 8:10-12.) The complete sentence taken from that footnote reads as follows:

> To determine whether a defendant's conduct is so reprehensible as to warrant the imposition of punitive damages, a jury may consider evidence ***of actual harm to nonparties, as that*** may show that the defendants' conduct, which harmed the plaintiffs, may also present a substantial risk to the general public. (emphasis added)

The *complete* citation instructs that evidence of actual harm to nonparties is properly considered, not that mere risk of harm to the public may be argued by Plaintiffs or considered by the trier of fact. Indeed, that would violate the prohibition on so-called "Golden Rule" arguments. Regardless, there is no evidence of actual harm to any non-parties in the case at bar.

Here, the record is bereft of any evidence demonstrating a culpable state of mind on the part of any Defendant, and certainly not the "clear and convincing" evidence required to prove punitive damages. Therefore, Plaintiffs' prayer for punitive damages must be stricken prior to trial.

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. . .

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V. CONCLUSION

Because Plaintiffs' case fails for want of proof on liability, and certainly on punitive damages, Defendants respectfully request summary judgment in their favor on all claims.

RESPECTFULLY SUBMITTED this 28th day of November, 2018.

GRANT & ASSOCIATES

ALEXANDRA B. M^C^LEOD, ESQ.
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CERTIFICATE OF SERVICE

I certify that I am an employee of GRANT & ASSOCIATES and that on this 28th day of November, 2018 I caused a true and correct copy of the foregoing **REPLY IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON LIABILITY AND PUNITIVE DAMAGES** to be served as follows:

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

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

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

/s/ Alexandra B. McLeod

An Employee of GRANT & ASSOCIATES

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

JOE N. BROWN, an individual, and his Wife, NETTIE J. BROWN, an individual Plaintiffs, vs. LANDRY'S, INC., a foreign corporation; GOLDEN NUGGET, INC. a Nevada corporation, d/b/a GOLDEN NUGGET LAUGHLIN; GNL, CORP., a Nevada corporation; THYSSENKRUPP ELEVATOR CORP., a foreign corporation; DOE INDIVIDUALS 1-100, ROE BUSINESS ENTITIES 1-100, Defendants. AND RELATED CASES	Case No.: A-16-739887-C Dept. No.: XXXI **PLAINTIFFS' RESPONSE TO DEFENDANT/THIRD PARTY DEFENDANT THYSSENKRUPP ELEVATOR CORPORATION'S JOINDER IN, AND ADDITIONAL BRIEF IN SUPPORT OF, DEFENDANT GNL, CORP.'S MOTION FOR SUMMARY JUDGMENT ON PUNITIVE DAMAGES** **Date of hearing: December 4, 2018** **Time of hearing: 9:30 a.m.**

Plaintiffs Joe N. Brown and Nettie J. Brown ("Plaintiffs") hereby file their Response to Defendant/Third Party Defendant Thyssenkrupp Elevator Corporation's Joinder in, and Additional Brief in Support of, Defendant GNL, Corp.'s Motion for Summary Judgment on Punitive Damages ("Joinder"). Upon full briefing the Court previously entered a detailed order granting Plaintiffs' motion to amend the complaint and maintain the right to seek punitive damages. The Motion and the Joinder now urge, essentially, reconsideration of that order and fail for the reasons set forth below. Plaintiffs are entitled to the judgment of a Nevada jury on punitive damages.

I. INTRODUCTION.

On November 1, 2018, Defendants GNL Corp., Landry's Inc., and Golden Nugget, Inc. (collectively, the "Nugget Defendants") filed a motion seeking summary judgment as to liability and punitive damages. On November 16, 2018, Defendant/Third Party Defendant Thyssenkrupp Elevator Corporation ("TKE") joined in only that portion of the Nugget Defendants' motion relating to punitive damages, and submitted an additional brief seeking summary judgment as to such damages.

As the Court is aware from prior briefing, on May 12, 2015, Plaintiff Joe N. Brown suffered a fall and broken neck on the down escalator at the Golden Nugget hotel, resort and casino in Laughlin Nevada (the "Laughlin Nugget"). The down escalator was an aging and problematic piece of equipment with design/operational flaws known to the manufacturer, TKE, and the Nugget Defendants. Moreover, the down escalator at the Laughlin Nugget had previously manifested those flaws by developing cracked steps that TKE and the Nugget Defendants ***knew posed a serious risk of harm to the public***. Yet TKE and the Nugget Defendants failed to replace the escalator, failed to replace the steps as recommended by the manufacturer, and failed to perform proper maintenance on what was to them a known public hazard.

The net result was that TKE and the Nugget Defendants saved a few thousand dollars for themselves by transferring the risk to an unknowing public – and ultimately, inflicting devastating injuries on the Plaintiffs. Nevada law provides for imposition of punitive damages on defendants who engage in such despicable conduct with a conscious disregard of the rights or safety of others. Accordingly, TKE and Nugget Defendants should properly be subject to the judgment of a Nevada jury on the question of punitive damages. For these reasons, and as set forth further below, Plaintiffs respectfully submits that summary judgment as to punitive damages remains inappropriate and should be denied.

/ / /

II. STATEMENT OF RELEVANT FACTS.

The down escalator at the Laughlin Nugget has a design flaw: the steps are prone to cracking. According to TKE technician Chris Dutcher, this is "a known condition" of this type of escalator; and Mr. Dutcher recommended replacing the escalator prior to 2015. Declaration of Mohamed A. Iqbal, Jr. in Support of Plaintiffs' Response to Defendant/Third Party Defendant Thyssenkrupp Elevator Corporation's Joinder in, and Additional Brief in Support of, Defendant GNL, Corp.'s Motion for Summary Judgment on Punitive Damages ("Iqbal Joinder Decl."), **Exhibit A** at 119:6-16; 189:1-190:5.

"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." Iqbal Joinder Decl., **Exhibit B** at p. 5. The steps on the down escalator at the Laughlin Nugget "have a known history of cracking." Iqbal Joinder Decl., Exhibit A at 122:4-15.

In or about August 2012, TKE found "over 30" cracked steps in the escalators at the Laughlin Nugget, and recommended to the Nugget Defendants that all the steps be replaced to prevent "a serious safety issue for the riding passengers." The total cost of replacing the steps was under $90,000. Iqbal Joinder Decl., **Exhibit C**. Mr. Dutcher testified that he recommended replacing the steps "every time" he spoke with his counterparts at the Laughlin Nugget, and explained that all the steps should be replaced if there is a cracking problem because "the other steps are going to start cracking soon as well." Iqbal Joinder Decl., Exhibit A at 123:7-17; 190:11-22. The Nugget Defendants' Director of Facilities for the Laughlin Nugget, Don Hartmann, characterized the deficiencies of the escalator as "documented" defects. Iqbal Joinder Decl., **Exhibit D** at 132:11-20.

TKE advised the Nugget Defendants in writing that the manufacturer's representative advised "all the steps should be replaced." Iqbal Joinder Decl., **Exhibit E**. Yet the Nugget Defendants "did not react/respond when advised of the extreme danger the escalator equipment exposed the unknowing riding public to when advised" by TKE. Iqbal Joinder Decl., Exhibit B at

p. 6. Instead, they held out for months to get a cheaper proposal: one that called for replacing only the steps that were already cracked and leaving the as-yet-uncracked steps in place. Iqbal Joinder Decl., Exhibit E and **Exhibit F**. This option saved the Nugget Defendants less than $28 thousand – ***less than a thousand dollars a month from the time they learned their escalator was a public safety hazard to the time it snapped Joe Brown's spine***. *Compare* Iqbal Joinder Decl., Exhibit C *with* Iqbal Joinder Decl., Exhibit F.

Even though replacing all the steps would have made the escalator safer, TKE actually replaced only "a few" of the steps on the down escalator. Iqbal Joinder Decl., Exhibit A at 137:7-9; 138:7-20. Despite knowing that the Laughlin Nugget escalator steps were prone to cracking, despite knowing that they had already begun to crack, and despite knowing that the Nugget Defendants had decided to expose the public to "extreme danger" in order to save a few dollars by refusing the manufacturers' recommendation (and TKE's own recommendation) for a full replacement, TKE took no steps to ameliorate the risk to the public. Instead, it left the escalator to operate in "pure filth" and "failed to properly clean the escalator to enable visual inspection of damage to the escalator equipment and step assemblies." Iqbal Joinder Decl., Exhibit B at pp. 5-6.

As a consequence of the penny-pinching behavior of the Nugget Defendants and TKE, the public was placed at risk. Mr. Dutcher conceded that the escalator developed additional cracked steps prior to the incident that injured Joe Brown. Iqbal Joinder Decl., Exhibit A at 175:2-5. According to the Plaintiffs' expert, had the Nugget Defendants and TKE taken proper measures to protect the public, Joe Brown's injuries could have been avoided. Iqbal Joinder Decl., Exhibit B at p. 6.

The Nugget Defendants' stinginess and TKE's utter lack of diligence continued beyond Mr. Brown's fall on May 12, 2015, and yet another injury on May 25—in the face of glaring and

known risk.[1] As shown in late-breaking TKE production, even several months later, in October of 2015, the parties did not yet have a signed proposal.[2]

III. ARGUMENT.

Nevada law by statute provides for award of punitive damages in the case of "malice, express or implied." NRS 42.005(1). This form of malice is characterized by "despicable conduct which is engaged in with a conscious disregard of the rights or safety of others." NRS 42.001(3). This Court has already held that conduct undertaken by a defendant despite knowledge of the probable consequences, including a substantial risk of harm to the public, may be sufficient to support an award of punitive damages under this statute. *See* Order Granting Motion for Leave to File Second Amended Complaint at 5:15-6:3 ("September 12 Order"), citing *Countrywide Home Loans, Inc. v. Thitchener*, 192 P.3d 243, 255 (Nev. 2008); *Wyeth v. Rowatt*, 244 P.3d 765, 783 n. 11 (Nev. 2010). Neither TKE nor the Nugget Defendants have asked the Court to reconsider this ruling.

In some cases, it may be necessary to infer defendants must have known the risks posed to the general public. *Wyeth*, 244 P.3d at 783 n. 11. Here, however, the Nugget Defendants and TKE actually knew the escalator was defective. They knew its defects had manifested in dangerous cracking that put the public at risk. And ***they knew their proposed and adopted course of action was at best a half-measure,*** because the old steps were still there; they were still prone to cracking; the public was still in danger. Moreover, they somehow managed to botch even their own half-measures, by failing to replace the steps as planned and failing to monitor the escalator for further cracking.

---

[1] Indeed, on June 16 and June 25, 2015, respectively, TKE manager Larry Panaro warned the Nugget Defendants that the Escalator's problems were "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;***" (Iqbal Joinder Decl., **Exhibit G**, at p. 5 (June 16 email))(emphasis added); and that the repair work should be done "very soon to avoid any further damage and/or incidents." *Id.* at p. 4 (June 25 email).

[2] In fact, the Nugget Defendants claimed to TKE that they were waiting on a proposal from TKE). Iqbal Joinder Decl., **Exhibit H** at pp. 4-5.

TKE's reliance on *American Excess Ins. Co. v. MGM Grand Hotels, Inc.,* 729 P.2d 1352 (Nev. 1980), is misplaced. That case was decided under a prior version of the Nevada punitive damages statute that required the plaintiff suffer either a willful wrong or damages as an intended or necessary consequence of the defendants' action. 729 P.2d at 1355. No such requirement exists in the law today, a fact TKE's Joinder regrettably does not acknowledge. Similarly, TKE errs in relying on *Maiduke v. Agency Rent-a-Car,* 953 P.2d 24 (Nev. 1998): that case turned on the plaintiffs' failure to show "oppression," defined as a "cruel and unjust hardship with conscious disregard of the rights of the person." 953 P.2d at 26-27. That however, is the standard under NRS 40.001(4); it is not the standard under NRS 42.001(3) – the standard under which leave to file the current complaint was sought ***and granted by the Court.*** *See* September 12 Order at 5:16-18. The *Maiduke* case is therefore inapposite.

Fundamentally, the question of punitive damages is one for the jury as the finders of fact in this case. NRS 42.005(3). The jury should be allowed to consider evidence showing the defendants put the public at risk for trifling sums money. For the Nugget Defendants, the savings were a few thousand dollars. For TKE, the reward was a continued contract and slipshod maintenance for a penny-pinching customer. In exchange, Joe Brown got a broken neck and a lifetime of pain. This is precisely the sort of case that calls for an award of punitive damages.

IV. CONCLUSION.

For all the foregoing reasons, summary judgment on punitive damages as sought by the Joinder remains inappropriate and should be DENIED.

Dated November 30, 2018.

Respectfully Submitted,

IQBAL LAW PLLC

By: _____

Mohamed A. Iqbal, Jr. (NSB #10623)
Christopher Mathews (NSB #10674)

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of IQBAL LAW PLLC, and that on this 30th day of November 2018, I caused to be served a true and correct copy of the foregoing **PLAINTIFFS' RESPONSE TO DEFENDANT/THIRD PARTY DEFENDANT THYSSENKRUPP ELEVATOR CORPORATION'S JOINDER IN, AND ADDITIONAL BRIEF IN SUPPORT OF, DEFENDANT GNL, CORP.'S MOTION FOR SUMMARY JUDGMENT ON PUNITIVE DAMAGES** by transmitting the same via the Court's electronic filing services to the Counsel and other recipients set forth on the service list.

/s/ Kevin Williams
An employee of IQBAL LAW PLLC

DECL
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DISTRICT COURT
CLARK COUNTY, NEVADA

JOE N. BROWN, an individual, and his Wife, NETTIE J. BROWN, an individual Plaintiffs, vs. LANDRY'S, INC., a foreign corporation; GOLDEN NUGGET, INC. a Nevada corporation, d/b/a GOLDEN NUGGET LAUGHLIN; GNL, CORP., a Nevada corporation; THYSSENKRUPP ELEVATOR CORP., a foreign corporation; DOE INDIVIDUALS 1-100, ROE BUSINESS ENTITIES 1-100, Defendants.	Case No.: A-16-739887-C Dept. No.: XXXI **Date of hearing: December 4, 2018** **Time of hearing: 9:30 a.m.**
AND RELATED CASES	

DECLARATION OF MOHAMED A. IQBAL, JR., ESQ. IN SUPPORT OF PLAINTIFFS' RESPONSE TO DEFENDANT/THIRD PARTY DEFENDANT THYSSENKRUPP ELEVATOR CORPORATION'S JOINDER IN, AND ADDITIONAL BRIEF IN SUPPORT OF, DEFENDANT GNL, CORP.'S MOTION FOR SUMMARY JUDGMENT ON PUNITIVE DAMAGES

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

1. I am an attorney duly licensed to practice law in the State of Nevada and am the principal for Iqbal Law PLLC, counsel of record for Plaintiffs JOE BROWN and NETTIE BROWN in case number A-16-739887-C currently pending before the Eighth Judicial District Court of Nevada. I make this declaration in support of Plaintiffs' Response to Defendant/Third Party

Defendant Thyssenkrupp Elevator Corporation's ("TKE") Joinder in, and Additional Brief in Support of, Defendant GNL, Corp.'s Motion for Summary Judgment on Punitive Damages. GNL, Corp., Landry's Inc., and Golden Nugget, Inc. are collectively referenced herein as the "Nugget Defendants."

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

3. **Exhibit A** to this Declaration is a true and correct excerpt of the transcript from the deposition of TKE mechanic Christopher Dutcher, including pages 119, 122-23, 137-38, 175, 189, and 190.

4. **Exhibit B** to this Declaration is a true and correct copy of Plaintiffs' Escalator Expert Witness Sheila Swett's May 4, 2018 Report.

5. **Exhibit C** to this Declaration is a true and correct excerpt of a TKE September 12, 2012 Repair Order.

6. **Exhibit D** to this Declaration is a true and correct excerpt of the transcript from the deposition of the Nugget Defendants' Director of Facilities for the Laughlin Nugget Don Hartmann, including page 132.

7. **Exhibit E** to this Declaration is a true and correct copy of TKE Account Manager Larry Panaro's October 2, 2012 email to the Nugget Defendants.

8. **Exhibit F** to this Declaration is a true and correct excerpt of a TKE October 2, 2012 Repair Order.

9. **Exhibit G** to this Declaration is a true and correct copy of certain emails, from June 16 to June 25, 2015, between TKE and the Nugget Defendants, as produced by Defendants.

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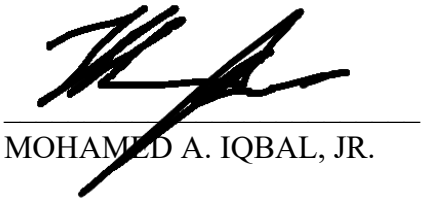
10. **Exhibit H** to this Declaration is a true and correct copy of certain emails, from October 6 to October 8, 2015, between TKE and the Nugget Defendants; these emails were produced by TKE on November 16, 2018, approximately forty days after the close of discovery. Plaintiffs intend to seek relief from the Court regarding these emails.

Dated November 30, 2018.



MOHAMED A. IQBAL, JR.

I LAW LV

EXHIBIT A

EXHIBIT A

that if approximately one-third of the steps are cracked on a particular unit, then all of the steps should be replaced, closed quote.

Do you see that?

A. Yes.

Q. What can cause escalator steps to crack?

A. Do you have the piece of paper regarding the KONE step cracks?

Q. Yes (handing).

MS. MASTRANGELO: No. I have it if you want to use it. He's talking about the OEM --

A. It's a known condition --

MS. MASTRANGELO: -- product bulletin.

A. -- of a Montgomery escalator, that their stairs will crack.

BY MR. IQBAL:

Q. You just said it -- it's a known condition?

A. It's a known condition by the manufacturer that built the escalator.

Q. Okay.

MS. MASTRANGELO: You can use this if you want it. I don't want to show it to him if you don't want him to see it.

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

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

A. Yes.

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

A. Yes.

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

A. Yes.

Q. Okay.

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

Q. Right. But it -- it -- it had -- it -- it had --

A. Some. But mostly the welded units.

Q. Got it.

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

older welded KONE steps that had the known cracking problem, correct?

A. Yes.

Q. Okay. Now, do you agree with Larry's statement here -- well, let me -- let me pull this back.

Do you agree with the manufacturer's representative, which we discussed as KONE -- do you agree with the -- the recommendation that if approximately one-third of the steps are cracked on a particular unit, that all of the steps should be replaced? Do you agree with that statement?

A. Yes.

Q. Why?

A. Because the other steps are going to start cracking soon as well if there's a known problem.

Q. Okay. And for you, that one-third is the -- is the magic ratio, or is it one-fourth; like, how many steps need to be cracked on an escalator before you recommend that the entire -- all the steps be -- be replaced?

A. I don't have a magic number.

Q. Okay. If you see -- say, on the 57 steps, here, if you saw five cracked steps,

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

BY MR. IQBAL:

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

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

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

A. Yes.

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

Did I read that right?

A. Yes.

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

A. Yes.

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

A. Yes.

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

correct?

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

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

A. Necessary.

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

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

Q. In 2012?

A. Yes. But not all of them.

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

A. No.

Q. You don't recall?

A. They weren't replaced.

Q. They were not replaced?

A. No.

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

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

A. Right.

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

A. Yes.

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

Is it safe to assume that was Don Hartmann?

A. It was.

Q. Okay.

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

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

A. Correct.

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

A. Yes.

Q. Okay. And you applied the grease?

A. I did.

Q. Okay. So just two weeks before that,

Did you personally ever recommend, either to Larry or Scott with your company, or Don or anyone at Golden Nugget -- did you ever recommend replacing the overall escalator?

A. Yes. With all the escalators in Laughlin, I do the same thing.

Q. Okay. When did you first recommend full replacement of the Laughlin escalators?

A. I don't remember the exact date.

Q. Was it years ago?

A. Years ago.

Q. Was it closer to when you started, around 2010?

A. It was between that and 2015; I know that.

Q. How many times did you recommend full replacement of the escalator?

A. Once.

Q. Okay.

A. And then the company forward -- follows up with that.

Q. Okay. So you recommended it only once?

A. Yes.

Q. And what was the result of your recommendation?

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

Q. Okay. So --

A. Obviously, there are still old escalators.

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

Do you remember that?

A. Yes.

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

A. In what date, 2012?

Q. Yes, after 2012.

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

A. Yeah, replacement steps, yes.

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

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

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

EXHIBIT B

EXHIBIT B

SWETT & ASSOCIATES
Elevator Consultants

May 4, 2018

Mr. Mohamed A. Igbal, 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:

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

SWETT & ASSOCIATES
Elevator Consultants

Findings from depositions, site visit, and exhibits reviewed:

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

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

Site review showed that the new steps have stabilizing tabs as an intregal 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 ½ hours was in response to callbacks (broken equipment). A call to fix a broken escalator is not maintenance.

116 ½ 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 ½ 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 of 2013 and May of 2014 which resulted in gearbox failure and a 50 man hour repair/replaced gearbox.

OPINIONS

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

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

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

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

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

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

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

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

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

SWETT & ASSOCIATES
Elevator Consultants

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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EXHIBIT C

EXHIBIT C

ThyssenKrupp Elevator

Repair Order.

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

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

Safety Matter

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

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

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

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

RETURN FAX: (866) 248-5612

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

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

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

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

Accepted:

GOLDEN NUGGET LAUGHLIN

By: _____
(Signature of Authorized Individual)

_____
(Printed or Typed Name)

Title: _____ Date: _____

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

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

Date: _____

Approved by: _____

Title: Branch Manager Date: _____

Terms and conditions.

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

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

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

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

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

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

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

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

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

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

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

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

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

If any drawings, illustrations or descriptive matter are furnished with this proposal, they are approximate and are submitted only to show the general style and arrangement of equipment being offered.

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

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

A service charge of 1 ½% per month, or the highest legal rate, whichever is less, shall apply to delinquent accounts. In the event of any default of the payment provisions herein, you agree to pay, in addition to any defaulted amount, all attorney fees, collection costs or court costs in connection therewith.

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

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

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

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

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

EXHIBIT D

EXHIBIT D

steps, and you said it's not just the steps.

A. No.

Q. It could be the --

A. Handrails.

Q. Handrails?

A. It can be rollers.

Q. Rollers?

A. It could be, you know, noise.

Q. Right.

A. Somebody dropped their keys.

Q. So then you would say -- it's fair to say there have been a number of safety operational mechanical issues with the down escalator?

A. Yes.

Q. Okay. Over the years?

A. Yes.

Q. And especially in 2012 and 2015 --

A. Well --

Q. -- with the steps?

A. Yes. Because it's documented.

Q. Got it. I want to just introduce one document into evidence, and then we can take the break for lunch.

A. Okay.

MR. IQBAL: I appreciate everyone's indulgence here.

EXHIBIT E

EXHIBIT E

Laura Fitzgerald

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

Importance: High

FYI...

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

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

---

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

Clint,

Per our conversations, attached is the proposal for Option #2 for the Golden Nugget Laughlin escalators. As I mentioned, I spoke with the manufacturer's representative and he recommended that if approximately 1/3 of the steps are cracked on a particular unit then all the steps should be replaced. He stated that if it were only 2 or 3 steps out of 58 steps that needed replacement, then it would probably be fine. But, if you needed to replace approximately 14 to 18 steps, or more, out of 58 then the recommendation was to replace all the steps. Therefore, our Option #2 scope includes the following:

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

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

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

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

Sincerely,

Larry Panaro
Account Manager
Service, Repair and Modernization Sales

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

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

www.thyssenkruppelevator.com

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EXHIBIT F

EXHIBIT F

ThyssenKrupp Elevator

Repair Order.

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

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

Safety Matter

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

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

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

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

RETURN FAX: (866) 248-5612

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

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

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

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

Accepted:

GOLDEN NUGGET LAUGHLIN

By: _____
(Signature of Authorized Individual)

_____
(Printed or Typed Name)

Title: _____ Date: _____

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

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

Date: 10/2/12

Approved by: _____

Title: Branch Manager Date: _____

RO 03/02

JNB01789

Terms and conditions.

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

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

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

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

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

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

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

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

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

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

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

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

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

If any drawings, illustrations or descriptive matter are furnished with this proposal, they are approximate and are submitted only to show the general style and arrangement of equipment being offered.

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

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

A service charge of 1 ½% per month, or the highest legal rate, whichever is less, shall apply to delinquent accounts. In the event of any default of the payment provisions herein, you agree to pay, in addition to any defaulted amount, all attorney fees, collection costs or court costs in connection therewith.

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

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

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

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

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

EXHIBIT G

EXHIBIT G

Laura Fitzgerald

From: Panaro, Larry <Larry.Panaro@thyssenkrupp.com>
Sent: Tuesday, October 31, 2017 11:45 AM
To: Olsen, Scott
Subject: FW: Damaged Escalator Steps (Down Unit)

FYI...

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

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

---

From: Hartmann, Don [mailto:DHARTMANN@GoldenNugget.com]
Sent: Wednesday, June 17, 2015 8:45 AM
To: Panaro, Larry
Cc: Olsen, Scott
Subject: Re: Damaged Escalator Steps (Down Unit)

Good Morning

Is it possible to split this cost over two months billing for the five cracked steps on the down escalator?

Best Regards

Sent from my iPhone

On Jun 16, 2015, at 4:30 PM, Panaro, Larry <Larry.Panaro@thyssenkrupp.com> wrote:

> Good Afternoon Don,
>
> It was great catching up with you last week. Per our conversation, and your conversations with Chris Dutcher (TKE Mechanic), attached are the proposals to replace the damaged/cracked escalator steps on the "Down" unit at the Golden Nugget Laughlin. As we discussed, this is a safety matter for the riding public. There are currently 40 steps showing signs of cracking, and 5 of the 40 are critical. At this time, we recommend replacing the 40 steps, however, the 5 steps need to be addressed asap.
>
> As you will notice, the price per step is significantly less if all 40 can be replaced at once (versus doing only 5 steps).
>
> Please call me with any further questions or concerns pertaining to this correspondence.
>
> Sincerely,
>
> Larry Panaro
> Account Manager
> Service, Repair and Modernization Sales
>
> **ThyssenKrupp Elevator Americas**
> 4145 W. Ali Baba, Suite A

Las Vegas, NV 89118

Phone: (702) 262-6775
Cell: (702) 591-9422
Fax: (866) 248-5612
mailto:larry.panaro@thyssenkrupp.com
Monthly Safety Message - Remember: Report all accidents in a timely manner!

---

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<GN Laughlin - 5 Esc Steps.pdf>

<GN Laughlin - 40 Esc Steps.pdf>

Laura Fitzgerald

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

Importance: High

FYI...

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

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

---

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

Hi Don,

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

Please let us know if you have any additional questions.

Sincerely,

Larry Panaro
Account Manager
Service, Repair and Modernization Sales

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

Phone: (702) 262-6775
Cell: (702) 591-9422
Fax: (866) 248-5612
mailto:larry.panaro@thyssenkrupp.com
Monthly Safety Message - Remember: Report all accidents in a timely manner!

---

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JNB01794

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

Good Afternoon Don,

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

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

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

Sincerely,

Larry Panaro
Account Manager
Service, Repair and Modernization Sales

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

Phone: (702) 262-6775
Cell: (702) 591-9422
Fax: (866) 248-5612
mailto:larry.panaro@thyssenkrupp.com
Monthly Safety Message - Remember: Report all accidents in a timely manner!

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EXHIBIT H

EXHIBIT H

Rebecca Mastrangelo

From: Dutcher, Christopher M. - Field Technician
Sent: Thursday, October 08, 2015 4:39 PM
To: Panaro, Larry
Subject: Re: Laughlin Proposals needed asap

Larry,

Thank you sir for the update.
I will talk to Richard in the morning.

Talk to you soon
Chris Dutcher

Sent from my iPhone

On Oct 8, 2015, at 3:53 PM, Panaro, Larry <Larry.Panaro@thyssenkrupp.com> wrote:

> Chris,
>
> Proposal has been sent to Richard. You can follow up with him.
>
> Proposal has been prepared for Don at Golden Nugget, but I have not sent it yet because I would like to speak with him first. I will let you know when he gets it.
>
> Thanks,
>
> **Larry Panaro**
> Sales Manager - Las Vegas
> West Region
>
> **ThyssenKrupp Elevator Americas**
> 5440 S. Procyon St., Ste. B
> Las Vegas, NV 89118
>
> Phone: (702) 262-6775
> Cell: (702) 591-9422
> Fax: (866) 248-5612
> mailto:larry.panaro@thyssenkrupp.com
> Monthly Safety Message - Remember: Report all accidents in a timely manner!
>
> ---
>
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>
> **From:** Dutcher, Christopher M. - Field Technician
> **Sent:** Thursday, October 08, 2015 3:23 PM
> **To:** Panaro, Larry
> **Subject:** Re: Laughlin Proposals needed asap

Hello Larry,

Just following up with you to see if you were able to send the proposals out.

I am looking to follow up with the customers after they have received the proposals so I can speed up the process of them approving them.

Thank you ,
Chris Dutcher

Sent from my iPhone

On Oct 7, 2015, at 10:04 AM, Panaro, Larry <Larry.Panaro@thyssenkrupp.com> wrote:

> Guys,
>
> I will follow up on these today.
>
> Thanks,
>
> **Larry Panaro**
> Sales Manager - Las Vegas
> West Region
>
> **ThyssenKrupp Elevator Americas**
> 5440 S. Procyon St., Ste. B
> Las Vegas, NV 89118
>
> Phone: (702) 262-6775
> Cell: (702) 591-9422
> Fax: (866) 248-5612
> mailto:larry.panaro@thyssenkrupp.com
> Monthly Safety Message - Remember: Report all accidents in a timely manner!
>
> ---
>
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>
> **From:** Olsen, Scott
> **Sent:** Wednesday, October 07, 2015 9:24 AM
> **To:** Panaro, Larry
> **Cc:** Dutcher, Christopher M. - Field Technician
> **Subject:** FW: Laughlin Proposals needed asap
>
> Larry, see Chris Dutcher's email below. can you please get proposals sent over to Don and Richard ASAP, if you have already please disregard.
>
> Thanks

JNB01798

Scott Olsen
Service Operation Superintendent

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

Phone: (702) 262-6775
Direct: (702) 789-4636
Cell: (702) 429-9927
Fax: (866) 248-5612
scott.olsen@thyssenkrupp.com

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---

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From: Dutcher, Christopher M. - Field Technician
Sent: Wednesday, October 07, 2015 8:31 AM
To: Olsen, Scott
Subject: Fwd: Laughlin Proposals needed asap

Sent from my iPhone

Begin forwarded message:

> **From:** Christopher Dutcher <christopher.dutcher@tkelevator.net>
> **Date:** October 6, 2015 at 1:49:14 PM MST
> **To:** larry.panaro@thyssenkrupp.com
> **Cc:** Scott Olsen <scott.olsen@thyssenkrupp.com>
> **Subject: Laughlin Proposals needed asap**
>
> Hello sir,
>
> Yesterday I spoke with Don Hartman in regards to his escalator steps needing replaced as soon as possible.
>
> He made know to me that he has not received a proposal as of yet for step replacement.
>
> Would you please send or resend the proposal to him and to myself in case I need to hand deliver said proposal.
>
> Today I spoke with Richard Ruff in regards to the glass

replacement that needs to be done.

He made known to me that he has not received a proposal as of yet for glass replacement.

Would you please send or resend the proposal to him and to myself in case I need to hand deliver said proposal.

Thank you sir

Sincerely,
Chris Dutcher

Sent from my iPhone

Electronically Filed
12/3/2018 4:35 PM
Steven D. Grierson
CLERK OF THE COURT

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

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

DISTRICT COURT

CLARK COUNTY, NEVADA

JOE N. BROWN, an individual, and his Wife, NETTIE J. BROWN, an individual, Plaintiffs, vs. LANDRY'S, INC., a foreign corporation; GOLDEN NUGGET, INC. a Nevada corporation, d/b/a GOLDEN NUGGET LAUGHLIN; GNL, CORP., a Nevada corporation; THYSSENKRUPP ELEVATOR CORP., a foreign corporation; DOE INDIVIDUALS 1-100, ROE BUSINESS ENTITIES 1-100, Defendants.	**Case No.: A-16-739887-C** **Dept. No.: XXXI** **OPPOSITION TO PLAINTIFFS' MOTION *IN LIMINE* TO EXCLUDE EXPERT WITNESS, DAVID L. TURNER**
GNL, CORP., a Nevada corporation; Third-Party Plaintiff, vs. THYSSENKRUPP ELEVATOR CORPORATION a foreign corporation; DOES 1-75; ROE CORPORATION 1-75 and ROE CORPORATION 1-25, Third-Party Defendants	**Date of hearing:** **Time of hearing:**

COME NOW Defendants, GNL, CORP., LANDRY'S, INC. & GOLDEN NUGGET, INC. (collectively "Defendants" and/or "GNL"), by and through their counsel of record, ALEXANDRA B. M^C^LEOD, ESQ., of the law firm of **GRANT & ASSOCIATES**, and hereby

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

submit the instant **OPPOSITION TO PLAINTIFFS' MOTION *IN LIMINE* TO EXCLUDE EXPERT WITNESS, DAVID L. TURNER** in the above-entitled action, pursuant to NRCP 16(c)(3).

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

RESPECTFULLY SUBMITTED this 3rd day of December, 2018.

GRANT & ASSOCIATES

ALEXANDRA B. MCLEOD, ESQ.
Nevada Bar No. 8185
7455 Arroyo Crossing Parkway, Suite 300
Las Vegas, Nevada 89113
Attorney for Defendants GNL, LANDRY'S, & GNI

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

POINTS & AUTHORITIES

I. INTRODUCTION & STATEMENT OF RELEVANT FACTS

Elderly Plaintiff, Joe Brown, fell after stepping onto a down escalator on May 12, 2015 at the Golden Nugget Laughlin (GNL), while intoxicated and using a cane. His wife, Nettie, claims loss of consortium. Plaintiff's Second Amended Complaint alleges the escalator was too loose, unstable, narrow, and shaky (at ¶¶13-14). To the contrary, State Inspector Steve Robertson determined that the incident occurred when Plaintiff stepped in between steps and lost his balance when the steps began to descend. ThyssenKrupp Elevator (TKE) was the servicing company contracted to maintain and repair the down escalator at the Golden Nugget Laughlin prior to and at the time of Plaintiff's fall.

Defendants GNL and TKE, through their counsel, entered into a joint defense agreement regarding the sharing of experts and costs therefor. Any "communications [Defendants] shared regarding the inspection" (Opposition at 5:3) went through counsel and are attorney work-product. The narrow questions presented in Plaintiffs' Motion *in Limine* are whether the November 16, 2017 inspection of GNL's escalator by GNL's shared expert violates the discovery rules and, if so, if the violation warrants exclusion.

II. PLAINTIFFS CANNOT OVERCOME THE PRESUMPTION OF INCLUSION WITH RESPECT TO PROBATIVE EVIDENCE THAT WILL INFORM THE FACT FINDER

Nevada vests trial courts "with broad discretion in determining the admissibility of evidence." *State ex rel. Department of Highways v. Nevada Aggregates & Asphalt Co.*, 92 Nev. 370, 376, 551 P.2d 1095, 1098 (1976). Granted, evidence is not admissible if its probative value is *substantially* outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury. NRS 48.035(1) (emphasis added). Nevertheless, "The fact that a piece of evidence hurts a party's chances does not mean it should automatically be excluded. If that were true, there would be precious little left in the way of probative evidence in any case. The question is one of 'unfair' prejudice—not of prejudice alone." *Onujiogu v. United States*, 817 F.2d 3, 6 (1st Cir. 1987).

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By requiring the prejudicial effect of evidence to substantially outweigh its probative value, this section strongly favors admissibility. To merit exclusion, the evidence must unfairly prejudice an opponent, typically by appealing to the emotional and sympathetic tendencies of a jury, rather than the jury's intellectual ability to evaluate evidence. *Krause Inc. v. Little*, 117 Nev. 929, 34 P.3d 566, 2001 Nev. LEXIS 76 (2001). Absent other indica of impropriety, where the danger of unfair prejudice does not substantially outweigh the probative value of relevant evidence, courts must include evidence because there is a presumption of inclusion with respect to evidence that will inform the fact finder. *Compare* NRS 48.035(1) *with* NRS 48.025.

III. THERE WAS NO MISCONDUCT HERE AND THERE IS NO BASIS TO EXCLUDE MR. TURNER

A. Inspection

First, there is simply no requirement that a defendant notify anyone of its own expert's inspection of its own property or equipment. Such an inspection falls outside the purview of NRCP 34. If there were any such requirement or precedent, surely Plaintiffs would have called it to the Court's' attention. Similarly, Plaintiffs did not inform the defense of the two NRCP 35 examinations of Joe Brown performed in his home by their chosen experts, Drs. Nalamachu and LaCost, on February 16 and 28, 2018, respectively. The long-recognized equitable theory that "what is sauce for the goose is sauce for the gander" applies here and the discovery and evidentiary rules must apply with equal force to both Plaintiffs and Defendants. *See, generally, In Re Petition for a Writ of Prohibition*, 111 Nev. 70, 183 (Nov. 1995), and *Snyder v. Viani*, 112 Nev. 568, 579 (Nev. 1996).

Second, there is no requirement that experts record every conversation or interview they have while investigating a case. TKE mechanic Chris Dutcher was not an eyewitness to Mr. Brown's fall, although he does have knowledge of historical facts regarding the maintenance of the subject escalator. His purpose in attending the inspection was not to be interviewed by Mr. Turner, but to safely turn off the escalator, provide access to the equipment, and ensure that the escalator was restarted safely. Furthermore, discovery has been open in this case since at least January 9, 2017, giving Plaintiffs ample opportunity to speak to Mr. Dutcher in deposition prior

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to his move to New York or to make the unusual request that he attend a NRCP 34 inspection. Allusions to Plaintiffs' having been deprived of communications and the allegation that critical discovery was conducted "behind Plaintiffs' backs" (Opposition at 8:13), are simply red herrings as Plaintiffs and their expert do not wish to face Mr. Turner at trial.

B. Turner's Expert Job File

Unlike the extra jurisdictional case law Plaintiffs' cite, there is no automatic disclosure of an expert's job file in Nevada. Defendants fully complied with the expert reporting requirements of NRCP 16.1(a)(2)(B), and Plaintiffs have not contended otherwise. Although an expert's file may be discoverable, it must be requested or, more commonly, sought through a deposition *duces tecum*. Defendants presented Mr. Turner on October 19, 2018 and any perceived prejudice that his file was incomplete at that time was cured by TKE's Seventh Supplement to NRCP 16.1 disclosures which was served November 16, 2018.

IV. CONCLUSION

WHEREFORE, for the above reasons, Plaintiffs' motion *in limine* should be denied and Davis Turner permitted to testify at trial as an expert.

RESPECTFULLY SUBMITTED this 3rd day of Deember, 2018.

GRANT & ASSOCIATES

ALEXANDRA B. M^C^LEOD, ESQ.
Nevada Bar No. 8185
7455 Arroyo Crossing Parkway, Suite 300
Las Vegas, Nevada 89113
Attorney for Defendants/Third-Party Plaintiffs, GNL, CORP., LANDRY'S, INC. & GOLDEN NUGGET, INC.

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

CERTIFICATE OF SERVICE

I certify that I am an employee of GRANT & ASSOCIATES and that on this 3rd day of December, 2018 I caused a true and correct copy of the foregoing **OPPOSITION TO PLAINTIFFS' MOTION *IN LIMINE* TO EXCLUDE EXPERT WITNESS, DAVID L. TURNER** to be served as follows:

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

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

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

/s/ Camie DeVoge

An Employee of GRANT & ASSOCIATES

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