

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

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

Appellant,

vs.

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

Respondents.

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

Appellant,

vs.

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

Respondents.

No. 80581

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**APPENDIX TO APPELLANT'S OPENING BRIEF**

**VOLUME 14**

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Dated June 10, 2022.

Respectfully submitted,

IQBAL LAW PLLC

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### **CERTIFICATE OF SERVICE**

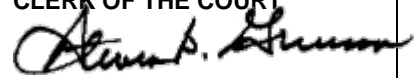
I certify that I am an employee of IQBAL LAW PLLC and that on June 10, 2022, I caused a true and correct copy of the **APPENDIX TO APPELLANT’S OPENING BRIEF VOLUME 14** to be served as follows:

\_\_\_ 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,<br>NETTIE J. BROWN, an individual<br><br>Plaintiffs,<br><br>vs.<br><br>LANDRY'S, INC., a foreign corporation;<br>GOLDEN NUGGET, INC. a Nevada<br>corporation, d/b/a GOLDEN NUGGET<br>LAUGHLIN; GNL, CORP., a Nevada<br>corporation; THYSSENKRUPP ELEVATOR<br>CORP., a foreign corporation; DOE<br>INDIVIDUALS 1-100,<br>ROE BUSINESS ENTITIES 1-100,<br><br>Defendants.<br><br>AND RELATED CASES | Case No.: A-16-739887-C<br>Dept. No.: XXXI<br><br><b>PLAINTIFFS' OPPOSITION TO GNL,<br/>CORP., LANDRY'S INC. &amp; GOLDEN<br/>NUGGET, INC.'S MOTION <i>IN LIMINE</i> #1<br/>TO EXCLUDE SRINIVAS NALAMACHU,<br/>M.D. FOR UNAUTHORIZED PRACTICE<br/>OF MEDICINE IN NEVADA</b><br><br><b>Date of hearing: March 28, 2019<br/>Time of hearing: 10:00 a.m.</b> |
|---|---|

Plaintiffs Joe N. Brown and Nettie J. Brown ("Plaintiffs") hereby file their Opposition to Defendants GNL, Corp., Landry's Inc. & Golden Nugget, Inc.'s (collectively, the "Nugget Defendants" or "GNL") Motion *in Limine* #1 to Exclude Srinivas Nalamachu, M.D. for Unauthorized Practice of Medicine in Nevada ("MiL #1").

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



1       **I. INTRODUCTION**

2           Dr. Srinivas Nalamachu, a board-certified physician licensed to practice in Kansas and  
3       Missouri, reviewed Plaintiff Joe N. Brown’s medical files and traveled to Las Vegas to perform a  
4       medical evaluation of Mr. Brown (as the Court is aware from prior briefing, on May 12, 2015, Mr.  
5       Brown broke his neck falling from the down escalator at the Golden Nugget casino in Laughlin,  
6       Nevada (the “Laughlin Nugget”).

7           The Nugget Defendants assert in MiL #1 that Dr. Nalamachu should be excluded from  
8       being an expert witness because, as a medical professional not licensed in Nevada, he may not  
9       offer competent expert testimony. Indeed, the Nugget Defendants claim that such medical  
10      professionals’ opinions are “unauthorized and inherently unreliable.” Motion at 7:15-17.

11          The Nugget Defendants are wrong: MiL #1 is contrary to settled Nevada law, and Dr.  
12      Nalamachu’s report and testimony should not be excluded.

13       **II. STATEMENT OF RELEVANT FACTS**

14          Plaintiffs engaged the expert services of Dr. Nalamachu, the Founder of, and Chief Medical  
15      Officer at, Mid America PolyClinic in Overland Park, Kansas to independently examine Mr.  
16      Brown. Dr. Nalamachu, who is board certified in the field of pain management and licensed in  
17      Kansas and Missouri,<sup>1</sup> has over 20 years of clinical research experience. See **Exhibit A** attached  
18      hereto, Nalamachu Curriculum Vitae (“Nalamachu CV”) at 1 and 22 (unpaginated). Dr.  
19      Nalamachu has, among other accomplishments, held several academic appointments, conducted  
20      and led, as the principal investigator, several clinical research studies in the areas of pain and pain  
21      management, published *sixty-seven* (67) articles and medical reviews (*id.* at 12-16 (unpaginated)),  
22      and presented posters and abstracts on *eighty* (80) occasions. *Id.* at 16-21 (unpaginated). On  
23      February 16, 2018, following his review of Mr. Brown’s medical records, Dr. Nalamachu traveled  
24

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25  
26           <sup>1</sup> From 1998 to 2001, Dr. Nalamachu was also licensed to practice medicine in New York.  
27      See Exhibit A, at 22 (unpaginated).

1 to Las Vegas, Nevada and examined Mr. Brown at his residence. See **Exhibit B** attached hereto,  
2 February 25, 2018 Nalamachu Report, at 1-2 (unpaginated).

3 Based upon his examination, Dr. Nalamachu opined that Mr. Brown has significant  
4 physical and functional limitations in his right lower extremity and neck and severe limitations  
5 with his ambulation that render him unable to participate in recreational activities. *Id.* at 4.  
6 Moreover, Dr. Nalamachu opined that Mr. Brown is unable to find a comfortable position to sleep  
7 due to his moderate to severe pain and is experiencing day-time fatigue because of his severe range  
8 of motion deficits. *Id.* Additionally, Dr. Nalamachu concluded that Mr. Brown has not tolerated  
9 most of the pain medication. *Id.* According to Dr. Nalamachu, the foregoing medical problems  
10 are contributing to Mr. Brown's anxiety and depression. *Id.*

11 As a result of the fall at the Laughlin Nugget, Mr. Brown suffers severe and debilitating  
12 pain, requires continuing medical services to treat his injuries and consistent pain, and likely will  
13 need such services for the rest of his life.

14 **III. LAW AND ARGUMENT: THE PREMISE AND ASSERTIONS OF MiL #1**  
15 **CONTRADICT SETTLED NEVADA LAW**

16 The Nugget Defendants seek to exclude Dr. Nalamachu because he was not licensed to  
17 practice medicine in Nevada at the time (when he independently examined Mr. Brown and his  
18 medical records and wrote an exprt report), rendering his resulting opinions inherently unreliable.  
19 In support for their argument, the Nugget Defendants principally rely on minutes from an open  
20 session meeting of the Nevada Board of Medical Examiners ("Board") discussing whether the  
21 term practice of medicine, as defined in NRS 630.020,<sup>2</sup> subsumes independent medical  
22 evaluations.

23  
24 <sup>2</sup> NRS 630.020 defines practice of medicine as follows:

25 1. To diagnose, treat, correct, prevent or prescribe for any human disease,  
26 ailment, injury, infirmity, deformity or other condition, physical or mental, by any  
means or instrumentality, including, but not limited to, the performance of an  
autopsy.

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

1 The Nugget Defendants' MiL #1 fails for *two reasons*. First, as the Board Minutes  
2 indicate, and contrary to the motion's assertions, the Board was *not* asked to determine whether  
3 an unlicensed, out-of-state physician was prohibited from offering expert testimony in Nevada  
4 courts. See attached hereto Exhibit C, September 14, 2007 Board Minutes, at 21-22. Second, and  
5 more importantly, the Nugget Defendants ignore settled Nevada law.

6 To testify as an expert witness, the witness must be qualified in an area of specialized  
7 knowledge, the testimony must assist the trier of fact, and the testimony must be limited to the  
8 scope of the expert's knowledge. *Hallmark v. Eldridge*, 189 P.3d 646, 650 (Nev. 2008); see NRS  
9 50.275. In *Wright v. Las Vegas Hacienda, Inc.*, 720 P.2d 696 (Nev. 1986), the district court  
10 excluded the plaintiff's medical expert and the Nevada Supreme Court reversed, holding, in  
11 relevant part:

12 *A witness need not be licensed to practice in a given field in order to be qualified*  
13 *to testify as an expert.* NRS 50.275 provides that a person with "special knowledge,  
14 skill, experience, training or education may testify [as an expert] to matters within  
15 the scope of such knowledge." This statute does not require an expert to be  
16 licensed. As noted, Dr. Rasmussen possessed special knowledge, training and  
education that would have enabled him to testify as an expert in the field of human  
factors engineering. Further, contrary to the district court's conclusion, a person  
does not unlawfully engage in the unlicensed practice of psychology or engineering  
when he testifies to his knowledge of the subject in a court of law.

17 *Id.* at 696-97 (emphasis added); accord *Freeman v. Davidson*, 768 P.2d 885, 886 (Nev. 1989)  
18 (noting that an unlicensed physician may offer expert testimony at trial); see *Hanneman v. Downer*,  
19 871 P.2d 279, 286 (Nev. 1989) (noting that "a person need not be licensed to qualify as an expert;  
20 rather, the witness must simply possess 'special knowledge, skill, experience, training or  
21

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22 2. To apply principles or techniques of medical science in the diagnosis or  
23 the prevention of any such conditions.

24 3. To perform any of the acts described in subsections 1 and 2 by using  
25 equipment that transfers information concerning the medical condition of the  
patient electronically, telephonically or by fiber optics, including, without  
limitation, through telehealth, from within or outside this State or the United States.

26 4. To offer, undertake, attempt to do or hold oneself out as able to do any of  
the acts described in subsections 1 and 2.

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

1 education’ relating to the subject matter” under NRS 50.275.”). In *Hallmark*, the Nevada Supreme  
2 Court reaffirmed that NRS 50.275 “does not require a witness to be licensed in a particular field  
3 to testify as an expert about matters within that field.” *Hallmark*, 189 P.3d at 499 n.12 (citations  
4 omitted).

5 This principle has broad application across multiple disciplines and areas of potential  
6 expert testimony. In *State v. Tatalovich*, 309 P.3d 43 (Nev. 2013), the Supreme Court determined  
7 that investigative work performed by an out-of-state private investigator for purposes of  
8 developing and giving his expert opinion testimony in a Nevada civil case did not require a Nevada  
9 private investigator’s license. *Tatalovich*, 309 P.3d at 43 (reasoning that unlicensed individuals  
10 may offer expert opinions because “the validity” of their “qualifications and work is tested—and  
11 contested—in court.”). Even an expert who is not licensed in Nevada is subject to rules of the  
12 court and judicial scrutiny. *See id.* at 45-46 (noting that the work of an unlicensed expert that is  
13 not subject to professional licensing requirements is “limited by the rules of the court, the judge’s  
14 approval of the expert’s qualifications to provide the opinion, and the judge’s determination of  
15 what testimony, if any, to allow.”). Accordingly, Nevada licensing requirements do not apply to  
16 unlicensed, out-of-state persons engaged as expert witnesses in a civil case “where the expert  
17 witness performs duties and tasks within his or her field to verify or obtain information necessary  
18 to form the basis for the opinion testimony.” *Id.* at 46. Such licensing requirements do not apply  
19 here for ***precisely the same reason***: Dr. Nalamachu’s report and opinions are based on his review  
20 and assessment of Mr. Brown’s medical records and his physical examination of Mr. Brown—  
21 "duties and tasks" at the heart of his field, that Dr. Nalamachu has undertaken for two decades as  
22 a practicing physician.

23 As such, wave after wave after wave of unambiguous Nevada law sink the Nuggets  
24 Defendants’ MiL #1. In this case, pursuant to NRS 50.275 and under *Hallmark* and *Tatalovich*,  
25 Dr. Nalamachu’s expert testimony should not be stricken.

26  
27 **PLAINTIFFS’ OPPOSITION TO TO GNL, CORP., LANDRY’S INC. & GOLDEN**  
28 **NUGGET, INC.’S MOTION *IN LIMINE* #1 TO EXCLUDE SRINIVAS NALAMACHU,**  
**M.D. FOR UNAUTHORIZED PRACTICE OF MEDICINE IN NEVADA**

1 **IV. CONCLUSION**

2 For all the foregoing reasons, the Nugget Defendants' MiL #1 should be DENIED.

3 Dated February 15, 2019.

Respectfully Submitted,

4 IQBAL LAW PLLC

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

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

Christopher Mathews (NSB #10674)

7 *Attorneys for Plaintiffs*

8  
9 **CERTIFICATE OF SERVICE**

10 I HEREBY CERTIFY that I am an employee of IQBAL LAW PLLC, and that on this 15th day of  
11 February 2019, I caused to be served a true and correct copy of the foregoing **PLAINTIFFS'**  
12 **OPPOSITION TO GNL, CORP., LANDRY'S INC. & GOLDEN NUGGET, INC.'S**  
13 **MOTION *IN LIMINE* #1 TO EXCLUDE SRINIVAS NALAMACHU, M.D. FOR**  
14 **UNAUTHORIZED PRACTICE OF MEDICINE IN NEVADA** by transmitting the same via  
15 the Court's electronic filing services to the Counsel and other recipients set forth on the service  
16 list.  
17

18 /s/ Marie-Claire Alsanjakli

19 An employee of IQBAL LAW PLLC

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

# **EXHIBIT A**

# **EXHIBIT A**

JNB02474

**Srinivas Nalamachu, MD**

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

**Clinical experience:**

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

**Academic appointments:**

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

**Medical education and Residency training:**

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

**Investigator Initiated Research:**

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

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

**Industry sponsored research:**

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

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

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

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

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

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

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

**Safety consulting Experience:**

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

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

2015-Current                      Independent Physician,  
    DSMB, PRA

**Clinical development/commercialization experience:**

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



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

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

**Leadership, committee experience and awards:**

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

**Publications:**

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

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

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

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

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

**Poster/Abstract Presentations:**

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

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

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



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

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

JNB02494

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

**Staff Privileges:**

Overland Park Regional Medical Center  
Menorah Medical Center

**Memberships:**

International Association for Study of Pain

**Qualifications/Certifications:**

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

JNB02495

**Licensure:**

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

# **EXHIBIT B**

# **EXHIBIT B**

JNB02497

**Mohamed A. Iqbal, Jr.**

**Iqbal Law PLLC**

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

**Las Vegas NV 89109**

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

**Feb. 25, 2018**

**Independent Medical Evaluation**

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

Dear Mr. Iqbal,

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

1. Western Arizona Regional Medical Center, Bullhead City, AZ (May 12, 2015)
2. Sunrise Medical Center, Las Vegas, NV (May 13, 2015- May 15, 2015)
3. VA Medical Center (multiple hospitalizations and out-patient evaluations starting July 15, 2015 until March 2016)
  - i. Mr. Brown was admitted to Western Regional Medical Center on May 12, 2015 at 8:22pm after a fall off the escalator at the Golden Nugget

**JNB02498**

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

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

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

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

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

**Impression:**

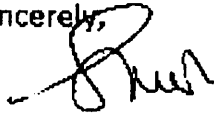
Based on my chart review, my interview with him both in person and over the phone as well as a physical exam on 2/16/18:

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



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

Sincerely,

A handwritten signature in black ink, appearing to read 'Srinivas'.

Srinivas Nalamachu, MD

Founder and Chief Medical Officer

Mid America PolyClinic

7100 College Blvd

Overland Park KS 66210

913-599-2440

Nalamachu@yahoo.com

JNB02501

**EXHIBIT C**

**EXHIBIT C**

JNB02502



## Nevada State Board of Medical Examiners

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

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

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

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

**and videoconferenced to**

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

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

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

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

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

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

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

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

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

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

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

**JNB02503**

Open Session Minutes  
September 14, 2007 Board Meeting  
Page 21 of 27

*Agenda Item 25*

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

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

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

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

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

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

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

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

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

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

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

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

*Agenda Item 23*

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

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

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





Open Session Minutes  
September 14, 2007 Board Meeting  
Page 22 of 27

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

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

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

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

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

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

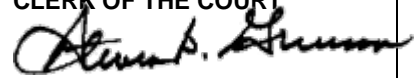
Dr. Lamerson stated it is her understanding that these physicians are coming from out of state, examining Nevada residents in the state of Nevada, and making a diagnosis.

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

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

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





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IQBAL LAW PLLC  
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Christopher Mathews (NSB #10674)  
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Las Vegas, Nevada 89109  
1-(702) 750-2950 (Tel); 1-(702) 825-2841 (V-Fax)  
[info@ilawlv.com](mailto:info@ilawlv.com)  
*Attorneys for Plaintiffs*

DISTRICT COURT  
CLARK COUNTY, NEVADA

|   |  |
|---|--|
| JOE N. BROWN, an individual, and his Wife,<br>NETTIE J. BROWN, an individual<br><br>Plaintiffs,<br><br>vs.<br><br>LANDRY'S, INC., a foreign corporation;<br>GOLDEN NUGGET, INC. a Nevada<br>corporation, d/b/a GOLDEN NUGGET<br>LAUGHLIN; GNL, CORP., a Nevada<br>corporation; THYSSENKRUPP ELEVATOR<br>CORP., a foreign corporation; DOE<br>INDIVIDUALS 1-100,<br>ROE BUSINESS ENTITIES 1-100,<br><br>Defendants.<br><br>AND RELATED CASES | Case No.: A-16-739887-C<br>Dept. No.: XXXI<br><br><b>PLAINTIFFS' OPPOSITION TO GNL,<br/>CORP., LANDRY'S INC. &amp; GOLDEN<br/>NUGGET, INC.'S MOTION <i>IN LIMINE</i> #2<br/>REGARDING OTHER INCIDENTS OR<br/>REPAIRS</b><br><br><b>Date of hearing: March 28, 2019<br/>Time of hearing: 10:00 a.m.</b> |
|---|--|

Plaintiffs Joe N. Brown and Nettie J. Brown ("Plaintiffs") hereby file their Opposition to Defendants GNL, Corp., Landry's Inc. & Golden Nugget, Inc.'s (collectively, the "Nugget Defendants" or "GNL") Motion *in Limine* #2 Regarding Other Incidents and Repairs ("MiL #2").

///

**PLAINTIFFS' OPPOSITION TO TO GNL, CORP., LANDRY'S INC. & GOLDEN  
NUGGET, INC.'S MOTION *IN LIMINE* #2 REGARDING OTHER INCIDENTS OR  
REPAIRS**

## I. INTRODUCTION

In MiL #2, the Nugget Defendants move to prevent Plaintiffs from presenting evidence of other incidents involving the down escalator at the Golden Nugget hotel, resort and casino in Laughlin, Nevada (the “Laughlin Nugget”), on which Plaintiff Joe Brown broke his neck on May 12, 2015. The Nugget Defendants note that twelve (12) prior incidents and one (1) subsequent incident (collectively, the “Other Incidents”) were uncovered during pretrial discovery (Motion at 7:9-11, and footnote 1), yet argue that the Other Incidents are not substantially similar to Mr. Brown’s incident (the “Incident”) and are otherwise irrelevant and unfairly prejudicial. In addition, the Nugget Defendants seek to exclude the admission of 2012 repair recommendations from the manufacturer (the “Repair Recommendations”) to replace the cracked escalator steps, arguing the Repair Recommendations are not relevant or substantially similar to the facts *sub judice*.

Unfortunately for the moving party here, the motion fails for contradicting settled Nevada law on these issues: evidence of *prior* incidents may be relevant to show notice or knowledge, and evidence of *subsequent* incidents may be relevant to show causation.

## II. STATEMENT OF RELEVANT FACTS

Evidence in this case has revealed, among other things, that the down escalator at the Laughlin Nugget had cracked steps, posed substantial risks to the riding public over a period of several years before the Incident and months after the Incident, and was consistently and continuously experiencing safety and maintenance problems, which caused injuries to Plaintiffs and other riders. For example, recently disclosed emails reveal that the escalator’s steps were previously cracked, that the Nugget Defendants were made aware of the escalator’s safety issues, and that it took *several months* just to generate proposals for a repair; this, despite the fact that the repairs needed were put in the “asap” categories on or about May 27, 2015, and that separate Panaro emails warned, on June 16, “a safety matter for the riding public . . . At this time, we

1 recommend replacing the 40 steps, however, *the 5 steps need to be addressed asap*,”<sup>1</sup> and, on June  
 2 25, that the repair work should be done “very soon to avoid any further damage and/or incidents.”<sup>2</sup>  
 3 The Escalator’s steps were not replaced until January 26, 2016, per separate Nugget documents.<sup>3</sup>

4 The Nugget Defendants were on notice and knew of the escalator’s dangerous condition  
 5 for years, and failed to take the necessary or recommended steps to make the escalator safe—  
 6 despite multiple incidents involving injuries to unsuspecting casino guests.

### 7 **III. LAW AND ARGUMENT**

8 Evidence of prior accidents involving a dangerous permanent condition is admissible to  
 9 establish notice or knowledge. *See S. Pac. Co. v. Watkins*, 435 P.2d 498 (Nev. 1967). There, the  
 10 Nevada Supreme Court held that “evidence of prior accidents is properly admitted to show notice  
 11 of a dangerous permanent condition where the physical condition of the crossing as a proximate  
 12 or concurring cause of the accident is in issue and there is prior admissible evidence tending to  
 13 show the dangerous condition.” *See Watkins*, 435 P.2d at 506. In *Reingold v. Wet ‘N Wild Nevada,*  
 14 *Inc.*, 944 P.2d 800 (Nev. 1997), the Court addressed subsequent incidents:

15 [t]his court has previously held that evidence of subsequent, similar accidents  
 16 involving the same condition may be relevant on the issues of causation and  
 17 whether there is a defective and dangerous condition. However, evidence of  
 subsequent accidents may not be admitted to demonstrate a defendant’s knowledge  
 of the condition prior to the instant accident.

18 *Id.* at 802 (citations omitted).

19 Here, as stated, the Nugget Defendants seek to exclude evidence of the Other Incidents and  
 20 Repair Recommendations based on relevance, prejudice and lack of substantial similarity. Their  
 21 argument is belied by the results of discovery. The evidence uncovered during discovery revealed  
 22

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23  
 24 <sup>1</sup> *See* Exhibit 1-B to Plaintiffs’ Emergency Motion for Reopening Discovery, Court  
 Intervention, and Sanctions on Order Shortening Time (Filed December 10, 2018)(“Plaintiffs’  
 25 Emergency Motion”), TKE 2<sup>nd</sup> Supp., at JNB\_002084 (emphasis added).

26 <sup>2</sup> *Id.* at JNB\_002083.

27 <sup>3</sup> *See, e.g.*, Exhibit 1-H to Plaintiffs’ Emergency Motion, GNL00904, part of Nugget’s  
 12<sup>th</sup> Supplemental NRCP 16.1 production.



double-digit incidents involving the down escalator during the several years (at least between 2012 and step-replacement, finally, in 2016). That evidence goes to the classic definition of a dangerous condition, and the occurrence of all of these incidents on the exact same down escalator—as it continued to operate—speaks to the principle of similarity. Moreover, the Repair Recommendations and disclosed emails go to show that the Nugget Defendants had notice and consciously disregarded a dangerous condition (cracked steps) prior to *and following* Mr. Brown’s broken neck suffered on May 12, 2015; indeed, scarcely two weeks after Mr. Brown’s accident, yet another individual was injured and hospitalized from yet another incident on the same down escalator. Accordingly, this evidence of prior and subsequent incidents is relevant to show that the Nugget Defendants were aware of the dangerous condition, i.e., the cracked steps, and disregarded the condition for years.

#### IV. CONCLUSION

For all the foregoing reasons, GNL’s MiL #2 should be DENIED.

Dated February 15, 2019.

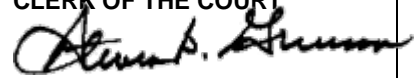
Respectfully Submitted,

IQBAL LAW PLLC

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

*Attorneys for Plaintiffs*

**PLAINTIFFS’ OPPOSITION TO TO GNL, CORP., LANDRY’S INC. & GOLDEN  
NUGGET, INC.’S MOTION *IN LIMINE* #2 REGARDING OTHER INCIDENTS OR  
REPAIRS**



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[info@ilawlv.com](mailto:info@ilawlv.com)  
*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' OPPOSITION TO  
DEFENDANT/THIRD PARTY  
DEFENDANT THYSSENKRUPP  
ELEVATOR CORPORATION'S MOTION  
IN LIMINE #4 RE: IMPROPER VOIR  
DIRE**

**Date of hearing: March 28, 2019**

**Time of hearing: 10:00 a.m.**

Plaintiffs Joe N. Brown and Nettie J. Brown ("Plaintiffs") hereby file this Opposition to Defendant/Third Party Defendant Thyssenkrupp Elevator Corporation's ("TKE") Motion in Limine #4 Re: Improper Voir Dire ("TKE MiL #4").

**I. INTRODUCTION**

TKE MiL #4 is an exhortation for the Court to instruct the parties to follow the law by not engaging in improper *voir dire* "questions and technique [*sic*]." TKE MiL #4 at 3:27-28. Relying

**PLAINTIFFS' OPPOSITION TO DEFENDANT/THIRD PARTY DEFENDANT  
THYSSENKRUPP ELEVATOR CORPORATION'S MOTION IN LIMINE #4 RE:  
IMPROPER VOIR DIRE**

1 on a memorandum order from a 20-year-old criminal case issued in another state,<sup>1</sup> the motion  
2 asserts there are a dozen categories of questions so “intrusive” they should be deemed off-limits  
3 or “sharply limited.” TKE MiL #4 at 6:3-21. In addition, the motion asserts that “asking specific  
4 questions regarding a juror’s ‘beliefs’ that would allow or prevent them from awarding ‘a million  
5 dollars’ or more are improper.” *Id.* at 6:22-23. The motion does not cite any authority for the  
6 claim that “million dollar” questions are improper, other than TKE’s own *ipse dixit*.

7 TKE further argues that “repetitive questions” are “impermissible,” to the extent such  
8 questions concern “potential verdicts” or “verdict amounts.” TKE MiL #4 at 7:1-17. The motion  
9 purports to rely on *Khoury v. Seastrand*, 377 P. 3d 81 (Nev. 2016), but fails to acknowledge that  
10 the Nevada Supreme Court actually held repeated questions “aimed more at the acquisition of  
11 information rather than indoctrination” may be permitted in the discretion of the trial court.  
12 *Khoury*, 377 P. 3d at 87-88.

13 Finally, TKE argues that it is improper for counsel to “argue their case in any fashion,” and  
14 demands that the Court “limit the questions during *voir dire* to prevent counsel from arguing their  
15 case.” TKE MiL #4 at 7:18-22. TKE does not cite, nor acknowledge in any way, the procedures  
16 of EDCR 7.70 concerning submission of *voir dire* questions to the Court.

17 **II. LAW AND ARGUMENT: IN CITING TO A PENNSYLVANIA MEMORANDUM**  
18 **ORDER, TKE’S MOTION IGNORES THE NEVADA SUPREME COURT AND**  
19 **NEVADA LAW**

20 Despite reciting a laundry list of supposedly-improper questions from a federal criminal  
21 trial in Pennsylvania, TKE MiL #4 makes no effort to tie any question on the list to the facts of  
22 this case; to explain why they would not be proper under Nevada law; or to provide even the  
23 vaguest of hints as to how the Court ought to exercise its discretion with respect to such questions,  
24 except for a content-free assertion that they should be “sharply limited.” TKE MiL#4 at 6:3-19.

---

25  
26 <sup>1</sup> *United States v. Serafini*, 57 F. Supp. 2d 108 (M.D. Pa. 1999) (incorrectly cited as “D.  
27 Pa” in TKE’s brief).

1 Several of these areas of inquiry cited by TKE may be highly relevant to the goal of obtaining an  
2 impartial jury where, as here, the case involves factual issues touching on marital status; medical  
3 issues; the impact of medications on quality of life or other issues; the expertise and competence  
4 of government employees; parties who are large employers and/or part of important local  
5 industries that may employ the prospective jurors or their close friends or family members; and so  
6 on. Moreover, the responses of the potential jurors during *voir dire* may suggest other areas of  
7 inquiry that require examination.

8 Under the Nevada law and the rules of this Court, proposed *voir dire* questions must be  
9 submitted to the trial judge—who then exercises discretion in determining what questions to ask  
10 and, as *voir dire* progresses, what follow-up questions may be posed by counsel. NRS 16.030;  
11 EDCR 7.70. TKE’s request that the Court issue advisory rulings on questions it has never seen,  
12 and follow-up that at this stage is less than hypothetical, does not appear consistent with the sound  
13 exercise of that discretion. Further, to the extent it would interfere with counsel’s ability to “probe  
14 delicate areas in which prejudice may exist or pursue answers that reveal the possibility of  
15 prejudice,” the motion’s broad exclusion of whole areas of inquiry is inconsistent with the goal of  
16 determining the fairness and impartiality of prospective jurors. *See Whitlock v. Salmon*, 752 P. 2d  
17 210, 212 (Nev. 1988) (noting the importance of latitude for counsel in *voir dire* given their greater  
18 familiarity with “the facts and nuances of a case”).

19 The one matter on which TKE is quite specific is its insistence that specific questions  
20 regarding whether a juror could or could not award a million-dollar verdict are improper. TKE  
21 MiL 6:22-23. TKE *cites no authority* for this position, *possibly because it is exactly contrary to*  
22 *Nevada law*. In the *Khoury* case, *supra*, after reviewing decisions of other state courts, the Nevada  
23 Supreme Court held:

24 We ... do not find the use of specific dollar amounts in voir dire to be per se  
25 improper. Indeed, it may be appropriate to use a specific amount in order to  
26 discover a juror’s biases toward large verdicts ... A juror may consider himself or  
herself capable of awarding a verdict of \$100,000, a verdict which in his or her

27 **PLAINTIFFS’ OPPOSITION TO DEFENDANT/THIRD PARTY DEFENDANT**  
28 **THYSSENKRUPP ELEVATOR CORPORATION’S MOTION IN LIMINE #4 RE:**  
**IMPROPER VOIR DIRE**

mind may be fabulously large, but be unable to follow the law and award a verdict with another zero attached.

*Id.*, 377 P. 3d at 87. Thus, not only are specific questions permitted, the precise scenario offered by TKE as an example of a *per se* improper question has in fact been held by the Nevada Supreme Court to be perfectly proper.

Similarly, the use of repetitive questions, while well within the trial judge's discretion to limit, are not *per se* improper either. *Khoury*, 377 P. 3d at 87-88. Indeed, such questions may be necessary, as where a prospective juror appears to give inconsistent responses in areas that might give rise to a challenge for cause. *See e.g., Boonsang Jitnan v. Oliver*, 254 P. 3d 623, 630 (Nev. 2011) (requiring the trial court to make findings of fact regarding such inconsistencies and their resolution).

To the extent TKE MiL #4 proposes broad restrictions based on criminal procedure, it is unhelpful; to the extent that it proposes limits that contravene rulings of our Supreme Court, it is just flat wrong. Plaintiffs respectfully submit that the procedures established by Nevada law, which require submission of propose *voir dire* questions to the judge and provide the judge with gatekeeper duties over follow-up questioning, are enough to ensure *voir dire* in this case will be conducted fairly.

### III. CONCLUSION

For all the foregoing reasons, TKE MiL #4 should be DENIED.

Dated February 15, 2019.

Respectfully Submitted,

IQBAL LAW PLLC

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

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

Christopher Mathews (NSB #10674)

*Attorneys for Plaintiffs*

**PLAINTIFFS' OPPOSITION TO DEFENDANT/THIRD PARTY DEFENDANT  
THYSSENKRUPP ELEVATOR CORPORATION'S MOTION IN LIMINE #4 RE:  
IMPROPER VOIR DIRE**

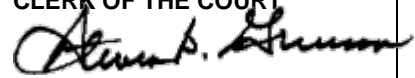
1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of IQBAL LAW PLLC, and that on this 15th  
3 day of February 2019, I caused to be served a true and correct copy of the foregoing  
4 **PLAINTIFFS' OPPOSITION TO DEFENDANT/THIRD PARTY DEFENDANT**  
5 **THYSSENKRUPP ELEVATOR CORPORATION'S MOTION IN LIMINE #4 RE:**  
6 **IMPROPER VOIR DIRE** by transmitting the same via the Court's electronic filing services to  
7 the Counsel and other recipients set forth on the service list.  
8

9  
10 /s/ Marie-Claire Alsanjakli  
11 An employee of IQBAL LAW PLLC  
12  
13

14 **I LAW LV**

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27 **PLAINTIFFS' OPPOSITION TO DEFENDANT/THIRD PARTY DEFENDANT**  
28 **THYSSENKRUPP ELEVATOR CORPORATION'S MOTION IN LIMINE #4 RE:**  
**IMPROPER VOIR DIRE**



**MLIM**  
IQBAL LAW PLLC  
Mohamed A. Iqbal, Jr. (NSB #10623)  
Christopher Mathews (NSB #10674)  
101 Convention Center Dr., Suite 1175  
Las Vegas, Nevada 89109  
1-(702) 750-2950 (Tel); 1-(702) 825-2841 (V-Fax)  
[info@ilawlv.com](mailto:info@ilawlv.com)  
*Attorneys for Plaintiffs*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

|  |   |
|--|---|
| JOE N. BROWN, an individual, and his Wife,<br>NETTIE J. BROWN, an individual<br><br>Plaintiffs,<br><br>vs.<br><br>LANDRY'S, INC., a foreign corporation;<br>GOLDEN NUGGET, INC. a Nevada<br>corporation, d/b/a GOLDEN NUGGET<br>LAUGHLIN; GNL, CORP., a Nevada<br>corporation; THYSSENKRUPP ELEVATOR<br>CORP., a foreign corporation; DOE<br>INDIVIDUALS 1-100,<br>ROE BUSINESS ENTITIES 1-100,<br><br>Defendants. | Case No.: A-16-739887-C<br>Dept. No.: XXXI<br><br><b>PLAINTIFFS' MOTION IN LIMINE #2<br/>REGARDING CERTAIN OPINION<br/>TESTIMONY OF DAVIS L. TURNER</b><br><br><b>Date of hearing:</b><br><b>Time of hearing:</b> |
| AND RELATED CASES  |   |

Plaintiffs JOE N. AND NETTIE J. BROWN ("Plaintiffs"), by and through their attorneys of record, IQBAL LAW PLLC, hereby file this Motion in Limine #2 Regarding Certain Opinion Testimony of Davis L. Turner ("Plaintiffs' MiL #2" or this "Motion").

This Motion is based on the papers and pleadings on file with the Court; the following memorandum of points and authorities; and on such arguments of counsel as the Court may entertain at a hearing on this Motion.

Dated: February 25, 2019

IQBAL LAW PLLC

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

**PLAINTIFFS' MOTION IN LIMINE #2  
REGARDING CERTAIN OPINION TESTIMONY OF DAVIS L. TURNER**

1 of 4

**JNB02515**

1 **NOTICE OF MOTION**

2 PLEASE TAKE NOTICE that the undersigned will bring the foregoing PLAINTIFFS'  
3 MOTION IN LIMINE #2 REGARDING CERTAIN OPINION TESTIMONY OF DAVIS L.  
4 TURNER for hearing on the 28 day of March, 2019, at 9 :00 A.m.

5 Dated: February 25, 2019

IQBAL LAW PLLC


6 By: /s/ Mohamed A. Iqbal, Jr.  
7 Mohamed A. Iqbal, Jr. (NSB #10623)  
8 Christopher Mathews (NSB #10674)  
*Attorneys for Plaintiffs*

9 **DECLARATION OF COUNSEL (EDCR 2.47)**

10 MOHAMED A. IQBAL JR. does hereby declare and state: I am counsel of record for  
11 Plaintiffs in the above-captioned matter. I make this Declaration of Counsel pursuant to Rule 2.47  
12 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada under penalty  
13 of perjury under the laws of the State of Nevada.

14 Prior to filing Plaintiffs' MiL #2, I conferred telephonically with Ms. Alexandra B.  
15 McLeod, Esq. and, separately, with Rebecca L. Mastrangelo, Esq., the respective counsel for the  
16 defendant parties, in an attempt to resolve the issues contained herein. I explained the basis for  
17 Plaintiffs' MiL #2, identified the issues with Mr. Turner's report, and discussed the matter with  
18 each attorney. We were unable to reach a resolution in either call, necessitating the filing of  
19 Plaintiffs' MiL #2.

20 Dated: February 25, 2019

21   
Mohamed A. Iqbal, Jr.

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 **I. INTRODUCTION.**

24 On January 10, 2019, more than eight weeks after the prior deadline for motions in limine  
25 passed, Defendant/Third-Party Defendant THYSSENKRUPP ELEVATOR CORPORATION  
26 ("TKE") served Plaintiffs with TKE's First Supplemental Designation of Expert Witnesses, which  
27

28 **PLAINTIFFS' MOTION IN LIMINE #2  
REGARDING CERTAIN OPINION TESTIMONY OF DAVIS L. TURNER**

2 of 4

**JNB02516**



1 served as a cover sheet for a document styled “Report of Findings and Opinions – Supplement  
2 One” dated January 4, 2019 (the “Supplement”), a copy of which is attached hereto as **Exhibit A**.  
3 On January 24, 2019, Defendant/Third Party Plaintiff GNL Corp. (“GNL”) filed a joinder thereto.

4 The Supplement contains the updated opinions of TKE’s previously-designated escalator  
5 expert, Davis L. Turner, who in pertinent part adds his opinion that Plaintiff Joe N. Brown’s  
6 allegedly-“inebriated state” was a causal factor in the incident in which Mr. Brown’s neck was  
7 broken. According to the Supplement, “Mr. Brown fell because of the effects of intoxication” and  
8 his use of a cane to assist in walking. *See* Supplement, p. 7.

9 Mr. Turner’s supposed expertise regarding of inebriation and intoxication is, according to  
10 the Supplement, based entirely on his California ***driver’s license***: “As a legally licensed driver in  
11 the State of California I know that a Blood Alcohol Concentration of 0.08 is considered  
12 ‘intoxicated’ and I’m not permitted to drive due t [*sic*] my impaired motor skills and cognitive  
13 acuity caused by my alcohol consumption.” Supplement at p. 3.

## 14 **II. LAW AND ARGUMENT.**

15 Expert testimony is governed by NRS Chapter 50, which provides in pertinent part that  
16 when “scientific, technical or other specialized knowledge will assist the trier of fact to understand  
17 the evidence or to determine a fact in issue, a witness qualified as an expert by special knowledge,  
18 skill, experience, training or education may testify to matters within the scope of such knowledge.”  
19 NRS 50.275. To testify as an expert, the witness must satisfy the following three requirements:  
20 (1) he or she must be qualified in an area of “scientific, technical or other specialized knowledge”  
21 (the qualification requirement); (2) his or her specialized knowledge must “assist the trier of fact  
22 to understand the evidence or to determine a fact in issue” (the assistance requirement); and (3) his  
23 or her testimony must be limited “to matters within the scope of [his or her specialized] knowledge”  
24 (the limited scope requirement). *Hallmark v. Eldredge*, 189 P.3d 646, 650 (Nev. 2008). Mr.  
25 Turner’s opinions regarding Mr. Brown’s putative consumption of alcohol fail **all three tests**.

26 An expert must have scientific, technical, or other specialized knowledge; but Mr. Turner’s  
27 status as the holder of a California driver’s license simply means he is a person over 18 years of

1 age. Cal. Veh. Code § 12512. His opinion therefore fails to meet the first requirement of the  
2 *Hallmark* case, *supra*. 189 P.3d at 650. Mr. Turner’s opinion is based on driving (“I’m not  
3 permitted to drive due t [sic] my impaired motor skills and cognitive acuity caused by my alcohol  
4 consumption,” Supplement at p. 3), but there are no allegations in this case involving the operation  
5 of a motor vehicle or any skills needed to do so. Mr. Turner has not shown that the skills needed  
6 to drive a car are related to the skills needed to stand on an escalator; thus, even if his opinion met  
7 the first *Hallmark* requirement, it would fail to meet the second—the assistance requirement. 189  
8 P.3d at 651-2. Finally, Mr. Turner has proffered nothing to show that his California-driving-  
9 license-based opinions regarding alcohol consumption are limited to the scope of his only actual  
10 specialized knowledge, in the field of escalator repair and maintenance; thus, they fail to meet the  
11 third *Hallmark* requirement, as well. 189 P.3d at 650.

12 **III. CONCLUSION.**

13 For all the foregoing reasons, Mr. Turner’s opinions regarding consumption of alcohol fail  
14 to meet the standards required of expert opinion under Nevada law and should be excluded.

15 Dated February 25, 2019.

Respectfully Submitted,

IQBAL LAW PLLC

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

21 **CERTIFICATE OF SERVICE**

22 I HEREBY CERTIFY that I am an employee of IQBAL LAW PLLC, and that on this 25th day of  
23 February 2019, I caused to be served a true and correct copy of the foregoing **PLAINTIFFS’**  
24 **MOTION IN LIMINE #2 REGARDING CERTAIN OPINION TESTIMONY OF DAVIS**  
25 **L. TURNER** by transmitting the same via the Court’s electronic filing services to the Counsel and  
other recipients set forth on the service list.

26 /s/ Marie-Claire Alsanjakli  
27 An employee of IQBAL LAW PLLC

28 **PLAINTIFFS’ MOTION IN LIMINE #2**  
**REGARDING CERTAIN OPINION TESTIMONY OF DAVIS L. TURNER**

# **EXHIBIT A**

# **EXHIBIT A**

JNB02519

**Davis L. Turner & Associates, LLC**

Elevator • Escalator • Consulting

*DLT&A*

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Mission Viejo, CA 92692-3227  
Phone (949) 582-1074  
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Report of Findings and Opinions – Supplement One  
in the matter of:

Joe N. Brown an individual and his wife, Nettie J. Brown, his  
wife 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  
January 4, 2019

## 1.0 Introduction

Davis L. Turner and Associates, LLC is an elevator consulting firm. Among the services provided by the firm are litigation support, consulting and expert services in the elevator/escalator industry. Refer to the original Report of Findings dated December 3, 2017. The firm's qualifications are enumerated in the *Curriculum Vitae* in Attachment 2. Fees for professional services are contained in the fee schedule in Attachment 3. Trial and Deposition testimony provided are contained in Attachments 4 and 5 respectively.

The author was asked to review certain discovery documents, perform inspections and other tasks in order to form opinions and conclusions as to the cause of an incident that occurred on May 12, 2015<sup>1</sup> at the Golden Nugget Hotel and Casino in Laughlin, Nevada.

## 2.0 Scope

This first supplemental report is prepared pursuant to NRCP 16.1(e)(1) on behalf of ThyssenKrupp Elevator Company, cross-defendants in the matter of Joe N. Brown, et al v. Landry's Inc, Golden Nugget, Inc., et al as opinions and observations based on information received subsequent to my preliminary report dated December 3, 2017. The opinions and findings contained in that report remain unchanged.

## 3.0 Supplemental Information

Subsequent to the December 3, 2017 report additional information has been received as follows:

| Date Rec'd | Document(s)   |
|------------|---|
| • 5/16/18  | The Deposition Transcript of Nettie Brown, 8/16/17 with exhibits                                    |
| • 5/16/18  | The Deposition Transcript of Joe N. Brown, 1/17/18 with exhibits                                    |
| • 5/16/18  | The Deposition Transcript of Don Hartman, 1/24/18 with exhibits                                     |
| • 5/16/18  | State of Nevada MCS inspection records for escalator bearing State Number NV1993, #2 Down Escalator |
| • 5/7/18   | The Expert Report of Shiela N. Swett dated May 4, 2018  |
| • 6/21/18  | The Swett and Associates Rebuttal report dated June 14, 2018  |
| • 9/5/18   | The Deposition Transcript of Clint Ray Belka, 5/1/18 with exhibits                                  |
| • 9/5/18   | The Deposition Transcript of Chris Dutcher, 5/14/18 with exhibits                                   |
| • 10/12/18 | The Deposition Transcript of Sheila N Swett dated 10/01/18  |
| • 10/18/18 | Hospital records, Sunrise Hospital and Medical Center, 5/13/15 for Joe Brown, DOB 9/26/49           |
| •          | Various Early Case Conference (exhibits)  |

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<sup>1</sup> The incident occurred approximately 7:30 pm on May 12, 2015



- 3<sup>rd</sup> Supplement (11/16/17)
- 12<sup>th</sup> Supplement (5/25/18)
- 13<sup>th</sup> Supplement (5/25/18)
- 15<sup>th</sup> Supplement (5/25/18)

### **3.1 Medical report by Sunrise Hospital Medical Center dated 5/13/15.**

Following the incident to Mr. Brown on May 12, 2015 at or about 7:28 PM he was transferred to Sunrise Hospital and Medical Center and admitted on May 13, 2015 at a time unknown. Contained in the report are the following entries:

**Social History:**

The patient denies any smoking, alcohol or recreational drug use.

**Laboratory Data:**

Serum alcohol level was 168

**Assessment:**

2. Acute alcohol intoxication

Notwithstanding Mr. Brown's denial of alcohol use, the testimony of Clayton Mollette reveals that Joe Brown consumed alcohol prior to going to the Golden Nugget.<sup>2</sup> His "serum alcohol level" was determined to be 168 which is equivalent to a Blood Alcohol Concentration, BAC, of 0.168. He was diagnosed as having "acute alcohol intoxication".

As a legally licensed driver in the State of California I know that a Blood Alcohol Concentration of 0.08 is considered "intoxicated" and I'm not permitted to drive due to my impaired motor skills and cognitive acuity caused by my alcohol consumption.

Mr. Brown's BAC or serum alcohol level was determined at least several hours after the accident. Based on the rate at which alcohol is metabolized in the system his BAC was higher than 0.168 at the time of the accident. While a BAC of 0.168 would significantly impair his balance and movement a higher level would produce a more serious impairment.

Mr. Brown's inebriated state contributed to his fall on the escalator.

### **3.2 Maintenance Records.**

Testimony regarding the completeness or incompleteness of maintenance records as being the cause of Mr. Brown falling of maintenance records is misleading and disingenuous. The maintenance records comprise the Maintenance Logs retained on the site and introduced during the deposition testimony of Sheila Swett, expert for the

---

<sup>2</sup> Mollette deposition pages 53, 54.

plaintiff, as well as the Account History reports produced with ThyssenKrupps 2<sup>nd</sup> supplement to Early Case conference List of Witnesses and the State of Nevada, Mechanical Compliance Section records of inspections. In order to properly assess the maintenance of the escalator all of the forgoing should be reviewed as each complements the other.

Shortcomings in maintenance record entries did not cause the plaintiff to fall.

### 3.3 Cracked Steps

Much attention has been focused on "cracked steps". A condition acknowledged by both the manufacturer of the subject escalator and the defendant service company. It is suggested that "cracked steps" cause:

- the escalator steps to be shaky.<sup>3</sup>
- the escalator steps to rock.<sup>4</sup>
- Unstable steps.<sup>5</sup>

Rocking and shaking of the steps were not observed at the inspection by state inspector Robertson the day following the incident or by state inspector Travis two weeks later. The only person even mentioning the "shaking of the steps" was the plaintiff who was intoxicated at the time.

Ms Shiela Swett, expert for the plaintiff, produced several documents during her deposition on October 1, 2018. They were not marked as exhibits that discussed cracked steps:

**The Detroit Free Press Article of October 27, 1995** (Exhibit 1) made mention of the fact that both Westinghouse Elevator Company as well as Montgomery Elevator Company had experienced cracked steps on their escalators. The article went on to say that **"All the injury cases found by the Free Press involved Westinghouse escalators,** and the incidents are few, especially considering the millions of people who ride escalators daily."

**The New York Times, 1989 article entitled Consumer's World; Escalator Dangers Called Preventable** (Exhibit 2) focuses on the responsibilities of the escalator manufacturers to provide safe equipment but quotes Mr. Carl J. White, renowned escalator expert, who offered suggestions as to how the riders can contribute to their own safety. Among those suggestions was **"Help elderly people, particularly when they are getting on and off."** As stated in my original report the people in Mr. Brown's party did nothing to assist him in boarding the escalator which would have prevented his fall.

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<sup>3</sup> Swett Deposition of 10/01/18 Pg73 Line17-18

<sup>4</sup> Swett Rebuttal report of June 4, 2018, Page 1

<sup>5</sup> *ibid* page 3



Cracked steps did nothing to contribute to Mr. Brown's fall on the escalator.

Mr. Brown and his party did nothing to prevent Mr. Brown from falling on the escalator.

### **3.4 Step Chain**

There is testimony that the escalator's step chain was "stretched" more than 6 mm which was an alleged code violation. This appears to be based on the MCS inspection report dated 5/26/15, two weeks after the incident.<sup>6</sup> The inspection was done by Mr. Lorne Travis an inspector for The State of Nevada Mechanical Compliance Section.

On May 26, 2015 Mr. Travis had investigated the incident to Mr. Hector Ruelas on 5/25/15. His report of the incident<sup>7</sup> made no mention of a "stretched" step chain or of any alleged step movement "back-and-forth" indicating an unstable step. The limitation of the "stretch" of the step chain is related to the clearance between adjacent steps which determines the potential for entrapment between the step tread and the riser of the adjacent step.

During the inspection of the subject escalator following the May 12, 2015 incident to Mr. Brown by State Inspector Robinson a "stretched" step chain was not noted as being in violation.

The original requirement for the clearance between steps was that the clearance should not exceed  $\frac{1}{4}$  inch which converts to 6.35 mm which is greater than the 6 mm clearance currently referenced in the ASME A17.12 code. The 6 mm requirement is a soft conversion from imperial to metric. Mr. Travis did not provide the amount of "stretch" in the step chain or the clearance between the steps only that, based on his opinion the clearance exceeded 6 mm. When this escalator was installed in 1980 the national code required the step-to-step clearance to be not greater than that required for the step tread to mesh with the adjacent step riser<sup>8</sup>. This was later clarified to be not greater than  $\frac{1}{4}$  in.<sup>9</sup> As stated the  $\frac{1}{4}$  inch was converted to the metric 6 mm which is actually less than the required  $\frac{1}{4}$  inch.

Any alleged stretch in the step chain and the alleged instability of the steps is questionable and improbable and did not cause Mr. Brown to fall.

### **3.5 Use of a cane.**

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<sup>6</sup> State DIR, MCS Inspection Report, Notice of Violation dated 5/26/15 (Bates# GNL001040)

<sup>7</sup> State DIR, MCS Elevator Accident Report dated 5/5/26/15 (Bates# JNB\_000002)

<sup>8</sup> ASME A17.1 – 1978 Rule 802.5c

<sup>9</sup> ASME A17.1 – 2000 Requirement 6.1.3.5.4



A security video provides a record of the incident to Mr. Brown. There are four different views of the escalator and the incident: Top of the escalator, bottom of the escalator and two different views of the lower landing around the bottom of the escalator.

Mr. Brown and his family can clearly be seen boarding the escalator at the upper landing. It is also clearly seen that Mr. Brown is using a cane as a walking aid.

No one in Mr. brown's party assists him boarding the escalator.

He grasps the left side handrail with his left hand while holding his cane in right hand as he boards the escalator.

He places the tip of the cane on an escalator step, still using it to help him keep his balance on the escalator.

As the escalator steps on which Mr. brown is standing move through the transition curve at the upper landing, the step on which his cane is resting moves down causing him to lean forward, lose his balance and fall.

It is significant to note that during her deposition testimony MS Swett made mention of her Board membership in the Elevator Escalator Safety Foundation (EESF) and the foundations programs to " *...teach the safe use of elevators and escalators. (to) second graders, college students and the elderly.*" The program for the elderly, "A Safe Ride" contains "Safety Tips" for riding on escalators". Among those tips is the following:

Before entering escalators:

- **No canes, walkers or wheeled vehicles.**<sup>10</sup>

Mr. Brown should have been assisted by someone in his party or used the nearby elevator to travel down from the casino level to the restaurant level.

#### **4.0 Summary**

Mr. Brown's inebriated state contributed to his fall on the escalator.

Cracked steps did nothing to contribute to Mr. Browns fall on the escalator.

Mr. Brown and his party did nothing to prevent Mr. Brown from falling on the escalator.

Any alleged stretch in the step chain and the alleged instability of the steps is questionable and improbable and did not cause Mr. Brown to fall.

---

<sup>10</sup> EESF " Safe Ride Elevator Safety Program for Seniors, Pg 11 (Exhibit 3)

Mr. Brown should have been assisted by someone in his party or used the nearby elevator to travel down from the casino level to the restaurant level.

The cause of Mr. Brown's fall on the escalator was not caused by failure to make entries in the maintenance logs or steps that had developed some cracks but did not rock, shake or become unstable. Nor did the allegedly "stretched step chain" contribute to his fall.

Mr. Brown fell because of the effects of intoxication and reliance on his cane to keep his balance on the escalator steps as they transitioned from horizontal to inclined motion.

I stand by the opinions expressed in my December 3, 2017 report.

I offer the opinions in my report and these supplements with a reasonable degree of factual certainty.

Respectfully,

A handwritten signature in cursive script, appearing to read "Davis L. Turner".

Davis L. Turner

January 4, 2019

Attachments:

Exhibit 1: The Detroit Free Press Article of October 27, 1995

Exhibit 2: The New York Times, 1989 article entitled Consumer's World; Escalator Dangers Called Preventable

Exhibit 3: EESF Safety Program "A Safe Ride". ([www.EESF.org](http://www.EESF.org))

END



FRIDAY, OCTOBER 27, 1995 DETROIT FREE PRESS SA w causes concern now Escalators cm invrz Recent accidents have prompted safety inspectors to caution building owners to be aware of potentially dangerous stair cracks during an escalator's annual cleaning. Unscheduled safety checks can be costly, since the entire stair mechanism has to be disassembled for viewing. Here's a look at the problem's cause and effect: Stress points on parts of Manufacturers respond that cracked steps are very rarely a problem the steps where cracks may occur. Cracks developing in an escalator's step support structure can cause the step to rock under a rider's weight. This creates gaps in the interlocking surfaces where shoes, fingers and other parts can be trapped. the city's inspection department. He said the weight of a rider would push the cracked steps down farther than normal, creating a gap at the top of the escalator where shoes could be caught. "We found 17 or 18 steps cracked on each of the escalators. So we shut them down until they were all fixed," Ledesma said. The Metro rail system in Washington, D.C, began noticing an increase in cracked and broken escalator steps in 1991, said Fady Bassilly, the system's deputy general manager. "We suspect that improper maintenance was the cause. As was the human factor of people dropping heavy objects on the escalator steps," Bassilly said. Atlanta's Hartsfield International Airport last year replaced numerous steps on its Montgomery escalators because of cracks, said WU1 Horton, of the Atlanta Airlines Terminal Corporation. Horton said Montgomery picked up the tab because the cracks were due to manufacturing defects. Joseph Tanti, acting superintendent of elevating devices for the Toronto Transit Commission, said the subway system is regularly paying \$3,000 each to replace cracked steps on Montgomery escalators. The company has "never owned up to the fact they have a stair problem," he said. . When a step collapses, one edge generally tree, allowing the surface to pivot down into by Alison Young Free Press Staff Writer An escalator step collapsed at JFK International Airport earlier this month, trapping a woman's leg in 'moving machinery. , In a similar accident, a step gave way at a New York Telephone office in 1987 and a woman died when she fell into the churning belts and gears of an , escalator. Experts say such accidents are usually due to cracks in the sides of the escalators' metal steps, out of view. In Detroit in 1991, Blue Cross & Blue Shield of Michigan discovered and replaced 127 cracked steps in the escalators at its downtown office building before anyone was hurt. Stepping onto an escalator shouldn't be a risk. Most of the time it's not. But nationwide, thousands of escalator steps are cracked. Manufacturers say this poses no hazard and injuries are extremely rare. But in an internal memo obtained by the Free Press, an escalator executive warned his company in 1989 that "these flaws represent a serious potential for injury or death" to the public. "People are playing the odds," said Hubert Hayes, a Brooklyn-based consultant who is a member of the escalator industry's national safety code committee. "It's a serious problem." A Free Press investigation this fall found incidents of cracked escalator steps in Atlanta, Detroit, Los Angeles, Toronto and Washington, D.C. But it is impossible to know how widespread the problem is or how many



escalator accidents are attributable to cracked steps. There is no regulatory agency tracking the problem, and the cracks may not be visible to safety inspectors unless the escalator is taken apart. "We try to stay right on top of this, because they can cause the worst kind of accident you can have on an escalator," said Terry Caster, chief of the elevator safety division in the Michigan Department of Labor, which also handles escalator inspections. Caster said inspectors rely on escalator maintenance companies to be vigilant in spotting and replacing cracked steps. He said inspectors try to check the stairs themselves if they are present when escalators are dismantled for required annual cleaning. The escalator industry does not make public any data on accidents. Experts say most are trips or falls due to rider inattention. The U.S. Consumer Product Safety Commission estimates that 18,000 people are treated in hospital emergency rooms each year for injuries received in accidents on escalators and elevators, which the agency lumps together. Escalator industry experts said cracked steps are a relatively common problem on certain kinds of escalators. With 30,000 escalators in use around the country, each averaging 65 steps, "you're probably talking thousands of cracked steps" nationwide, said Carl White of Colorado Springs, Colo., a consultant who serves on the escalator industry's safety code committee. "When it comes to a cracked step, there is very little riders can do to protect themselves," he said. According to escalator inspectors and other industry experts, the cracked steps are most often found on escalators manufactured by Montgomery Elevator Co. and Westinghouse Elevator Corp., which was purchased in 1989 by Schindler Elevator Corp. Schindler officials did not return telephone calls. Tim Duin, Montgomery's vice president for risk management, said "it's not a safety hazard," but a maintenance issue. "I suppose it's no different than changing the oil in your car," Duin said: In properly maintained escalators, steps won't generally crack, and any that do will be detected and replaced, he said. "The point is," Duin said, "there have been no accidents or injuries resulting from this." All the injury cases found by the Free Press involved Westinghouse escalators, and the incidents are few, especially considering the millions of "people who ride escalators daily. But Dick Fleming, senior safety engineer for the state of California, said escalator owners and the riding public have just been lucky so far. Throughout the escalator industry, regular maintenance is being scaled back to cut costs, competition is fierce for maintenance contracts and companies are cutting corners on the work, he said. "If it continues this way, this is going to start to catch up with us." Blue Cross & Blue Shield of Michigan has sued Montgomery Elevator over the cracked steps in two Montgomery escalators at the insurer's machinery IJ Tfx Z';r.t!!S!!kh. I downtown building. According to the U.S. District Court suit, Montgomery maintained the escalators jinder contract from 1986 through January 1991, and never informed Blue Cross of any problems or potential problems with cracked steps. In February 1991, Blue Cross awarded the maintenance contract to Millar Elevator Service Co., which found cracks in 127 steps. The cracks were "a serious safety issue and placed employees, customers, independent agents and members of the public in danger," the



lawsuit alleges. Montgomery disagreed and refused to replace them. , Blue Cross is asking the court to force Montgomery to pay the \$50,000 cost of replacing the steps, done by Millar. The case could go to trial before the end of the year. Montgomery memos 'obtained by the Free Press show the company has heard about cracked stairs since at least 1981. In one 1989 memo, a Montgomery official advised the company's branch managers that Otis Elevator was finding cracks when doing maintenance on Montgomery equipment. Otis said the apparent "design-manufacturing flaws . . . represent a serious potential for injury or death to the riding public if the escalators are continued to be operated without appropriate repairs or replacement," according to the 1989 memo. Ken Giles, a spokesman for the U.S. Consumer Product Safety Commission, said the agency's compliance officers would be interested in reviewing the memos. By law, manufacturers are required to report their discovery of an unsafe or defective product within 24 hours. Failure to report could result in fines of up to \$1.25 million. Officials from the New York Port Authority are investigating why a step collapsed Oct. 6 on a Westinghouse escalator in the Delta Airlines Terminal at JFK International Airport. A woman on the step was trapped for more than two hours in the escalator machinery. She suffered cuts, but was spared worse injury because a bystander hit the escalator's emergency stop button. Cracked steps caused several people to be injured on Westinghouse escalators at the Beverly Center, a Los Angeles shopping mall, in 1992, said Harvey Ledesma, who is in charge

**The New York Times** | <https://nyti.ms/29rDkUI>

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ARCHIVES | 1989

## CONSUMER'S WORLD; Escalator Dangers Called Preventable

By MICHAEL DECOURCY HINDS

Yvonne L. Little, a 56-year-old Maryland resident, caught the belt of her raincoat in an escalator step when she was leaving a subway station in suburban Washington earlier this month. Ms. Little, unaware, rode to the top of the moving stairs. The machinery reeled in the belt and yanked her to the ground, breaking her wrist, dislocating her shoulder and stripping away most of her clothing before a transit worker shut off the escalator.

The accident was not a freak occurrence. Escalators of the Washington Metropolitan Area Transit Authority that were apparently in good working order killed a 40-year-old woman last month and a 3-year-old girl in 1985; in both cases the victims were strangled when their clothing became entangled in the machinery. This week the authority posted signs that direct passengers' attention to the emergency shut-off switches on escalators.

Most people ride escalators without a thought about danger. But every year escalators around the nation kill one or two people and injure about 7,500 others, mostly small children and elderly people, the industry estimates. Preventing Falls

Manufacturers say their safety record is excellent, given the billions of passengers carried by about 25,000 escalators in the United States every year. They also say that most accidents involve elderly people who lose their balance and fall while getting on or off escalators. But safety experts and lawyers for victims say many of the falls and nearly all other accidents could be prevented by minor modifications in equipment and by more thorough maintenance.



The Consumer Product Safety Commission, which has jurisdiction over escalators, says it does not have the resources to address products like escalators because of the relatively few deaths and serious injuries. The pressure on manufacturers to improve safety primarily comes from state and local building officials and insurance companies, from product-liability suits and publicity about accidents, said Douglas L. Noble, a spokesman for the agency.

The escalator industry essentially regulates itself by adopting voluntary safety standards, which most states and municipalities incorporate into their building codes. Most localities have building inspectors check escalators several times a year, but some governments require escalator owners to have maintenance companies do some or all of the inspections.

These self-inspections, which are fairly common in the building industry, cause conflicts of interest, said Hubert H. Hayes, an escalator consultant in Brooklyn. Escalator owners may be reluctant to shut escalators down for repairs, he said, and service companies may be reluctant to initiate repairs because under most maintenance contracts they must pay half the cost.

"It's a difficult business to be honest in," Mr. Hayes said, adding that he believes many accidents occur as a result of poor maintenance. Good for Sales There are no firm accident statistics because the Government does not separate escalator statistics from other injury data it collects, and manufacturers do not release the information because of their concern about product-liability suits, said Richard W. Heintschel, a spokesman for Schindler Elevator Corporation in Toledo, Ohio. Schindler, a subsidiary of Schindler Limited of Switzerland, and three other companies - Otis Elevator Corporation, Westinghouse Elevator Company, Montgomery Elevator Company - dominate the \$100 million-a-year American market.

Escalators were invented in the 1890's and first used at Coney Island. Sales surged when retailers saw that they helped sales by giving passengers a wide view of merchandise. Since most escalators are in stores, that is where most accidents occur.

On March 15, for example, Claire Bezy, 3, was playing with the moving handrail of an escalator at the Galleria, a shopping mall in White Plains. The handrail pulled her body against a plastic safety barrier, which gave way and caused the child to fall 33 feet to the first floor. She fractured her skull and broke several bones and has been hospitalized every since.



The White Plains Building Department reported that the safety barrier was missing three of four retaining bolts and other hardware used to secure the barrier to the escalator frame. The department did not say whether a properly installed barrier would have prevented the accident.

Escalator specialists criticize manufacturers for being slow to make safety improvements.

"I can tell you that safety is not the No. 1 priority of most manufacturers," said Carl J. White, an escalator safety-consultant and inventor of a device designed to prevent clothing and children's fingers from getting caught in the crack between stairs and side walls. "This is an industry whose major insurance company, Liberty Mutual Insurance Companies, has developed more safety improvements than all four domestic manufacturers put together."

Clark Slusher, Liberty Mutual's technical director for escalators, said "most escalator companies are slow to adopt new safety ideas" and that some Japanese escalators, which are not widely sold here yet, provide the most safety.

Mr. Heintschel of Schindler said companies could not prevent most accidents, which he said "involve negligence on the part of passengers, usually children under 7 and adults over 55."

"We're working on what we can do to make the passenger more alert," he said.

He is chairman of the escalator-code committee of the American National Standards Institute, which writes voluntary safety codes. The committee has written a new standard for testing the strength of steps, he said, and expects to publish others requiring modifications to emergency shut-off switches and devices that would automatically stop escalators when steps were out of alignment or missing. Another standard, intended to make it easier to get on and off escalators, would require them to have a flat, three-foot-long runway at top and bottom.

But officials at the New York City Department of Buildings, which proposed the standards to the institute two years ago, said the voluntary process is inadequate and slow.

"The institute wasn't very responsive to our proposals, so we've drafted legislation that will be ready to go to the City Council shortly," said Vahe A. Tiryakian, a department spokesman. Incentives to Change



Product-liability losses by the industry provide incentives to improve safety, said Jay W. Dankner, a Manhattan lawyer. He represents the family of Emma Niskala, 35, who died two years ago in a Brooklyn office building when an escalator step collapsed and she was pulled into the machinery's gear wheels.

Several days before the accident, a maintenance company had inspected the escalator and found that it had to be closed for repairs, Mr. Dankner said. But instead of shutting it down immediately, the service company mailed its recommendation to the building's owner -on the very day Mrs. Niskala was killed.

Mr. Dankner said the manufacturer, Westinghouse, and other defendants in the case were negotiating a settlement. Westinghouse and the other defendants would not comment. MAKING THE TRIP A SAFE ONE

Carl J. White, a consultant on escalator safety, offers these suggestions for safe rides:

- \* Look for the emergency shut-off switches, which are usually under the rail at both the top and bottom of the stairway.

- \* Older escalators have fewer safety features. Avoid them if you can; be vigilant if you cannot.

- \* If an escalator is noisy or wobbles, do not get on it. Report it to the local building department.

- \* Do not let children sit on the moving stairs, and carry toddlers. Avoid putting a stroller on an escalator, but if you have to, lift it when getting off.

- \* Keep away from an escalator's stationary sides, where shoes, shoelaces, coat belts and long skirts can get caught in the space adjacent to the steps.

- \* Help elderly people, particularly when they are getting on and off.

The TimesMachine archive viewer is a subscriber-only feature.

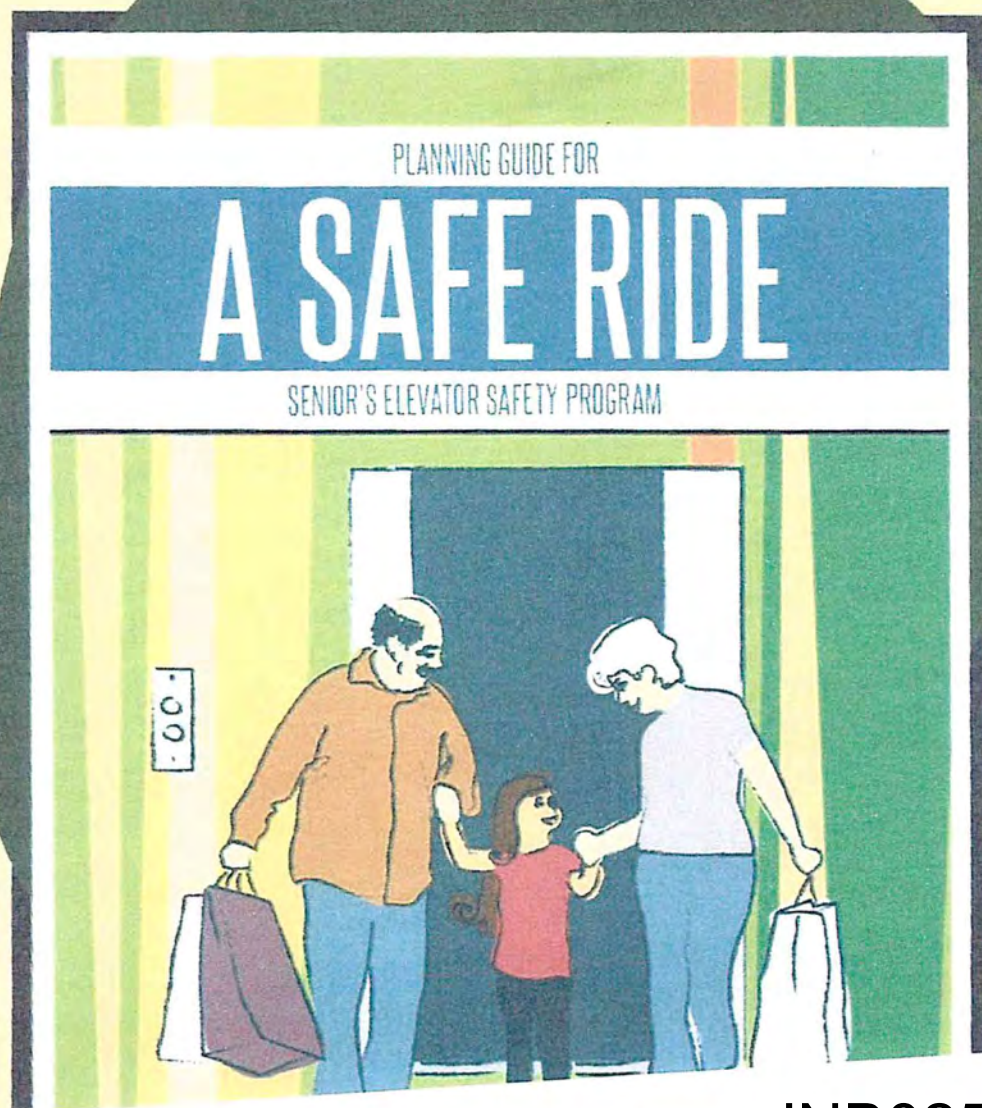
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A version of this article appears in print on April 29, 1989, on Page 1001052 of the National edition with the headline: CONSUMER'S WORLD; Escalator Dangers Called Preventable.



# SAFETY FOR OLDER ADULTS

"A Safe Ride" Elevator Safety Program for Seniors



JNB02534



## Escalators

There are over 33,000 escalators in the U.S. and Canada moving an estimated 90 billion passengers annually or 245 million passengers a day. The first escalator was designed by Jesse Reno in 1892. Originally, the escalator steps were made of wood. Statistically, escalators are safer than stairs. The number one type of escalator accident, as with stairs, is losing your balance and falling.

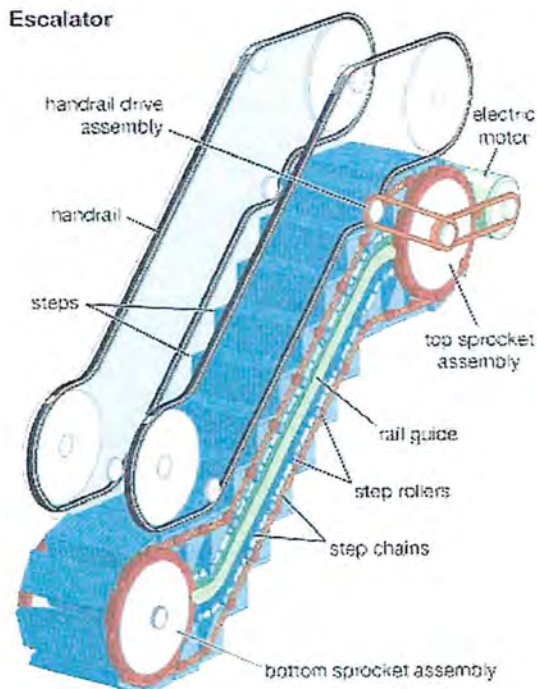


Fig. A. Diagram of how an escalator works



Emergency Stop Buttons can be located in a couple of different locations. Higher up where you can see them and on older units down below where they are more difficult to get to. In the event that someone needs help on an escalator help direct others to stop the unit by pressing the button.

Escalators have been designed with your safety in mind. Take a close look at the safety features built into all escalators.

The handrail and moving steps are designed to move at the same rate to help people keep their balance.

Handrails extend several feet into the entry to help passengers adjust to the correct speed before stepping on.



Brakes and a shutoff are automatically activated if the speed is too fast or too slow.

If there is an emergency push one of the Stop buttons located at the top or bottom landings of the escalator (at handrail or floor level).

Check to find the emergency stop button the next time you ride.

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Where do you encounter escalators in your daily or weekly routine?

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## Escalator Safety Tips

*Follow these safety tips and enjoy a safe ride!*

### Before entering escalators:

- No canes, walkers or wheeled vehicles.
- Don't ride barefoot or with loose shoelaces.
- Check the direction of the moving steps.

### When entering escalators:

- Step on and off promptly. Take extra care if you are wearing bifocals.
- Hold children or small packages firmly with one hand.
- Grasp the handrail as you step promptly onto the moving step.

### When riding escalators:

- Stand toward the middle of the step — away from the sides, and face forward.
- Keep loose clothing clear of steps and sides.
- Keep a firm grip on the handrail
- Reposition your hand slowly if the handrail moves ahead or behind the steps.
- Don't rest your handbag or parcels on the handrail.
- Pay attention. Don't window-shop while riding.
- Don't lean against the side.

### When exiting escalators:

- Don't hesitate. Step off promptly.
- Immediately move clear of the escalator exit area — don't stop to talk or look around. Other passengers may be behind you.

*These same safety tips apply to moving walks.*

## Easy to Be Safe

*You can help avoid accidents by using an elevator under certain conditions.*

*Put an X through the boxes below which show people who should **NOT** be using an escalator and who should use an elevator instead.*



**X = USE AN ELEVATOR INSTEAD OF ESCALATOR**

## Safety and Health

***Be aware of certain conditions and circumstances under which you should never use an escalator.***

Do you use a walker, cane or wheelchair?

Yes ☒ No ☐

Are you unsteady on your feet?

Yes ☒ No ☐

Do you take any medication that affects your eyesight, mobility or balance?

Yes ☐ No ☐

Do you have a medical condition that affects your eyesight, mobility or balance?

Yes ☒ No ☐

If you checked any items **Yes** — take an elevator instead of riding on an escalator or you may fall.

***There are occasions under which you must be extra careful when riding an escalator:***

- If you wear bifocals.
- When you are riding with young children.

**Never ride an escalator if you are wearing loose or long clothing or if you do not feel steady on your feet.**



### Escalator Trivia

*Know the facts. Be a safe rider. Find the one incorrect statement below.*

True False

- |                          |                          |   |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | 1. Statistically, there are fewer accidents on escalators than on stairs.                       |
| <input type="checkbox"/> | <input type="checkbox"/> | 2. The first escalator was designed by Jesse Reno in 1892.                                      |
| <input type="checkbox"/> | <input type="checkbox"/> | 3. In an emergency, anyone near the escalator can press the <i>Stop</i> button.                 |
| <input type="checkbox"/> | <input type="checkbox"/> | 4. Originally, escalator steps were made of plastic — not metal.                                |
| <input type="checkbox"/> | <input type="checkbox"/> | 5. If someone is using a walker or a cane, he or she should use an elevator — not an escalator. |
| <input type="checkbox"/> | <input type="checkbox"/> | 6. As you exit an escalator, you should step off promptly and move clear of it at once.         |
| <input type="checkbox"/> | <input type="checkbox"/> | 7. Never balance a large package on the handrail of an escalator.                               |

*Answers: 1. True | 2. True | 3. True | 4. False | 5. True | 6. True | 7. True*



### Spread the Word

*List 3 things you learned and 3 people with whom you can share information on elevator and escalator safety.*

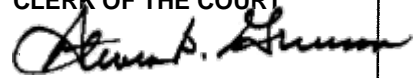
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### Disclaimer

*Although the information and recommendations contained in this publication have been compiled from sources believed to be reliable, the National Safety Council and the Elevator Escalator Safety Foundation make no guarantee as to, and assumes no responsibility for, the correctness, sufficiency or completeness of such information or recommendations. Other or additional safety measures may be required under particular circumstances.*



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THYSSENKRUPP ELEVATOR CORPORATION

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

CASE NO.: A-16-739887-C

DEPT. NO.: XXXI

DATE OF HEARING: 3/28/19  
TIME OF HEARING: 10:00 a.m.

GNL, CORP., a Nevada corporation;

Third-Party Plaintiff,

vs.

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

Third-Party Defendants.

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

**JNB02542**

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

5 Plaintiffs' opposition to the instant motion does not cite any case authorities which hold that  
6 it is proper for a plaintiff to intimate or argue that a defendant is "avoiding responsibility" or to  
7 utilize the "reptile theory" by arguing that a defendant has violated general "safety rules." While  
8 Plaintiffs generally agree that the parties should not "disparage" each other, Plaintiffs apparently are  
9 determined to disparage TKE for defending itself in court.

10 While Plaintiffs argue that TKE did not present any authorities, the moving papers are replete  
11 with cited case law standing for the propositions in the motion. *See United States v. Derosa*, 548  
12 F.2d 464 (3rd Cir. 1977); *United States v. Dinitz*, 424 U.S. 600 (1976); *Arizona v. Washington*, 434  
13 U.S. 497, 54 L.Ed. 2d 717 (1978):

14 As the Defendant has a fundamental right to defend itself, and to confront the witnesses  
15 against it, no attorney may make a disparaging remark intimating that Defendant is "avoiding  
responsibility" by exercising its fundamental rights.

16 Apparently, Plaintiffs' counsel is not familiar with the Reptile Theory although the Court  
17 likely is. In short, the theory prays upon ideas of self-preservation, fear, and group survival, all  
18 designed to inflame a jury sufficiently to award excessive damages.

19 As to utilization of "safety rules," it is improper for Plaintiffs to appeal to the fear, emotion,  
20 and anger of jurors, and to tell jurors to "protect the community" by making an example of the  
21 Defendant. Multiple courts have prohibited arguments that ask a jury to "send a message to a  
22 defendant" or to "act as the conscience of the community." *Westbrook v. General Tire & Rubber*  
23 *Co.*, 754 F.2d 1233, 1268 (5th Cir. 1985); *U.S. v. Johnson*, 968 F.2d 768 (8th Circuit 1992)  
24 (prohibiting unduly inflammatory and prejudicial "conscience of the community arguments"); *U.S.*  
25 *v. Solivan*, 937 F.2d 1146 (6th Cir. 1991) (recognizing as improper any "conscience of the  
26 community" argument that is designed to inflame or incite the jury, and reversing conviction based  
27 on counsel's closing argument urging jurors to "send a message" because it appealed to the jurors'  
28 emotions, passions, and prejudices); *U.S. v. Monaghan*, 741 F.2d 1434 (D.C. Cir. 1984) ("A

1 prosecutor may not urge jurors to convict a criminal defendant in order to protect community value,  
2 preserve civil order, and deter future lawbreaking.”); *U.S. v. Barlin*, 686 F.2d 81 (2nd Cir. 1982)  
3 (condemning this genre of comments and arguments as designed to divert, rather than focus, the jury  
4 upon the evidence). Far from failing to provide authorities, Defendant’s motion provides the only  
5 applicable authority governing the admissibility of such evidence and arguments.

6 A lawyer is not, under any circumstances, permitted to make arguments designed to appeal  
7 to jurors’ emotion or sympathy. Any appeal to a jury’s emotional or sympathetic tendencies, rather  
8 than an appeal to a jury’s intellectual ability to evaluate evidence, is improper. *Krause, Inc. v. Little*,  
9 117 Nev. 929, 935, 34 P.3d 566 (2001). Yet, this is precisely the stated purpose of Reptile: to  
10 stealthily appeal to fear and emotion. Such tactics must be strictly prohibited in this matter.

11 The Nevada Supreme Court, and numerous other courts, have prohibited “golden rule”  
12 arguments in both criminal and civil settings. *Lioce v. Cohen*, 124 Nev. 1, 174 P.3d 970 (2008); *see*  
13 *also State v. McDaniel*, 320 S.C. 33, 462 S.E.2d 882 (Ct.App.1995) (reversing conviction and  
14 remanding for new trial in sexual assault/robbery case where solicitor used “you” or a form of “you”  
15 some forty-five times, asking the jury to put themselves in place of the victim); *Forrestal v.*  
16 *Magendantz*, 848 F.2d 303, 309 (1st Cir.1988) (stating golden rule argument is universally  
17 condemned); *U.S. v. Teslim*, 869 F.2d 316,328 (7th Cir.1989) (holding it is improper for prosecutor  
18 to urge jurors to place themselves in party’s shoes); *State v. McHenry*, 276 Kan. 513, 78 P.3d 403,  
19 410 (2003) (golden rule arguments are not allowed because they encourage jury to depart from  
20 neutrality and decide case on improper basis of personal interest and bias); *Caudill v.*  
21 *Commonwealth*, 120 S.W.3d 635, 675 (Ky.2003) (prohibited golden rule argument is one in which  
22 prosecutor asks jurors to imagine themselves or someone they care about in position of crime  
23 victim); *State v. Carlson*, 559 N.W.2d 802,811-812 (N.D.1997) (golden rule argument is improper  
24 and should be avoided in civil and criminal actions); *Hayes v. State*, 236 Ga.App. 617, 512 S.E.2d  
25 294, 297 (1999) (an improper golden rule argument asks jurors to consider a case, not objectively  
26 as fair and impartial jurors, but rather from biased, subjective standpoint of litigant or victim).

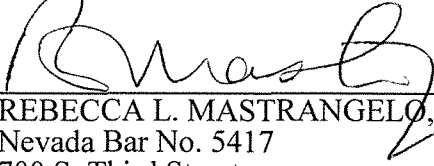
27 Plaintiffs’ opposition suggests that they may intend to make arguments based upon improper  
28 emotional appeal. The very goal of the Reptile strategy is to overgeneralize a very broad safety rule

1 to the point that it is no longer directly relevant solely to the facts of the particular case at hand.  
2 Reptile questions that are hypothetical and generalized are not relevant to the issue of whether  
3 Plaintiffs' injuries were caused by Defendant's negligence.

4 Because arguments based on theories of responsibility avoidance, Reptile logic and golden  
5 rule are improper, Defendant's motion to preclude the same should be granted.

6 DATED this 20th day of February, 2019.

7 ROGERS, MASTRANGELO, CARVALHO  
8 & MITCHELL

9   
10 REBECCA L. MASTRANGELO, ESQ.  
11 Nevada Bar No. 5417


12 700 S. Third Street  
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14 Attorney for Defendant/Third-Party Defendant  
15 THYSSENKRUPP ELEVATOR CORPORATION  
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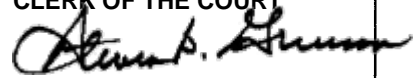
1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5(a), E.D.C.R. 7.26(a), and Rule 9 of the N.E.F.C.R. I hereby certify  
3 that I am an employee of Rogers, Mastrangelo, Carvalho & Mitchell, and on the 28 day of  
4 February, 2019, a true and correct copy of the foregoing **DEFENDANT/THIRD PARTY**  
5 **DEFENDANT THYSSENKRUPP ELEVATOR CORPORATION'S REPLY IN SUPPORT**  
6 **OF MOTION IN LIMINE #3 RE: RESPONSIBILITY AVOIDANCE AND REPTILE**  
7 **THEORY ARGUMENTS** was served via electronic means with the Eighth Judicial District Court,  
8 addressed as follows, upon the following counsel of record:

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

13 Annalisa N. Grant, Esq.  
14 Alexandra B. McLeod, Esq.  
15 GRANT & ASSOCIATES  
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Las Vegas, Nevada 89113  
Attorneys for Defendant/Third-Party Plaintiff

16  
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20 An employee of ROGERS, MASTRANGELO, CARVALHO  
& MITCHELL  
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THYSSENKRUPP ELEVATOR CORPORATION

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

GNL, CORP., a Nevada corporation;

Third-Party Plaintiff,

vs.

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

Third-Party Defendants.

CASE NO.: A-16-739887-C

DEPT. NO.: XXXI

DATE OF HEARING: 3/28/19  
TIME OF HEARING: 10:00 a.m.

**DEFENDANT/THIRD PARTY DEFENDANT THYSSENKRUPP ELEVATOR  
CORPORATION'S REPLY IN SUPPORT OF MOTION IN LIMINE #4  
RE: IMPROPER VOIR DIRE**

**JNB02547**

1 Defendant/Third-Party Defendant, thyssenkrupp Elevator Corporation, by and through its  
2 attorney of record, REBECCA L. MASTRANGELO, ESQ., of the law firm of ROGERS,  
3 MASTRANGELO, CARVALHO & MITCHELL, hereby submits its Reply In Support of its Motion  
4 in Limine #4 re: Improper Voir Dire.

5 Plaintiffs' opposition argues that Defendant's motion failed to explain why Defendant's list  
6 of improper voir dire questions from *United States v. Serafini*, 57 F. Supp. 2d 108 (D. Pa. 1999)  
7 should be prohibited. Plaintiffs' opposition also argues that specific verdict amounts are allowable  
8 questions during voir dire.

9 Plaintiffs' opposition ignores the clear directive of NRCP 47(a), which allows for  
10 examination of potential jurors within the discretion of the trial judge. "The purpose of voir dire  
11 examination is to determine whether a prospective juror can and will render a fair and impartial  
12 verdict on the evidence presented and apply the facts, as he or she finds them, to the law given."  
13 *Whitlock v. Salmon*, 104 Nev. 24, 27, 752 P.2d 210 (1988). Voir dire must be limited to those  
14 questions which will determine whether the juror can be unbiased and impartial.

15 The trial judge has a duty to restrict attorney-conducted voir dire to its permissible  
16 scope; obtaining an impartial jury. NRS 16.030(6) clearly contemplates that the trial  
17 judge will supervise the process and that he may reasonably restrict supplemental  
18 examination of prospective jurors by the litigants' counsel.

18 *Id* at 28.


19 Plaintiffs' opposition does not explain how questions concerning voter registration, television  
20 shows, or psychological questions can determine whether a juror can be impartial. The purpose of  
21 asking such questions is to determine the psychological profile of a juror (whether conservative or  
22 liberal) in order to place a particular type of juror on the panel. The purpose of the voir dire is to  
23 obtain impartial jurors, not liberal or conservative jurors. If a question posed during voir dire does  
24 not determine whether the juror can be impartial, but instead goes to profiling, the question is  
25 improper. See *Schlinsky v. United States*, 379 F.2d 735, 738 (1<sup>st</sup> Cir. 1967) ("The purpose of the voir  
26 dire is to ascertain disqualifications, not to afford individual analysis in depth to permit a party to  
27 choose a jury that fits into some mold that [counsel] believes appropriate for [counsel's] case".)  
28



1 As to verdict amounts, the motion argued that it is improper, under Nevada law, to ask  
2 repetitive questions regarding a potential verdict. See *Khoury v. Seastrand*, 132 Nev. Adv. Op. 52  
3 (2016) citing *Trautman v. New Rockford-Fessenden Co-op Transp. Ass'n*, 181 N.W.2d 754, 759  
4 (N.D.1970); (“It is well within the trial court's discretion to sustain objections to such questions.”).  
5 Defendant brings this motion to avoid having to interrupt voir dire with objections and seeks an  
6 order from the Court to preclude counsel from conducting voir dire with questions that are repetitive,  
7 arguments of the case or design to profile.

8 DATED this 28<sup>th</sup> day of February, 2019.

9 ROGERS, MASTRANGELO, CARVALHO  
10 & MITCHELL

11   
12 REBECCA L. MASTRANGELO, ESQ.

13 Nevada Bar No. 5417

14 700 S. Third Street

15 Las Vegas, Nevada 89101

16 Attorney for Defendant/Third-Party Defendant  
17 THYSSENKRUPP ELEVATOR CORPORATION  
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5(a), E.D.C.R. 7.26(a), and Rule 9 of the N.E.F.C.R. I hereby certify  
3 that I am an employee of Rogers, Mastrangelo, Carvalho & Mitchell, and on the 28 day of  
4 February, 2019, a true and correct copy of the foregoing **DEFENDANT/THIRD PARTY**  
5 **DEFENDANT THYSSENKRUPP ELEVATOR CORPORATION'S REPLY IN SUPPORT**  
6 **OF MOTION IN LIMINE #4 RE: IMPROPER VOIR DIRE** was served via electronic means  
7 with the Eighth Judicial District Court, addressed as follows, upon the following counsel of record:  
8

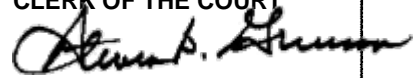
9 Mohamed A. Iqbal, Jr., Esq.  
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13 Attorneys for Plaintiffs

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

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An employee of ROGERS, MASTRANGELO, CARVALHO  
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THYSSENKRUPP ELEVATOR CORPORATION

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

GNL, CORP., a Nevada corporation;

Third-Party Plaintiff,

vs.

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

Third-Party Defendants.

CASE NO.: A-16-739887-C

DEPT. NO.: XXXI

Date of Hearing: 3/28/19

Time of Hearing: 10:00 a.m.

**DEFENDANT/THIRD PARTY DEFENDANT THYSSENKRUPP ELEVATOR**  
**CORPORATION'S REPLY IN SUPPORT OF MOTION IN LIMINE #6 RE:**  
**EXCLUSION OF EVIDENCE OF SUBSEQUENT INCIDENTS**

**JNB02551**

1 Defendant/Third-Party Defendant, thyssenkrupp Elevator Corporation, by and through its  
2 attorney of record, REBECCA L. MASTRANGELO, ESQ., of the law firm of ROGERS,  
3 MASTRANGELO, CARVALHO & MITCHELL, hereby submits its Reply in Support of Motion  
4 in Limine #6 re: Exclusion of Evidence of Subsequent Incidents.

5 The incident at issue in this litigation occurred on May 12, 2015 and involved an  
6 intoxicated, elderly man, walking with a cane and having a history of falls, getting onto moving  
7 escalator stairs while his family ran ahead of him, unconcerned with his intoxication or  
8 difficulty walking. Within seconds of Joe Brown getting onto the escalator, he fell and  
9 sustained serious injury. The entire event is captured on video.

10 According to documentation produced by Golden Nugget, another intoxicated couple,  
11 Yolanda R. Moreno and Hector Ruelas, fell going down the same escalator on or about May 25,  
12 2015. The moving papers argued for the exclusion of this subsequent incident based upon the  
13 fact that it is not relevant to show notice, knowledge or negligence. Plaintiffs' opposition seems  
14 to agree with this proposition but argues that the evidence of a subsequent fall by two other  
15 patrons of the Golden Nugget is somehow admissible on the issue as to whether or not there  
16 was a dangerous condition pertaining to the escalator on the prior date. This is nonsensical for  
17 a number of reasons.

18 First of all, the subsequent couple who fell on the escalator did not file suit and there has  
19 been no evidence presented as to the cause of their fall. Documents that Golden Nugget  
20 produced, confidentially, reflect that these individuals were intoxicated. There is no evidence  
21 as to what caused them to fall. Thus, even if there were some limited purpose for the admission  
22 of this "evidence," which Plaintiffs have not articulated, and which thyssenkrupp cannot figure  
23 out, it would still not be relevant to what occurred on May 12, 2015, almost two weeks earlier.

24 In addition, TKE argued in the moving papers that Plaintiffs waited until the last day of  
25 discovery to name these witnesses; however, based upon the electronic service stamp, these  
26 witnesses were actually disclosed by Plaintiffs two days after the close of discovery. *See*  
27 *attached Exhibit "A."* Therefore, their disclosure was untimely and, even if disclosed two days  
28 earlier, Defendants would have had no ability to take their depositions to determine if they had

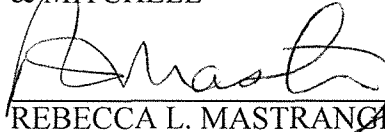
1 anything relevant to say. Plaintiffs' generic description that these witnesses are expected to  
2 testify as to their "knowledge and experience as a patron using the subject escalator at the  
3 Golden Nugget Laughlin before, at the time of, and after the subject incident" (*Id.*) is  
4 insufficient to establish relevance (and is also inaccurate as these witnesses were not using the  
5 escalator "at the time of" the subject incident).

6 Finally, and perhaps most importantly, the crux of thyssenkrupp's defense does not  
7 dispute that there were cracks in some of the steps on the down escalator at the time Mr. Brown  
8 fell. In fact, as Plaintiffs' opposition points out, Christopher Dutcher testified as to his opinion  
9 that the cracks in the steps existed prior to Mr. Brown's fall. (Exhibit "A" to Plaintiffs'  
10 Opposition at page 175, lines 2 to 5.) thyssenkrupp remains of the position that there is no  
11 evidence (1) that Joe Brown was on a cracked step at the time he fell; (2) that cracks in  
12 escalator steps could cause shaking or instability of the steps; and (3) that any cracks in the  
13 steps which may have existed on May 12, 2015, caused the intoxicated, cane carrying, and fall-  
14 prone Mr. Brown to fall as soon as he stepped on the first escalator step.

15 Based upon the foregoing, Defendant's motion should be granted and these witnesses  
16 should be precluded from testifying at the time of trial.

17 DATED this 28<sup>th</sup> day of February, 2019.

18 ROGERS, MASTRANGELO, CARVALHO  
19 & MITCHELL

20 

21 REBECCA L. MASTRANGELO, ESQ.

22 Nevada Bar No. 5417

23 700 S. Third Street

24 Las Vegas, Nevada 89101

25 Attorney for Defendant/Third-Party Defendant

26 THYSSENKRUPP ELEVATOR CORPORATION  
27  
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5(a), E.D.C.R. 7.26(a), and Rule 9 of the N.E.F.C.R. I hereby certify  
3 that I am an employee of Rogers, Mastrangelo, Carvalho & Mitchell, and on the 29 day of  
4 February, 2019, a true and correct copy of the foregoing **DEFENDANT/THIRD PARTY**  
5 **DEFENDANT THYSSENKRUPP ELEVATOR CORPORATION'S REPLY IN SUPPORT**  
6 **OF MOTION IN LIMINE #6 RE: EXCLUSION OF EVIDENCE OF SUBSEQUENT**  
7 **INCIDENTS** was served via electronic means with the Eighth Judicial District Court, addressed as  
8 follows, upon the following counsel of record:

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

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

21  
22  
23  
24  
25  
26  
27  
28  
  
An employee of ROGERS, MASTRANGELO, CARVALHO  
& MITCHELL

EXHIBIT A

JNB02555

**SLWD**

IQBAL LAW PLLC

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

Christopher Mathews (NSB #10674)

101 Convention Center Dr., Suite 1175

Las Vegas, Nevada 89109

1-(702) 750-2950 (Tel); 1-(702) 825-2841 (V-Fax)

info@ilawlv.com

*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.;  
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' NINTH SUPPLEMENTAL  
LIST OF WITNESSES AND DOCUMENTS  
PURSUANT TO NRCP 16.1**

**AND ALL RELATED CASES**

Pursuant to NRCP 16.1, Plaintiffs Joe N. Brown and Nettie J. Brown hereby submit their Seventh Supplemental List of Witnesses and Documents Pursuant to NRCP 16.1, as follows (\*updates in **bold**). These disclosures are subject to supplementation as discovery and investigation continues.

Witnesses:

1. Joe N. Brown  
c/o Iqbal Law PLLC  
101 Convention Center Drive, Suite 1175  
Las Vegas, Nevada 89109

**PLAINTIFFS' NINTH SUPPLEMENTAL LIST OF WITNESSES AND DOCUMENTS  
PURSUANT TO NRCP 16.1**

1 of 10



1 Joe N. Brown is expected to testify to his knowledge of the facts and circumstances  
2 relating to the allegations in the pleadings.

- 3 2. Nettie J. Brown  
4 c/o Iqbal Law PLLC  
5 101 Convention Center Drive, Suite 1175  
6 Las Vegas, Nevada 89109

7 Nettie J. Brown is expected to testify to her knowledge of the facts and circumstances  
8 relating to the allegations in the pleadings.

- 9 3. Shalonda Mollette  
10 c/o Iqbal Law PLLC  
11 101 Convention Center Drive, Suite 1175  
12 Las Vegas, Nevada 89109

13 Shalonda Mollette is expected to testify to her knowledge of the facts and circumstances  
14 surrounding Joe N. Brown's fall.

- 15 4. Clay Mollette  
16 c/o Iqbal Law PLLC  
17 101 Convention Center Drive, Suite 1175  
18 Las Vegas, Nevada 89109

19 Clay Mollette is expected to testify to his knowledge of the facts and circumstances  
20 surrounding Joe N. Brown's fall.

- 21 5. Mary Brown  
22 c/o Iqbal Law PLLC  
23 101 Convention Center Drive, Suite 1175  
24 Las Vegas, Nevada 89109

25 Mary Brown is expected to testify to her knowledge of the facts and circumstances  
26 surrounding Joe N. Brown's fall.

- 27 6. Dr. C. Stephen Carr, PhD.  
28 Technology Litigation Corporation  
c/o Iqbal Law PLLC  
101 Convention Center Drive, Suite 1175  
Las Vegas, NV 89109

Dr. Carr is expected to testify as to his expert knowledge of escalators and the subject  
escalator at the Golden Nugget Laughlin before, at the time of, and after the subject  
incident.

7. Don Hartman

PLAINTIFFS' NINTH SUPPLEMENTAL LIST OF WITNESSES AND DOCUMENTS  
PURSUANT TO NRCp 16.1

1 Golden Nugget Laughlin  
2 c/o Alexandra B. McLeod, Esq.  
3 GRANT & ASSOCIATES  
4 7455 Arroyo Crossing Parkway, Suite 300  
5 Las Vegas, Nevada 89113

6 Don Hartman is expected to testify regarding the subject escalator at the Golden Nugget  
7 Laughlin – and management decisions regarding said escalator – before, at the time of,  
8 and after the subject incident; and, generally, discovery in this litigation.

- 9 8. Irais Mendoza, Purchasing Buyer  
10 Golden Nugget Laughlin  
11 c/o Alexandra B. McLeod, Esq.  
12 GRANT & ASSOCIATES  
13 7455 Arroyo Crossing Parkway, Suite 300  
14 Las Vegas, Nevada 89113

15 Irais Mendoza is expected to testify regarding the subject escalator at the Golden Nugget  
16 Laughlin – and management decisions regarding said escalator – before, at the time of,  
17 and after the subject incident; and, generally, discovery in this litigation.

- 18 9. Person Most Knowledgeable and/or Custodian of Records  
19 Golden Nugget Laughlin  
20 c/o Alexandra B. McLeod, Esq.  
21 GRANT & ASSOCIATES  
22 7455 Arroyo Crossing Parkway, Suite 300  
23 Las Vegas, Nevada 89113

24 These witnesses are expected to testify regarding the subject escalator at the Golden  
25 Nugget Laughlin – and management decisions regarding said escalator – before, at the  
26 time of, and after the subject incident; and, generally, discovery in this litigation.

- 27 10. Person Most Knowledgeable and/or Custodian of Records  
28 LANDRY'S, INC.  
c/o Alexandra B. McLeod, Esq.  
GRANT & ASSOCIATES  
7455 Arroyo Crossing Parkway, Suite 300  
Las Vegas, Nevada 89113

These witnesses are expected to testify regarding the subject escalator at the Golden  
Nugget Laughlin – and management decisions regarding said escalator – before, at the  
time of, and after the subject incident; and, generally, discovery in this litigation.

11. Person Most Knowledgeable and/or Custodian of Records

PLAINTIFFS' NINTH SUPPLEMENTAL LIST OF WITNESSES AND DOCUMENTS  
PURSUANT TO NRCP 16.1

1 GOLDEN NUGGET, INC.  
2 c/o Alexandra B. McLeod, Esq.  
3 GRANT & ASSOCIATES  
4 7455 Arroyo Crossing Parkway, Suite 300  
5 Las Vegas, Nevada 89113

6 These witnesses are expected to testify regarding the subject escalator at the Golden  
7 Nugget Laughlin – and management decisions regarding said escalator – before, at the  
8 time of, and after the subject incident; and, generally, discovery in this litigation.

9 12. Christopher Dutcher  
10 THYSSENKRUPP ELEVATOR CORPORATION  
11 c/o Rebecca L. Mastrangelo, Esq.  
12 700 S. Third Street  
13 Las Vegas, Nevada 89101

14 Christopher Dutcher is expected to testify regarding the subject escalator and  
15 repair/maintenance/replacement/work order/modernization/safety issues related thereto,  
16 and this litigation, generally – including discovery issues.

17 13. Larry Panaro  
18 THYSSENKRUPP ELEVATOR CORPORATION  
19 c/o Rebecca L. Mastrangelo, Esq.  
20 700 S. Third Street  
21 Las Vegas, Nevada 89101

22 Larry Panaro is expected to testify regarding the subject escalator and  
23 repair/maintenance/replacement/work order/modernization/safety issues related thereto,  
24 and this litigation, generally – including discovery issues.

25 14. Richard Smith, Risk Manager  
26 Golden Nugget Laughlin  
27 c/o Alexandra B. McLeod, Esq.  
28 GRANT & ASSOCIATES  
7455 Arroyo Crossing Parkway, Suite 300  
Las Vegas, Nevada 89113

Richard Smith is expected to testify regarding the subject escalator at the Golden Nugget  
Laughlin – and management decisions regarding said escalator – before, at the time of,  
and after the subject incident; and, generally, discovery in this litigation.

15. Clint Belka, VP of Engineering  
Golden Nugget Laughlin  
c/o Alexandra B. McLeod, Esq.  
GRANT & ASSOCIATES

PLAINTIFFS' NINTH SUPPLEMENTAL LIST OF WITNESSES AND DOCUMENTS  
PURSUANT TO NRCP 16.1

1 7455 Arroyo Crossing Parkway, Suite 300  
2 Las Vegas, Nevada 89113

3 Clint Belka is expected to testify regarding the subject escalator at the Golden Nugget  
4 Laughlin – and management decisions regarding said escalator – before, at the time of,  
5 and after the subject incident; and, generally, discovery in this litigation.

6 16. Jim MacDavid, Service Operations Manager  
7 THYSSENKRUPP ELEVATOR CORPORATION  
8 c/o Rebecca L. Mastrangelo, Esq.  
9 700 S. Third Street  
10 Las Vegas, Nevada 89101

11 Jim MacDavid is expected to testify regarding the subject escalator and  
12 repair/maintenance/replacement/work order/modernization/safety issues related thereto,  
13 and this litigation, generally – including discovery issues.

14 17. Scott Olsen, Service Superintendent  
15 THYSSENKRUPP ELEVATOR CORPORATION  
16 c/o Rebecca L. Mastrangelo, Esq.  
17 700 S. Third Street  
18 Las Vegas, Nevada 89101

19 Scott Olsen is expected to testify regarding the subject escalator and  
20 repair/maintenance/replacement/work order/modernization/safety issues related thereto,  
21 and this litigation, generally – including discovery issues.

22 18. Paul Hamrick, Service Superintendent  
23 THYSSENKRUPP ELEVATOR CORPORATION  
24 c/o Rebecca L. Mastrangelo, Esq.  
25 700 S. Third Street  
26 Las Vegas, Nevada 89101

27 Paul Hamrick is expected to testify regarding the subject escalator and  
28 repair/maintenance/replacement/work order/modernization/safety issues related thereto,  
and this litigation, generally – including discovery issues.

19. Dr. Srinivas Nalamachu, MD  
Mid America PolyClinic  
c/o Iqbal Law PLLC  
101 Convention Center Drive, Suite 1175  
Las Vegas, NV 89109

Dr. Srinivas Nalamachu is expected to testify as to his expert knowledge in pain  
management before, at the time of, and after the subject incident.

PLAINTIFFS' NINTH SUPPLEMENTAL LIST OF WITNESSES AND DOCUMENTS  
PURSUANT TO NRCP 16.1

5 of 10

JNB02560

1       **20. Dr. William LaCost, DO**  
2       LV VA Medical Center; Specialty (II) Clinic  
3       c/o Iqbal Law PLLC  
4       101 Convention Center Drive, Suite 1175  
5       Las Vegas, NV 89109

6       Dr. William LaCost is expected to testify as to his expert knowledge of diagnosis, care,  
7       and treatment of the musculoskeletal system before, at the time of, and after the subject  
8       incident.

9       **21. Sheila N. Swett**  
10      Swett & Associates  
11      c/o Iqbal Law PLLC  
12      101 Convention Center Drive, Suite 1175  
13      Las Vegas, NV 89109

14      Ms. Sheila Swett is expected to testify as to her expert knowledge of escalators and the  
15      subject escalator at the Golden Nugget Laughlin before, at the time of, and after the  
16      subject incident.

17      **22. Yolanda R. Moreno**  
18      Victim/Potential Victim of Escalator Malfunction  
19      7055 Selma Avenue  
20      Rancho Cucamonga, CA 91701

21      Yolanda R. Moreno is expected to testify to her knowledge and experience as a  
22      patron using the subject escalator at the Golden Nugget Laughlin before, at the time  
23      of, and after the subject incident.

24      **23. Hector Ruelas**  
25      Victim/Potential Victim of Escalator Malfunction  
26      7055 Selma Avenue  
27      Rancho Cucamonga, CA 91701

28      Hector Ruelas is expected to testify to her knowledge and experience as a patron  
using the subject escalator at the Golden Nugget Laughlin before, at the time of, and  
after the subject incident.

**24. Elliott W. Taliaferro, Esq.**  
Landry's  
c/o Alexandra B. McLeod, Esq.  
**GRANT & ASSOCIATES**  
7455 Arroyo Crossing Parkway, Suite 300  
Las Vegas, Nevada 89113

1 Mr. Taliaferro is expected to testify regarding the subject escalator and  
2 repair/maintenance/replacement/work order/modernization/safety issues related  
3 thereto, and this litigation, generally – including discovery issues.

4 **25. Julie M. Moeller, Esq.**

5 Landry's  
6 c/o Alexandra B. McLeod, Esq.  
7 GRANT & ASSOCIATES  
8 7455 Arroyo Crossing Parkway, Suite 300  
9 Las Vegas, Nevada 89113

10 Ms. Moeller is expected to testify regarding the subject escalator and  
11 repair/maintenance/replacement/work order/modernization/safety issues related  
12 thereto, and this litigation, generally – including discovery issues.

13 **26. Person Most Knowledgeable and/or Custodian of Records**

14 Nevada Gaming Control Board  
15 555 East Washington Avenue, #2600  
16 Las Vegas, NV 89101

17 This witness is expected to testify regarding the Golden Nugget Laughlin Casino.

18 **27. Person Most Knowledgeable and/or Custodian of Records**

19 Nevada Gaming Commission  
20 555 East Washington Avenue, #2600  
21 Las Vegas, NV 89101

22 This witness is expected to testify regarding the Golden Nugget Laughlin Casino.

23 **28. Person Most Knowledgeable and/or Custodian of Records, IT**

24 Golden Nugget Inc d/b/a Golden Nugget Laughlin  
25 2300 S Casino Drive  
26 Laughlin, NV 89029

27 This witness is expected to testify regarding Electronically Stored Information  
28 (“ESI”), communications, correspondence, documents, and evidence relating to the  
subject escalator.

**29. Person Most Knowledgeable and/or Custodian of Records, IT**

Landry's  
2300 S Casino Drive  
Laughlin, NV 89029

This witness is expected to testify regarding ESI, communications, correspondence,  
documents, and evidence relating to the subject escalator.

PLAINTIFFS' NINTH SUPPLEMENTAL LIST OF WITNESSES AND DOCUMENTS  
PURSUANT TO NRCP 16.1



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ILAW LV

**30. Person Most Knowledgeable and/or Custodian of Records, IT  
GNL, CORP.  
2300 S Casino Drive  
Laughlin, NV 89029**

**This witness is expected to testify regarding ESI, communications, correspondence, documents, and evidence relating to the subject escalator.**

**31. Person Most Knowledgeable and/or Custodian of Records  
Thyssenkrupp Elevator Corp.  
5440 South Procyon Street B  
Las Vegas, NV 89118**

**This witness is expected to testify regarding ESI, communications, correspondence, documents, and evidence relating to the subject escalator.**

Plaintiffs reserve the right to:

- (i) name any additional witnesses or identify expert witnesses as investigation and discovery continue and reserve the right to call any witness or expert witness named by Defendants for purposes of rebuttal, impeachment, or any other purpose;
- (ii) examine and/or call any witness, including expert witnesses, disclosed by any party to this action;
- (iii) add/call any witnesses for the purposes of impeachment;
- (iv) add/call any witnesses for purposes of rebuttal; and
- (v) add/call any witnesses who have been deposed or noticed for deposition.

**LIST OF DOCUMENTS**

| # | DOCUMENT DESCRIPTION   | BATES #        |
|---|--|----------------|
| 1 | Division of Industrial Relations, Mechanical Compliance Section, Golden Nugget—Laughlin Escalator Records, Date: January 1, 2005-May31, 2015 | JNB_000001-102 |
| 2 | Joe N. Brown Medical Records, Western Arizona Regional Medical Center, CT Results, Date: May 13, 2015  | JNB_000103-107 |

|    |   |                 |
|----|---|-----------------|
| 3  | Joe N. Brown Medical Records, Western Arizona Regional Medical Center, Date: May 12, 2015-May 13, 2015                                      | JNB_000108-136  |
| 4  | Joe N. Brown Medical Records, Western Arizona Regional Medical Center, Date: May 12, 2015-May 13, 2015                                      | JNB_000137-162  |
| 5  | Joe N. Brown Medical Records, Sunrise Hospital and Medical Center, Date: May 13, 2015-May 15, 2015  | JNB_000163-409  |
| 6  | Joe N. Brown Medical Records, Southern Nevada VA, Date: May 13, 2015-June 14, 2016  | JNB_000410-1477 |
| 7  | Joe N. Brown Medical Records, Southern Nevada VA, Scanned Records, Date: May 11, 2015-May 13, 2016  | JNB_001478-1667 |
| 8  | Desert Surgical Associates Medical Invoice, Date: August 25, 2015   | JNB_001668      |
| 9  | Sunrise Hospital Medical Invoice, Date: August 20, 2015   | JNB_001669      |
| 10 | Culinary Health Fund Medical Invoices, Date: July 21, 2015  | JNB_001670-1674 |
| 11 | IPC of Nevada Medical Invoice, Date: September 16, 2016   | JNB_001675-1676 |
| 12 | Assorted Photographs of Plaintiffs  | JNB_001677-1697 |
| 13 | Plaintiffs' Marriage License, Date: April 13, 1989  | JNB_001698-1699 |
| 14 | Photographs of Shoes Worn by Plaintiff Joe N. Brown at the time of his fall, Taken: April 7, 2017   | JNB_001700-1704 |
| 15 | Joe N. Brown's Identification   | JNB_001705-1706 |
| 16 | Joe N. Brown Medical Bills  | JNB_001707-1734 |
| 17 | Joe N. Brown Medical Records, Southern Nevada VA, Date: January 23, 2017  | JNB_001735-1761 |
| 18 | Joe N. Brown Medical Records, Summerlin Hospital Medical Center, Date: January 20, 2017   | JNB_001762-1824 |
| 19 | Plaintiffs Tax Returns, Date: 2013-2015   | JNB_001825-1851 |
| 20 | Plaintiff Joe N. Brown's 1099-R, Date: 2013-2015  | JNB_001852-1859 |
| 21 | Defendant Thyssenkrupp Elevator Corporation's ("TKE") Early Case Conference List of Witnesses and Production of Documents served 04/18/2017 | JNB_001860-2001 |
| 22 | Defendant TKE's First Supplement to Early Case Conference List of Witnesses and Production of Documents served on 10/30/2017                | JNB_002002-2006 |
| 23 | Defendant TKE's Second Supplement to Early Case Conference List of Witnesses and Production of Documents served on 11/06/2017               | JNB_002006-2104 |
| 24 | Defendant TKE's Third Supplement to Early Case Conference List of Witnesses and Production of Documents served on 11/17/2017                | JNB_002105-2186 |

PLAINTIFFS' NINTH SUPPLEMENTAL LIST OF WITNESSES AND DOCUMENTS  
PURSUANT TO NRCP 16.1

|    |   |                        |
|----|---|------------------------|
| 25 | Defendants Landry's, Inc.; Golden Nugget, Inc., d/b/a Golden Nugget Laughlin; and GNL, Corp.'s January 23, 2018                 | JNB_002187-2303        |
| 26 | Sheila N. Swett Initial Expert Report   | JNB_002304-2309        |
| 27 | Dr. Srinivas Nalamachu, MD Initial Expert Report  | JNB_002310-2313        |
| 28 | Dr. William LaCost, DO Initial Expert Report  | JNB_002314-2318        |
| 29 | Sheila N. Swett Rebuttal Report   |                        |
| 30 | Dr. William LaCost, DO Rebuttal Report  |                        |
| 31 | NRCP 16.1(a)(2)(B) Disclosures by Expert Witnesses Dr. Srinivas Nalamachu, Sheila N. Swett, and Dr. William LaCost and Exhibits |                        |
| 32 | <b>Photographs of Subject Escalator taken by Plaintiffs' Expert Sheila N. Swett, May 2018 (Exhibit A attached hereto)</b>       | <b>JNB_002319-2368</b> |

Plaintiffs reserve the right to add to its list of documents as discovery proceeds.

Dated October 3, 2018

Respectfully Submitted,

IQBAL LAW PLLC

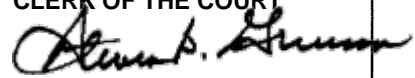
By: /s/ Mohamed A. Iqbal, Jr.  
 Mohamed A. Iqbal, Jr. (NSB# 10623)  
 Christopher Mathews (NSB #10674)

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

PLAINTIFFS' NINTH SUPPLEMENTAL LIST OF WITNESSES AND DOCUMENTS  
 PURSUANT TO NRCP 16.1

10 of 10

**JNB02565**



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

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

GNL, CORP., a Nevada corporation;

Third-Party Plaintiff,

vs.

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

Third-Party Defendants.

CASE NO.: A-16-739887-C

DEPT. NO.: XXXI

Date of hearing: 3/28/19  
Time of hearing: 10:00 a.m.

**DEFENDANT/THIRD PARTY DEFENDANT THYSSENKRUPP ELEVATOR  
CORPORATION'S REPLY IN SUPPORT OF MOTION IN LIMINE #7 RE: CLAIM  
THAT THYSSENKRUPP "HID" OR FAILED TO PRODUCE EVIDENCE**

**JNB02566**

1 Defendant/Third-Party Defendant, thyssenkrupp Elevator Corporation (“TKE”), by and  
2 through its attorney of record, REBECCA L. MASTRANGELO, ESQ., of the law firm of ROGERS,  
3 MASTRANGELO, CARVALHO & MITCHELL, hereby submits its Reply in Support of its Motion  
4 in Limine #7 re: Claim that thyssenkrupp “hid” or failed to produce evidence.

5 As this court is aware, TKE was recently sanctioned for its failure to produce all of its emails  
6 pertaining to the subject escalator. TKE did produce, in 2017, a number of emails but, unbeknownst  
7 to its counsel, other emails existed in a “deleted” database which could not be accessed other than  
8 through TKE’s IT department. As soon as that was discovered, the additional emails were produced;  
9 however, the second production came shortly after the close of discovery and was otherwise  
10 untimely. It is undisputed that the more recently produced emails contain no surprises and nothing  
11 of substance which had not already been discovered by counsel through other discovery in the case.  
12 The court did not find that any action by TKE was in bad faith, but imposed monetary sanctions,  
13 inter alia. (See Order attached as Exhibit “A.”) TKE promptly paid the sanctions (in the form of  
14 attorneys fees) to Plaintiffs’ counsel. The purpose of the instant motion in limine is not to overturn  
15 the order or the sanctions imposed, but to exclude reference to same from evidence at trial.

16 Plaintiffs obtained the relief they requested from the court due to the discovery violation.  
17 To allow them to also raise the now resolved discovery issue before the jury would be unfairly  
18 prejudicial and would cause confusion and a misleading of the jury. NRS 48.035 precludes such  
19 evidence from being admitted. Further, there is nothing relevant in these discovery issues as they  
20 have no tendency to make any issue of fact of consequence to the determination of the action more  
21 or less probable than it would be without the evidence. NRS 48.015. Irrelevant evidence is not  
22 admissible. NRS 48.025.

23 In addition to the foregoing, there is no evidence to support Plaintiffs’ accusation that  
24 evidence was “hidden” or that there is any other “evidence” within TKE’s custody or control which  
25 has not been produced. Although TKE erred in its discovery obligations in 2017, that error has since  
26 been corrected and TKE has been punished for its late disclosure. Plaintiffs should not be permitted  
27 to punish TKE again by arguing the discovery matter to a jury.

28 Plaintiffs argue that there are potential emails that are still missing, pointing to the

1 deposition of Chris Dutcher that his phone crashed and he could no longer access his emails.  
2 (Opposition Exhibit "B.") However, the emails Dutcher was referring to were those he sent to TKE  
3 email addresses, and all such emails would have been (and were) obtained from the TKE database  
4 referenced above. TKE has produced all of the emails that it found relating to any such emailed  
5 conversations involving the Golden Nugget escalators; there is no evidence that any unproduced  
6 emails exist. Plaintiffs should not be permitted to argue that there is other evidence, which has  
7 been "hidden" or not produced, when they have nothing to support such an accusation.

8 Finally, Plaintiffs' opposition to the instant motion runs afoul of EDCR 2.20(e) in that it  
9 fails to cite to *any* case law in support of its opposition. That alone is a basis for this court to  
10 construe the opposition as "an admission that the motion . . . is meritorious and a consent to  
11 granting the same."

12 Based upon the foregoing and in fairness to a trial on the merits, Defendant's motion should  
13 be granted in its entirety.

14 DATED this 28<sup>th</sup> day of February, 2019.

15 ROGERS, MASTRANGELO, CARVALHO  
16 & MITCHELL

17   
18 REBECCA L. MASTRANGELO, ESQ.

19 Nevada Bar No. 5417

20 700 S. Third Street

21 Las Vegas, Nevada 89101

22 Attorney for Defendant/Third-Party Defendant  
23 THYSSENKRUPP ELEVATOR CORPORATION  
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.R.C.P. 5(a), E.D.C.R. 7.26(a), and Rule 9 of the N.E.F.C.R. I hereby certify  
3 that I am an employee of Rogers, Mastrangelo, Carvalho & Mitchell, and on the 28 day of  
4 February, 2019, a true and correct copy of the foregoing **DEFENDANT/THIRD PARTY**  
5 **DEFENDANT THYSSENKRUPP ELEVATOR CORPORATION'S REPLY IN SUPPORT**  
6 **OF MOTION IN LIMINE #7 RE: CLAIM THAT THYSSENKRUPP "HID" OR FAILED TO**  
7 **PRODUCE EVIDENCE** was served via electronic means with the Eighth Judicial District Court,  
8 addressed as follows, upon the following counsel of record:

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

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

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An employee of ROGERS, MASTRANGELO, CARVALHO  
& MITCHELL

# EXHIBIT A

JNB02570

**ORDR**

**IQBAL LAW PLLC**

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

Christopher Mathews (NSB #10674)

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1-(702) 750-2950 (Tel); 1-(702) 825-2841 (V-Fax)

[info@ilawlv.com](mailto:info@ilawlv.com)

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

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

AND ASSOCIATED CASES

Case No.: A-16-739887-C

Dept. No.: XXXI

**ORDER GRANTING EMERGENCY  
MOTION FOR REOPENING  
DISCOVERY, COURT INTERVENTION,  
AND SANCTIONS ON ORDER  
SHORTENING TIME**

On January 8, 2019, the Court considered the Emergency Motion for Reopening Discovery, Court Intervention, and Sanctions on Order Shortening Time ("Motion") filed by Plaintiffs Joe N. Brown and Nettie J. Brown (collectively, "Plaintiffs") on December 10, 2018. Mohamed A. Iqbal, Jr., Esq., appeared on behalf of the Plaintiffs; Alexandra B. McLeod, Esq., appeared on behalf of Landry's Inc., Golden Nugget, Inc., and GNL, Corp. (collectively, the "Nugget Defendants"); and

**ORDER GRANTING EMERGENCY MOTION FOR REOPENING DISCOVERY,  
COURT INTERVENTION, AND SANCTIONS ON ORDER SHORTENING TIME**

(1 of 6)

FEB 08 '19 PM 04:28\*

JNB02571

1 Rebecca L. Mastrangelo, Esq., appeared on behalf of Thyssenkrupp Elevator Corporation  
2 (“TKE”).

3 Having considered the Motion, the opposition papers filed by TKE and the joinder thereto  
4 filed by the Nugget Defendants, and the reply brief filed by Plaintiffs in response; the evidence  
5 submitted by the parties; the records of this Court; and the arguments of counsel, the Court enters  
6 the following essential:

7 **FINDINGS OF FACT**

8 1. Between 2010 and 2018, TKE technician Chris Dutcher (“Dutcher”) was primarily  
9 responsible for servicing escalators at the Golden Nugget hotel, resort, and casino in Laughlin,  
10 Nevada (the “Laughlin Nugget”).

11 2. Plaintiffs filed their initial complaint in this case on July 12, 2016, and subsequently  
12 filed two amended complaints. Each of these pleadings alleges Plaintiffs were injured by defects  
13 in the design, operation, and/or maintenance of the “down” escalator at the Laughlin Nugget.

14 3. Defendant GNL Corp. filed a third-party complaint against TKE on January 23,  
15 2017, alleging TKE was responsible for maintaining the escalator in question.

16 4. TKE contends that sometime in 2017, its counsel asked “that anyone in the [TKE]  
17 Las Vegas office who had responsibility for the [Laughlin Nugget] escalators search their  
18 computers (and hard files) for any emails (or other documentation) pertaining to the down escalator  
19 at issue.” TKE does not contend it directed searches of mobile devices such as cell phones or  
20 tablets, or archival records, nor that it directed its information technology (“IT”) personnel to  
21 participate in the search.

22 5. Documents discovered in this search were produced as a supplement to TKE’s  
23 initial discovery disclosures on November 6, 2017.

24 6. Plaintiffs served discovery requests to TKE in January 2018, including seven  
25 document requests seeking emails and other documents exchanged by various persons employed  
26 by TKE and/or the Nugget Defendants. Plaintiffs specifically requested emails exchanged by

27 **ORDER GRANTING EMERGENCY MOTION FOR REOPENING DISCOVERY,**  
28 **COURT INTERVENTION, AND SANCTIONS ON ORDER SHORTENING TIME**

(2 of 6)

JNB02572

1 Dutcher, Larry Panaro ("Panaro"), Scott Olsen ("Olsen"), Don Hartmann ("Hartmann"), and  
2 others.

3 7. TKE responded to Plaintiffs' document requests in February 2018, by claiming it  
4 "[had] not located" any responsive documents other than those already produced.

5 8. Discovery proceeded pursuant to various stipulated orders of this Court. Plaintiffs  
6 deposed Hartmann in January 2018 and Dutcher in May 2018. Plaintiffs also engaged, pursuant  
7 to EDCR 2.34, in further efforts to obtain the emails and other documents sought by Plaintiffs'  
8 discovery requests.

9 9. After the close of discovery, TKE's counsel wrote to Plaintiffs' counsel to advise  
10 that emails sent by Dutcher to TKE persons already "would have been produced," and that neither  
11 Olsen, Panaro, or "anyone else" in TKE's Las Vegas office "has any additional emails" pertaining  
12 to the escalator. TKE further advised that emails to Hartmann should be in the possession of the  
13 Nugget Defendants. TKE's letter concluded that "it is highly unlikely that Chris Dutcher sent any  
14 emails pertaining to the escalator."

15 10. On November 16, 2018, TKE produced more than 40 additional pages of emails,  
16 color photographs, and other documents exchanged in 2015 between Dutcher, Panaro, and Olsen  
17 concerning the escalators at the Laughlin Nugget (the "November 2018 Disclosure"). Some of the  
18 emails reference bulletins and proposals concerning the escalator, including a proposal prepared  
19 for the Nugget Defendants' Hartmann, and a planned discussion between Panaro and Hartmann.

20 11. After receiving and reviewing the additional emails and documents from TKE,  
21 Plaintiffs timely filed this Motion.

22 12. The Court offered TKE the opportunity to present testimony and other evidence at  
23 an evidentiary hearing on the Motion; but TKE declined the Court's offer.

24 13. Any of the foregoing findings of fact which should more appropriately be  
25 denominated conclusions of law shall be so construed.

26 The Court therefore enters the following essential:

27 **ORDER GRANTING EMERGENCY MOTION FOR REOPENING DISCOVERY,**  
28 **COURT INTERVENTION, AND SANCTIONS ON ORDER SHORTENING TIME**

(3 of 6)

JNB02573

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**CONCLUSIONS OF LAW**

1. Parties have an obligation to take affirmative steps to preserve evidence when they are on notice that litigation is reasonably foreseeable. *Bass-Davis v. Davis*, 134 P.3d 103, 108 (Nev. 2006). This includes documents, tangible items, and information relevant to litigation that are reasonably calculated to lead to the discovery of admissible evidence. *Id.*

2. Emails, photographs, and other documents relating to alleged defects in and operational issues with the “down” escalator at the Laughlin Nugget should have been preserved and produced by TKE pursuant to Nev. R. Civ. P. 16.1; in response to Plaintiffs’ discovery requests of January 2018; or both.

3. TKE had an affirmative obligation to determine from its personnel what relevant, discoverable evidence was in their possession, to preserve it, and to provide it to the Plaintiffs. This obligation includes making an inquiry of TKE’s IT personnel.

4. Although the Court does not on the record presently before it find TKE acted in bad faith, it nonetheless concludes that TKE failed to meet its discovery obligations and in so doing hindered Plaintiffs’ discovery and the adjudication of this case.

5. Accordingly, the Court finds that sanctions against TKE as set forth in the Court’s decretal paragraphs below are appropriate. Nev. R. Civ. P. 26(g)(3); *Young v. Johnny Ribeiro Bldg., Inc.*, 787 P.2d 777, 780 (Nev. 1990).

6. Any of the foregoing conclusions of law which should more appropriately be denominated findings of fact shall be so construed.

Now, therefore, good cause appearing,

**IT IS HEREBY ORDERED, DECREED, AND ADJUDGED** that Plaintiffs’ Motion is **GRANTED** as follows:

1. The Court issued a new scheduling order and set an April 22, 2019 trial date, but will consider a stipulation or motion practice from the parties.

**ORDER GRANTING EMERGENCY MOTION FOR REOPENING DISCOVERY,  
COURT INTERVENTION, AND SANCTIONS ON ORDER SHORTENING TIME**

(4 of 6)

JNB02574



2. Discovery is reopened at least with respect to all persons identified in TKE's November 2018 Disclosure. Plaintiffs may depose or re-open the deposition of such persons with respect to the subject matter of the materials in the November 2018 Disclosure. The parties will confer with one another to ascertain a timetable for such discovery; the Court will issue such further orders as may be necessary.


3. TKE will bear the cost of the deposition transcripts for all persons deposed (or re-deposed) pursuant to this Order.

4. TKE will pay the reasonable expenses incurred in connection with the Motion, including a reasonable attorney's fee and costs. The parties will attempt to resolve without motion practice, or Plaintiff will file a motion setting forth the amount of the fees and costs, which shall include the factors set forth in *Brunzell v. Golden Gate National Bank*, 455 P.2d 31, 33 (Nev. 1969). TKE may object to the amount requested in an opposition brief which shall be filed no later than 10 days after service of the motion for fees and costs.

5. No sanctions are imposed against or awarded to the Nugget Defendants.

IT IS SO ORDERED.

Dated this 8 day of February, 2019.

 JOANNA S. KISHNER  
Hon. Joanna S. Kishner  
District Court Judge, Department XXXI

[Party signatures on the next page]

**ORDER GRANTING EMERGENCY MOTION FOR REOPENING DISCOVERY,  
COURT INTERVENTION, AND SANCTIONS ON ORDER SHORTENING TIME**

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February 8, 2019

IQBAL LAW PLLC

 2/8/19

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

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

February 8, 2019


GRANT & ASSOCIATES

By: \_\_\_\_\_  
Alexandra B. McLeod (NSB #8185)  
Sarah B. Hartig (NSB #10070)  
*Attorneys for Defendants/Third-Party Plaintiffs,  
GNL Corp., Landry's, Inc. & Golden Nugget, Inc.*

February 8, 2019

ROGERS, MASTRANGELO, CARVALHO & MITCHELL

By: /s/ (Ms. Mastrangelo authorized sig. via email to Mr. Iqbal)  
Rebecca L. Mastrangelo (NSB #5417)  
*Attorneys for Defendant/Third-Party Defendant  
Thyssenkrupp Elevator Corporation*

 2/8/19

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February 8, 2019

IQBAL LAW PLLC

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

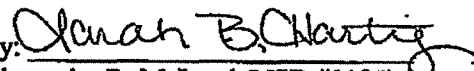
Mohamed A. Iqbal, Jr. (NSB #10623)

Christopher Mathews (NSB #10674)

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

February 8, 2019

GRANT & ASSOCIATES

By: 

Alexandra B. McLeod (NSB #8185)

Sarah B. Hartig (NSB #10070)

*Attorneys for Defendants/Third-Party Plaintiffs,  
GNL Corp., Landry's, Inc. & Golden Nugget, Inc.*

February 8, 2019

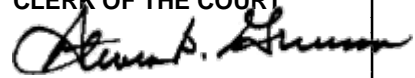
ROGERS, MASTRANGELO, CARVALHO & MITCHELL

By: Rebecca L. Mastrangelo (NSB #5417)

*Attorneys for Defendant/Third-Party Defendant  
Thyssenkrupp Elevator Corporation*

ORDER GRANTING EMERGENCY MOTION FOR REOPENING DISCOVERY,  
COURT INTERVENTION, AND SANCTIONS ON ORDER SHORTENING TIME  
(6 of 6)

JNB02577



**RPLY**  
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rmastrangelo@rmcmllaw.com  
Attorneys for Defendant/Third-Party Defendant  
THYSSENKRUPP ELEVATOR CORPORATION

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

GNL, CORP., a Nevada corporation;

Third-Party Plaintiff,

vs.

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

Third-Party Defendants.

CASE NO.: A-16-739887-C

DEPT. NO.: XXXI

Date of Hearing: 3/28/19  
Time of Hearing: 10:00 a.m.

**DEFENDANT/THIRD PARTY DEFENDANT THYSSENKRUPP ELEVATOR  
CORPORATION'S REPLY IN SUPPORT OF MOTION IN LIMINE #8 RE:  
EXCLUDE THE TESTIMONY OF SHEILA NABORS SWETT**

**JNB02578**

1 Defendant/Third-Party Defendant, thyssenkrupp Elevator Corporation (“TKE”), by and  
2 through its attorney of record, REBECCA L. MASTRANGELO, ESQ., of the law firm of ROGERS,  
3 MASTRANGELO, CARVALHO & MITCHELL, hereby submits its Reply in Support of its Motion  
4 in Limine #8 re: Exclude the Testimony of Sheila Nabors Swett.

5 Plaintiffs’ opposition to the motion argues that Ms. Swett should be allowed to testify at trial  
6 because she has “decades of experience designing, inspecting and issuing permits for escalators” and  
7 that she has designed Dover escalators. (Opposition at page 2.) Notably, this case does not involve  
8 a Dover escalator and there are no negligent design allegations; indeed the company which designed,  
9 manufactured and installed the subject escalator is not even a party to this suit. The claims against  
10 TKE involve allegations negligent **maintenance**. Ms Swett has never worked on an escalator as a  
11 mechanic; she has never maintained, serviced or repaired an escalator. The companies she has  
12 owned do not provide escalator maintenance. (See Motion Exhibit “B,” pages 43-44; page 123.)  
13 Plaintiffs’ opposition does not provide any evidence of escalator maintenance experience by Ms.  
14 Swett. The opposition does not cite a single piece of authority in support of Plaintiffs’ argument that  
15 someone like Ms. Swett with zero experience maintaining escalators can be qualified to criticize the  
16 maintenance of an escalator by TKE. The failure of Plaintiffs to cite to any case law in support of  
17 their opposition is grounds for the court to construe the motion as meritorious and as a consent of  
18 the non-moving party for a granting of the motion. EDCR 2.20(e).

19 Plaintiffs also failed to distinguish, or even to address the case authorities cited in the moving  
20 papers, which hold that experience in escalator design does not justify the admission of opinion  
21 testimony on issues of escalator maintenance. See *Jones v. Novartis Pharmaceuticals Corp.*, 235 F.  
22 Supp. 3d 1244, 1251 (N.D. Ala. 2017), *aff’d in part sub nom. Jones v. Novartis Pharmaceuticals Co.*,  
23 720 Fed. Appx. 1006 (11th Cir. 2018); *Mueller v. Chugach Fed. Sols., Inc.*, 2014 WL 2891030, at  
24 \*9 (N.D. Ala. June 25, 2014); *Furlan v. Schindler Elevator Corp.*, 864 F. Supp. 2d 291, 298–99  
25 (E.D. Pa. 2012), *aff’d*, 516 Fed. Appx. 201 (3d Cir. 2013).

26 As the court in *Jones v. Novartis Pharmaceuticals Co.*, 720 Fed. Appx. 1006 (11th Cir. 2018)  
27 succinctly stated:

28 Experience in a particular field is not enough to qualify an expert;

1 the expert must have experience with the issue before the court.

2 Plaintiffs' opposition wholly failed to discuss the relevant legal and factual issues identified  
3 with Ms. Swett's proposed testimony. Plaintiff has presented no evidence or argument that shows  
4 Ms. Swett has the relevant and necessary experience in escalator maintenance. Thus, Defendant's  
5 motion should be granted.

6 In addition, Ms. Swett's factual foundation to testify is missing in the present case. First, she  
7 claims that the dirty condition of the escalator steps prevented Defendant from finding the "cracked"  
8 steps, but Ms. Swett did not view the escalator steps until three years post incident. There has been  
9 no testimony of evidence of any kind that the steps were "dirty" at the time of the incident. Swett  
10 merely assumes that the stairs were "dirty" given her inspection in 2018.

11 Where an expert opinion is not sufficiently based in facts, it should not be admitted. See  
12 *United States v. Real Prop. Located at 475 Martin Lane, Beverly Hills California*, 298 Fed. Appx.  
13 545, 550–51 (9th Cir. 2008); citing *Guidroz–Brault v. Missouri Pac. R.R.*, 254 F.3d 825, 831–32  
14 (9th Cir.2001). See also *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 807 (9th Cir.1988)  
15 (upholding district court's exclusion of conclusions in expert report with only "scant basis" in the  
16 record); *Great Am. Ins. Co. of New York v. Vegas Const. Co., Inc.*, 2007 WL 2375056, at \*2 (D.  
17 Nev. Aug. 15, 2007):

18 In addition, as Judge Cardozo explained: "[a]n opinion has a significance proportioned to the  
19 sources that sustain it." *Petrogradsky Mejdunarodny Kommerchesky Bank v. National City*  
20 *Bank*, 253 N.Y. 23, 25, 170 N.E. 479, 483 (1930). Thus, "an expert's report that does nothing  
to substantiate this opinion is worthless, and therefore inadmissible."

21 Secondly, Ms. Swett does not know which step Plaintiff was on at the time of his fall. Swett  
22 has also admitted that she cannot testify whether or not Plaintiff was standing on a cracked step prior  
23 to his fall. In order to find liability, Plaintiffs must prove that a defective condition **actually caused**  
24 the injury, not merely that a defect was present at the time. See *Glenn v. B & R Plastics, Inc.*, 326  
25 F. Supp. 3d 1044, 1065 (D. Idaho 2018).

26 Without identifying which step was allegedly so cracked and unstable that it caused Plaintiff  
27 to fall, Ms. Swett's testimony is nothing more than sheer speculation. Plaintiffs' opposition does not  
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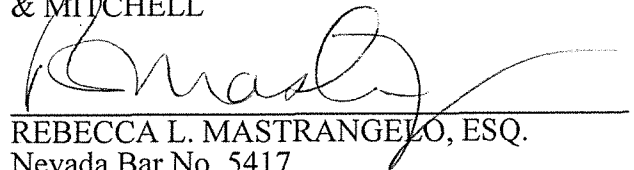


1 address any of these failures in Ms. Swett's experience or foundation; it simply argues that the court  
2 should let in all the testimony and allow the defense to cross examine Swett on her lack of  
3 experience and foundation. This is not Nevada law, however. It is the court's responsibility to be  
4 a gatekeeper and to determine whether an expert is in fact qualified to testify at trial, and should there  
5 be a failure in qualifications or foundation, the expert must not be permitted to testify.

6 As Sheila Swett has neither the necessary education, training and experience nor the  
7 factual foundation for her speculative opinions, she cannot, pursuant to *Hallmark*, be permitted to  
8 testify as to any opinions on alleged negligent maintenance by TKE. Thus, she should be excluded  
9 from testifying at trial.

10 DATED this 28<sup>th</sup> day of February, 2019.

11 ROGERS, MASTRANGELO, CARVALHO  
12 & MITCHELL

13   
14 REBECCA L. MASTRANGELO, ESQ.

15 Nevada Bar No. 5417  
16 700 S. Third Street  
17 Las Vegas, Nevada 89101  
18 Attorney for Defendant/Third-Party Defendant  
19 THYSSENKRUPP ELEVATOR CORPORATION  
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**CERTIFICATE OF SERVICE**

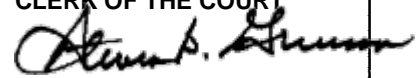
Pursuant to N.R.C.P. 5(a), E.D.C.R. 7.26(a), and Rule 9 of the N.E.F.C.R. I hereby certify that I am an employee of Rogers, Mastrangelo, Carvalho & Mitchell, and on the 28 day of February, 2019, a true and correct copy of the foregoing **DEFENDANT/THIRD PARTY DEFENDANT THYSSENKRUPP ELEVATOR CORPORATION'S REPLY IN SUPPORT OF MOTION IN LIMINE #8 RE: EXCLUDE THE TESTIMONY OF SHEILA NABORS SWETT** was served via electronic means with the Eighth Judicial District Court, addressed as follows, upon the following counsel of record:

Mohamed A. Iqbal, Jr., Esq.  
Christopher Mathews, Esq.  
101 Convention Center Drive, Suite 1175  
Las Vegas, Nevada 89109  
Attorneys for Plaintiffs

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



An employee of ROGERS, MASTRANGELO, CARVALHO  
& MITCHELL



**RPLY**

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Attorneys for Defendant/Third-Party Defendant  
THYSSENKRUPP ELEVATOR CORPORATION

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

GNL, CORP., a Nevada corporation;

Third-Party Plaintiff,

vs.

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

Third-Party Defendants.

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

Date of Hearing: 3/28/19  
Time of Hearing: 10:00 a.m.

**DEFENDANT/THIRD-PARTY DEFENDANT THYSSENKRUPP ELEVATOR  
CORPORATION'S REPLY IN SUPPORT OF ITS JOINDER TO DEFENDANTS' GNL,  
CORP., LANDRY'S, INC. & GOLDEN NUGGET, INC.'S MOTION IN LIMINE #2  
REGARDING OTHER INCIDENTS OR REPAIRS**

JNB02583

COMES NOW, Defendant/Third-Party Defendant THYSSENKRUPP ELEVATOR CORPORATION, by and through its attorneys of record, the law firm of ROGERS, MASTRANGELO, CARVALHO & MITCHELL, and hereby files its reply in support of its joinder in Defendants GNL, CORP., Landry's, Inc. & Golden Nugget, Inc.'s Motion in Limine #2 Regarding Other Incidents or Repairs.

The Golden Nugget Defendants filed a Motion to exclude any arguments, testimony or evidence of, inter alia, prior and/or subsequent incidents of falls on the subject escalator. thyssenkrupp joined that motion. Plaintiffs opposed the motion arguing that evidence of the prior incidents may be relevant to show notice or knowledge. What Plaintiffs failed to inform the court is that the majority of the 12 prior incidents involved falls which were completely unrelated to the functioning of the escalator as shown below. Further, and more importantly to thyssenkrupp, only one of those prior incidents (dated August 17, 2012) was reported to thyssenkrupp Elevator; none of the others were. This fact is contained within each of the reports, which were produced confidentially by the Nugget Defendants.

A summary of the prior incidents is as follows:

- 04/09/10 - a woman dropped loose change on the escalator stairs and fell to a seated position when she tried to pick them up.
- 08/28/10 - a boy's thong footwear came off on the escalator, causing a cut to his foot.
- 11/25/10 - an intoxicated and obscenity spewing man claimed to have fallen on the escalator.
- 02/08/12 - a woman lost her balance and fell on the escalator but was not injured.
- 05/09/12 - a man fell on the escalator and reported to security, "I was goofing around and, tripped on the bottom step."
- 08/17/12 - an intoxicated man fell on the escalator; thyssenkrupp was called and found the escalator to have been working properly.

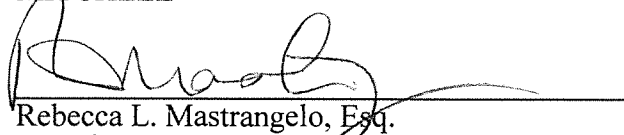
- 02/23/13 - a man stated he "lost his footing while trying to get on the escalator."
- 04/21/13 - someone shoved a man from behind on the escalator, causing him to fall forward into his wife and they both fell down the escalator.
- 05/26/13 - a woman cut her foot on the escalator.
- 09/30/13 - a man got on the escalator with his walker and fell, reporting to security, "I had a hard time getting my walker on the escalator, and as I was going down I could feel my walker slipping, and I lost my balance and fell."
- 02/14/15 - a man's shoelace was caught in the steps of the escalator.

Very clearly, none of these prior incident are relevant in that they do not have a tendency to make any fact of consequence to the determination of the present action more or less probable than it would be without the evidence. NRS 48.015. The vast major of the prior incidents are dissimilar and remote. Further, only one of the alleged incident was reported to TKE and that incident occurred three years prior to the subject incident.

Based upon the foregoing, the prior incidents are not relevant and should be excluded per NRS 48.025. Alternatively, should the court find them relevant in ny way, they should still be excluded because any probative value they may have is substantially outweighed by the danger of unfair prejudice, confusion of the issues and misleading of the jury. NRS 48.035. To the extent the court disagrees and admits such evidence, it should be admitted, and the jury instructed, that they may only consider the evidence as to Golden Nugget and not as to thyssenkrupp as to each incident that was not reported to thyssenkrupp.

DATED this 23<sup>rd</sup> day of February, 2019.

ROGERS, MASTRANGELO, CARVALHO &  
MITCHELL



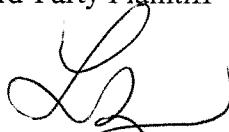
Rebecca L. Mastrangelo, Esq.  
Nevada Bar No. 5417  
700 South Third Street  
Las Vegas, Nevada 89101  
Attorney for Defendant/Third-Party Defendant  
THYSSENKRUPP ELEVATOR CORPORATION

1 **CERTIFICATE OF SERVICE**

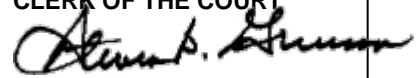
2 Pursuant to N.R.C.P. 5(a), E.D.C.R. 7.26(a), and Rule 9 of the N.E.F.C.R. I hereby certify  
3 that I am an employee of Rogers, Mastrangelo, Carvalho & Mitchell, and on the 27 day of  
4 February, 2019, a true and correct copy of the foregoing **DEFENDANT/THIRD-PARTY**  
5 **DEFENDANT THYSSENKRUPP ELEVATOR CORPORATION'S REPLY IN**  
6 **SUPPORT OF JOINDER TO DEFENDANTS' GNL, CORP., LANDRY'S, INC. &**  
7 **GOLDEN NUGGET, INC.'S MOTION IN LIMINE #2 REGARDING OTHER**  
8 **INCIDENTS OR REPAIRS** was served via electronic means with the Eighth Judicial District  
9 Court, addressed as follows, upon the following counsel of record:

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

14 Annalisa N. Grant, Esq.  
15 Alexandra B. McLeod, Esq.  
16 GRANT & ASSOCIATES  
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Las Vegas, Nevada 89113  
Attorneys for Defendant/Third-Party Plaintiff

17 

18 An employee of ROGERS, MASTRANGELO,  
19 CARVALHO & MITCHELL



**RPLY**

LEE J. GRANT II, ESQ.

Nevada Bar No. 11808

ALEXANDRA B. M<sup>c</sup>LEOD, ESQ.

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Alexandra.M<sup>c</sup>Leod@aig.com

Attorney for Defendant/Third-Party Plaintiff, GNL, CORP.

**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**

**REPLY IN SUPPORT OF  
DEFENDANT GNL, CORP.'S  
MOTIONS *IN LIMINE* #1-3**

**Date of hearing: Mar 28, 2019**

**Time of hearing: 10:00 a.m.**



COMES NOW Defendant, GNL, CORP.,<sup>1</sup> (hereinafter “GNL”), by and through its counsel of record, ALEXANDRA B. M<sup>c</sup>LEOD, ESQ., of the law firm of GRANT & ASSOCIATES, and hereby submits the instant Reply in Support of its Motions *in Limine* #1-3 in the above-entitled action, pursuant to NRCP 16(c)(3).

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 Motions, if so desired.

RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of February, 2019.

GRANT & ASSOCIATES



ALEXANDRA B. M<sup>c</sup>LEOD, ESQ.  
Nevada Bar No. 8185  
7455 Arroyo Crossing Parkway, Suite 300  
Las Vegas, Nevada 89113  
*Attorney for Defendant GNL*

#### POINTS & AUTHORITIES

#### A. INTRODUCTION & STATEMENT OF RELEVANT FACTS

The Court is familiar with the facts of this case. Elderly Plaintiff, Joe Brown, fell after stepping onto a down escalator on May 12, 2015 at the Golden Nugget Laughlin (“GNL”) while intoxicated<sup>2</sup> and using a cane. His wife, Nettie, claims loss of consortium. 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 Brown’s fall.

Trial is currently set fifth of seven on the April 22, 2019 stack; meanwhile, discovery has been re-opened on the discrete question of the production of TKE emails from 2015.

<sup>1</sup> Former parties LANDRY’S, INC. and GOLDEN NUGGET, INC. were dismissed pursuant to summary judgment on February 12, 2019. The written order memorializing same is pending in chambers.

<sup>2</sup> Sunrise Hospital Medical Center record dated 5-13-15 documented Plaintiff’s serum alcohol level as 168, equivalent to Blood Alcohol Concentration of 0.168.

1 **B. REPLIES IN SUPPORT OF MOTIONS *IN LIMINE***

2 **1. *Motion in Limine to Exclude Nalamachu's Unauthorized Practice of Medicine***  
3 ***and Resulting Opinions***

4 Plaintiffs' Opposition misses the mark. Defendant GNL (and TKE by joinder) does not  
5 challenge Dr. Nalamachu's qualifications as a medical professional, rather Defendant  
6 challenges the basis of his report and opinions: and unauthorized and improper medical  
7 examination inside the State of Nevada. Again, this Court has the duty to act as gatekeeper and  
8 to exclude expert opinions which are not the product of reliable methodology, *Hallmark v.*  
9 *Eldridge*, 124 Nev. 492, 500, 189 P.3d 646, 651 (2008), or, here, which are the product of  
10 unauthorized practice of medicine in our State. *See generally* NAC 630.225.

11 It is undisputed that the Nevada State Board of Medical Examiners unanimously  
12 declared that independent medical examinations are the practice of medicine.<sup>3</sup> Therefore, an out  
13 of state physician, such as Dr. Nalamachu, is barred from performing IMEs in Nevada unless  
14 under the oversight of a Nevada-license physician under NAC 630.225(1). It is further  
15 undisputed that Nalamachu did not take steps to comply with the NAC 630.225 consultation  
16 process.

17 Regardless of his education and training, Nalamachu's examination of Brown was  
18 improper. That examination forms the basis and foundation for all of his opinions regarding  
19 Brown's current condition and ongoing limitations. He simply cannot testify reliably without  
20 making reference to his unauthorized practice of medicine here. The improper Rule 35  
21 examination must be excluded and, accordingly, Nalamachu's opinions must be similarly  
22 prohibited as fruit of the poisonous tree.

23 **2. *Motion in Limine to Exclude Prior or Subsequent Events and Repairs***

24 Plaintiffs have failed to prove a causal connection between any of the other 12 prior  
25 events, or the one subsequent, on the Down Escalator and the Subject Incident in order to justify  
26 the introduction of any of this evidence at trial. *See, generally, FGA, Inc. v Giglio*, 128 Nev.

27 \_\_\_\_\_  
28 <sup>3</sup> See EXHIBIT C to underlying MIL, Nevada State Board of Medical Examiners Minutes of Open Session Board Meeting, September 14, 2007, at pp 21-22.

1 Adv. Rep. 26, 278 P.3d 490, 498 (2012). While Plaintiffs correctly set forth the law that prior or  
2 subsequent incidents *may* be admissible if (1) substantially similar and (2) involving the same,  
3 permanent condition, they fall far short of providing this Court with any factual information or  
4 analysis on which to determine whether the prior or subsequent events are indeed substantially  
5 similar to the case at bar.

6 Reports detailing the 12 prior events on the Subject Down Escalator were produced  
7 confidentially in discovery. Regardless, they detail a myriad of happenings from a child getting  
8 its flip-flop/thong sandal caught in between the escalator steps,<sup>4</sup> guests dropping coins<sup>5</sup> or cards<sup>6</sup>  
9 on the escalator, to one guest being shoved and falling into his wife.<sup>7</sup> None of these events are  
10 substantially similar to Mr. Brown's incident and likewise have nothing to do with Plaintiffs'  
11 theory of liability involving cracked escalator steps. Plaintiffs' contention that the mere  
12 occurrence of "incidents on the exact same down escalator" (Opposition at 4:3) is sufficient  
13 foundation for admissibility, is contrary to settled law. *See White v. Ford Motor Co.*, 312 F.3d  
14 998, 1009 (9th Cir. 2002); *Schwartz v. New Castle Corp.*, 1997 U.S. App. LEXIS 33701, at \*5  
15 (9th Cir. 1997). Further, Plaintiffs can point to no citations or violations following any prior  
16 incident that (1) were not remediated before Plaintiff Joe Brown's fall, or (2) relate to cracked  
17 escalator steps. The subsequent event also fails the threshold test for substantial similarity  
18 because two guests, who had admittedly been drinking, got on the escalator and the wife lost her  
19 balance and fell forward, knocking her husband over.

20 Without the required, factual showing of substantial similarity for each of the 13 other  
21 events, Plaintiffs cannot demonstrate that their proffered evidence would be more probative than  
22 prejudicial. To avoid unfair prejudice to Defendants, all testimony and evidence of prior and  
23 subsequent accidents be excluded at trial.

24 . . .

25 . . .

26 \_\_\_\_\_  
27 <sup>4</sup> 8-28-2010 incident.

<sup>5</sup> 4-9-2010 incident.

28 <sup>6</sup> 1-23-2013 incident.

<sup>7</sup> 4-21-2013 incident.

3. ***Motion in Limine to Preclude References, Implications, or Testimony of Collateral Discovery Issues, or to the Timing of Discovery Production***

Plaintiffs' Opposition concedes counsel's intention to refer to the Defendants' (alleged) failure to preserve and produce evidence. (Opposition at 3:8-9). Any such argument is improper unless a spoliation instruction is sought and granted by this Court. In the absence of any such instruction (as there currently is none),<sup>8</sup> allowing counsel to reference discovery issues or timing of discovery production would only serve to confuse the issues, mislead the jury, and distract from the merits of the case before the Court. *See* NRS 48.035(1). Again, neither the timing of the production of evidence nor the outcome of previous discovery disputes is relevant to any fact of consequence at trial. Therefore, references, argument, or testimony on those topics must be prohibited.

C. **CONCLUSION**

WHEREFORE, based on the precedent and evidentiary rules cited above, the GNL respectfully requests that the Court issue orders *in limine* as follows:

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

RESPECTFULLY SUBMITTED this 28<sup>th</sup> day of February, 2019.

GRANT & ASSOCIATES



ALEXANDRA B. MCLEOD, ESQ.

Nevada Bar No. 8185

7455 Arroyo Crossing Parkway, Suite 300

Las Vegas, Nevada 89113

Attorney for GNL, CORP.

<sup>8</sup> If the Court agrees with Plaintiffs that this evidentiary issue is not ripe until the last of discovery is completed, Defendant GNL respectfully requests that its Motion *in Limine* be continued at the Court's discretion.

**CERTIFICATE OF SERVICE**

I certify that I am an employee of GRANT & ASSOCIATES and that on this 28<sup>th</sup> day of February, 2019 I caused a true and correct copy of the foregoing **REPLY IN SUPPORT OF DEFENDANT GNL, CORP.'S MOTIONS *IN LIMINE* #1-3** to be served as follows:

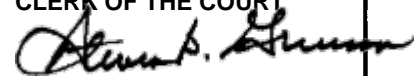
\_\_\_\_ By placing the same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and/or

\_\_\_\_ 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



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

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

GNL, CORP., a Nevada corporation;

Third-Party Plaintiff,

vs.

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

Third-Party Defendants.

CASE NO.: A-16-739887-C

DEPT. NO.: XXXI

**DEFENDANT/THIRD PARTY DEFENDANT THYSSENKRUPP ELEVATOR  
CORPORATION'S OPPOSITION TO PLAINTIFFS' MOTION IN LIMINE  
TO EXCLUDE EXPERT DAVIS L. TURNER'S OPINIONS ON ALCOHOL USE**

JNB02593

1 Defendant/Third-Party Defendant, thyssenkrupp Elevator Corporation ("TKE"), by and  
2 through its attorney of record, REBECCA L. MASTRANGELO, ESQ., of the law firm of ROGERS,  
3 MASTRANGELO, CARVALHO & MITCHELL, hereby submits its Opposition to Plaintiffs'  
4 Motion in Limine to Exclude Expert Davis L. Turner's opinions on Alcohol use.

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

8 DATED this 8 day of March, 2019.

9 ROGERS, MASTRANGELO, CARVALHO  
10 & MITCHELL

#5721

FOR:

11   
12 REBECCA L. MASTRANGELO, ESQ.

Nevada Bar No. 5417

13 CHARLES A. MICHALEK, ESQ.

Nevada Bar No. 5721

14 700 S. Third Street

Las Vegas, Nevada 89101

15 Attorney for Defendant/Third-Party Defendant

16 THYSSENKRUPP ELEVATOR CORPORATION

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 Plaintiffs are requesting that the Court strike the opinions of Davis Turner concerning  
19 Plaintiff's use of alcohol. The motion does not deny that Plaintiff's BAC level was .168, and that he  
20 was diagnosed with acute alcohol intoxication. Mr. Turner can rely upon the other medical experts  
21 in determining the BAC level, and can testify as to his opinions at trial.

22 **Davis L. Turner should be allowed to provide opinions on intoxication due to his common**  
23 **knowledge and experience.**

24 NRS 50.285 allows experts to testify in reliance upon other expert opinions:

- 25 1. The facts or data in the particular case upon which an expert bases an opinion or  
26 inference may be those perceived by or made known to the expert at or before the  
hearing.
- 27 2. If of a type reasonably relied upon by experts in forming opinions or inferences upon  
28 the subject, the facts or data need not be admissible in evidence.



1 NRS 484C.110 provides that a person cannot legally drive a vehicle in Nevada if they have  
2 a blood alcohol level greater than .08. This law is identical to California laws, which Mr. Turner is  
3 familiar with. While Davis Turner is not an expert in BAC levels, it is common knowledge that a  
4 person with a BAC level greater than .08 is considered intoxicated. Mr. Turner can utilize this  
5 information to provide his opinion on why the accident occurred, in that Plaintiff was not able to  
6 safely ride the escalator while intoxicated. This level of intoxication would severely impair his  
7 balance and movement. (Motion Exhibit "A" at page 3).

8 Mr. Turner can rely upon the physician testimony and the competence of the technicians who  
9 determined the proper BAC level, as this information is reasonably relied upon in the legal and  
10 medical fields to determine whether a person can safely drive a vehicle.

11 Moreover, proof of intoxication need not be made by expert testimony, but a witness may  
12 simply describe the facts and circumstances which led to his conclusion or simply state his opinion  
13 as to the fact of intoxication or soberness. *Whittmore v. State*, 742 P.2d 1154, 1157 (Okla. Crim.  
14 App. 1987); See also *State v. Smith*, 58 N.J. 202, 213, 276 A.2d 369 (1971), ("[a]n ordinary citizen  
15 is qualified to advance an opinion in a court proceeding that a person was intoxicated because of  
16 consumption of alcohol. The symptoms of that condition have become such common knowledge that  
17 the testimony is admissible."); *State v. Bealor*, 187 N.J. 574, 587 (2006) ("we have long recognized  
18 that opinion testimony of lay witnesses as to whether a person was intoxicated from the consumption  
19 of alcohol is admissible at trial").

20 See also *Edwards v. Worcester*, 172 Mass. 104, 105, 51 N.E. 447 (1898). "While it might  
21 not be easy accurately to describe each and every minute detail indicative of intoxication ... the  
22 principal objective symptoms are so well known that witnesses have always been permitted to  
23 express their opinion as to the inebriety of a person.", W.G. Young, J.R. Pollets, & C. Poreda,  
24 Evidence § 701.6, at 467 (2d ed. 1998) ("Since the princip[al] objective symptoms of intoxication  
25 are so well known, and a conclusion which people in general are capable of drawing, witnesses are  
26 permitted to express their opinions as to the sobriety of a person").

27 ///

28 ///

1 Plaintiff's motion does not dispute the medical evidence showing that Plaintiff was severely  
2 intoxicated. The state of intoxication is relevant to Plaintiff's ability to safely use the escalator. Davis  
3 Turner has, in his expert opinion, relied upon the medical evidence to find that Plaintiff was  
4 intoxicated, and can testify as to the circumstances of the incident given the intoxication. Mr. Turner  
5 should be allowed to present this opinion at trial.

6 DATED this 8<sup>th</sup> day of March, 2019.

7  
8 ROGERS, MASTRANGELO, CARVALHO &  
MITCHELL

9  #5721  
FOR:  
10 Rebecca L. Mastrangelo, Esq.  
11 Nevada Bar No. 5417  
12 700 South Third Street  
13 Las Vegas, Nevada 89101  
14 Attorney for Defendant/Third-Party Defendant  
15 THYSSENKRUPP ELEVATOR CORPORATION  
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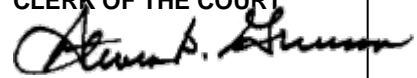
**CERTIFICATE OF SERVICE**

Pursuant to N.R.C.P. 5(a), E.D.C.R. 7.26(a), and Rule 9 of the N.E.F.C.R. I hereby certify that I am an employee of Rogers, Mastrangelo, Carvalho & Mitchell, and on the 8<sup>TH</sup> day of March, 2019, a true and correct copy of the foregoing **DEFENDANT/THIRD PARTY DEFENDANT THYSSENKRUPP ELEVATOR CORPORATION'S OPPOSITION TO PLAINTIFFS' MOTION IN LIMINE TO EXCLUDE EXPERT DAVIS L. TURNER'S OPINIONS ON ALCOHOL USE** was served via electronic means with the Eighth Judicial District Court, addressed as follows, upon the following counsel of record:

Mohamed A. Iqbal, Jr., Esq.  
Christopher Mathews, Esq.  
101 Convention Center Drive, Suite 1175  
Las Vegas, Nevada 89109  
Attorneys for Plaintiffs

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

  
An employee of ROGERS, MASTRANGELO, CARVALHO  
& MITCHELL



**JOIN**

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

Attorney for Defendant/Third-Party Plaintiff, GNL, CORP.

**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**

**JOINDER TO THYSSENKRUPP'S  
OPPOSITION TO PLAINTIFFS'  
MOTION *IN LIMINE* TO EXCLUDE  
EXPERT DAVIS L. TURNER'S  
OPINIONS ON ALCOHOL USE**

**Date of hearing: 3/28/19**  
**Time of hearing: 9:00 a.m.**

COMES NOW Defendant, GNL, CORP., by and through its counsel of record,  
ALEXANDRA B. M<sup>c</sup>LEOD, ESQ., of the law firm of GRANT & ASSOCIATES, and hereby  
submits the instant **JOINDER TO THYSSENKRUPP'S OPPOSITION TO PLAINTIFFS'**

1 **MOTION *IN LIMINE* TO EXCLUDE EXPERT DAVIS L. TURNER'S OPINIONS ON**  
2 **ALCOHOL USE** in the above-entitled action, pursuant to NRCP 16(c)(2)(C) and NRS 50.285.  
3 Said Joinder hereby adopts and incorporates by reference the Points and Authorities contained  
4 in the subject Opposition.

5 This Joinder is made and based upon all of the papers and pleadings on file herein, the  
6 subject Opposition, as well as the Points and Authorities contained therein, and such oral  
7 argument and testimony as this Honorable Court may entertain at the hearing of the Motion.

8 RESPECTFULLY SUBMITTED this 11<sup>th</sup> day of March, 2019.

9 GRANT & ASSOCIATES

10 

11 ALEXANDRA B. MCLEOD, ESQ.

12 Nevada Bar No. 8185

13 7455 Arroyo Crossing Parkway, Suite 300

14 Las Vegas, Nevada 89113

15 *Attorney for Defendants GNL, Corp.*

**CERTIFICATE OF SERVICE**

I certify that I am an employee of GRANT & ASSOCIATES and that on this 11<sup>th</sup> day of March, 2019 I caused a true and correct copy of the foregoing **JOINDER TO THYSSENKRUPP'S OPPOSITION TO PLAINTIFFS' MOTION IN LIMINE TO EXCLUDE EXPERT DAVIS L. TURNER'S OPINIONS ON ALCOHOL USE** 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

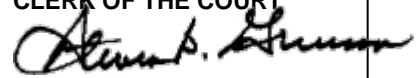
X Pursuant to EDCR 7.26, by transmitting via the Court's electronic filing services by the document(s) listed above to the Counsel set forth on the service list.

Mohamed A. Iqbal, Jr., Esq.  
Christopher Mathews, Esq.  
IQBAL LAW PLLC  
101 Convention Center Drive, Suite 1175  
Las Vegas, NV 89109  
*Attorney for Plaintiffs*

Rebecca L. Mastrangelo, Esq.  
ROGERS, MASTRANGELO, CARVALHO & MITCHELL  
700 South Third Street  
Las Vegas, NV 89101  
*Attorney for Thyssenkrupp Elevator Corporation*

*/s/ Denisse A. Girard-Rubio*

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



1 **NEOJ**

2 LEE J. GRANT II, ESQ.

3 Nevada Bar No. 11808

4 ALEXANDRA B. M<sup>c</sup>LEOD, ESQ.

5 Nevada Bar No. 8185

6 **GRANT & ASSOCIATES**

7 7455 Arroyo Crossing Parkway, Suite 300

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11 Alexandra.M<sup>c</sup>Leod@aig.com

12 Attorney for Defendants/Third-Party Plaintiffs,

13 GNL, CORP., LANDRY'S, INC. & GOLDEN NUGGET, INC.

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

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

19 vs.

20 LANDRY'S, INC., a foreign corporation;  
21 GOLDEN NUGGET, INC. a Nevada  
22 corporation, d/b/a GOLDEN NUGGET  
23 LAUGHLIN; GNL, CORP., a Nevada  
24 corporation; THYSSENKRUPP ELEVATOR  
25 CORP., a foreign corporation; DOE  
26 INDIVIDUALS 1-100,  
27 ROE BUSINESS ENTITIES 1-100,

28 Defendants.

GNL, CORP., a Nevada corporation;

Third-Party Plaintiff,

vs.

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

Third-Party Defendants

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

**Dept. No.: XXXI**

**NOTICE OF ENTRY OF ORDER  
GRANTING SUMMARY JUDGMENT  
AS TO LANDRY'S, INC. AND  
GOLDEN NUGGET, INC.**

...



1 PLEASE take notice, that an *Order Granting Summary Judgment as to Landry's, Inc.*  
2 *and Golden Nugget, Inc.* was entered on the Court's docket on the 11<sup>th</sup> day of March, 2019 in  
3 this matter. A Copy of which is attached hereto.

4 DATED this 11<sup>th</sup> day of March, 2019.

5 GRANT & ASSOCIATES

6 

7 ALEXANDRA B. MCLEOD, ESQ.

8 Nevada Bar No. 8185

9 7455 Arroyo Crossing Parkway, Suite 300

10 Las Vegas, Nevada 89113

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

**CERTIFICATE OF SERVICE**

I certify that I am an employee of GRANT & ASSOCIATES and that on this 11<sup>th</sup> day of March, 2019 I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING SUMMARY JUDGMENT AS TO LANDRY'S, INC. AND GOLDEN NUGGET, INC.** 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

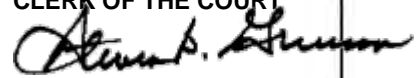
X Pursuant to EDCR 7.26, by transmitting via the Court's electronic filing services by the document(s) listed above to the Counsel set forth on the service list.

Mohamed A. Iqbal, Jr., Esq.  
Christopher Mathews, Esq.  
IQBAL LAW PLLC  
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*Attorney for Plaintiffs*

Rebecca L. Mastrangelo, Esq.  
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*Attorney for Thyssenkrupp Elevator Corporation*

*/s/ Denisse A. Girard-Rubio*

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



**ORDR**

LEE J. GRANT II, ESQ.  
Nevada Bar No. 11808  
ALEXANDRA B. McLEOD, ESQ.  
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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.

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

**ORDER GRANTING SUMMARY  
JUDGMENT AS TO LANDRY'S, INC.  
AND GOLDEN NUGGET, INC.**

Date of hearing: Feb 12, 2019

Time of hearing: 10:00 a.m.

Defendants', LANDRY'S, INC. and GOLDEN NUGGET, INC., Motion for Summary  
Judgment, having come on for hearing before the above-entitled Court on the 12<sup>th</sup> day of  
February, 2019, at the hour of 10:00 a.m.; and this Honorable Court having considered all of the

1 papers and pleadings on file herein, as well as the argument of counsel for the parties hereto;  
2 and good cause appearing therefor;

### 3 FINDINGS OF FACT

4 1. No undisputed facts remain for adjudication at trial concerning the ownership  
5 and operation of the hotel and casino premises known as the Golden Nugget Laughlin, located  
6 at 2300 S. Casino Drive, Laughlin, Nevada.

7 2. Plaintiffs cannot manufacture a material issue of fact with evidence that would  
8 not qualify for admission at trial.

9 3. GNL, CORP. owns, operates, and manages the Golden Nugget Laughlin.

10 4. At the time of the Subject Incident (5-12-15), LANDRY'S, INC. neither directly  
11 nor indirectly, through one or more of its subsidiaries, owned any percent of the outstanding  
12 ownership or membership interest in GNL, CORP.

13 5. The undisputed facts establish that LANDRY'S, INC. is not in the direct chain of  
14 ownership of GNL, CORP.

15 6. GOLDEN NUGGET, INC. is a holding company that owns the outstanding stock  
16 of GNL, CORP. among other companies.

17 7. GOLDEN NUGGET, INC. does not directly, or indirectly, manage or operate  
18 GNL, CORP. or the Golden Nugget Laughlin.

19 8. Plaintiffs have not pled any alter ego allegations.

### 20 CONCLUSIONS OF LAW

21 1. The actions of a subsidiary company are not attributable to any parent or sibling  
22 corporation. *See generally, Viega GmbH v. Eighth Jud. Dist. Ct.*, 130 Nev. 368, 380, 328 P.3d  
23 1152, 1161 (2014).

24 2. NRS 78.225 and 78.747 protect individual stockholders or parent companies  
25 from direct liability simply due to their stakeholder status.

26 3. Some oversight by a parent or shareholder corporation is to be expected, and the  
27 amount of control typical in a parent-subsidary relationship is insufficient to demonstrate  
28

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1 agency. *Id.* at 130 Nev. at 380, 328 P.3d at 1160; *see also*, *MGM Grand, Inc. v. Eighth Judicial*  
2 *Dist. Court*, 107 Nev. 65, 68-69, 807 P.2d 201, 203 (1991).

3 4. Plaintiffs have failed to prove that either LANDRY'S, INC. or GOLDEN  
4 NUGGET, INC. operate the Golden Nugget Laughlin over and above mere corporate oversight.

5 **THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that  
6 summary judgment is **granted** in favor of LANDRY'S, INC. and GOLDEN NUGGET, INC.,  
7 and both entities shall be dismissed and removed from the case caption.

8 **IT IS SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

10  
11 DISTRICT COURT JUDGE JOANNA KISHNER

12 Respectfully submitted by:

13 **GRANT & ASSOCIATES**

14  
15   
16 ALEXANDRA B. MCLEOD, ESQ.

Nevada Bar No. 8185

17 7455 Arroyo Crossing Parkway, Suite 300  
18 Las Vegas, Nevada 89113

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

20 Approved as to form & content:

21 IQBAL LAW PLLC

ROGERS, MASTRANGELO, CARVALHO  
& MITCHELL

22 SEE NEXT PAGE

23 MOHAMED A. IQBAL, JR., ESQ.

Nevada Bar No. 10623

24 101 Convention Center Drive, Suite 1175  
25 Las Vegas, Nevada 89109

*Attorneys for Plaintiffs,*

26 *JOE N. BROWN and NETTIE J. BROWN*

SEE NEXT PAGE

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700 S. 3rd Street

Las Vegas, NV 89101

*Attorneys for Defendant/ Third-Party*

*Defendant, THYSSENKRUPP ELEVATOR*  
*CORPORATION*

agency. *Id.* at 130 Nev. at 380, 328 P.3d at 1160; *see also*, *MGM Grand, Inc. v. Eighth Judicial Dist. Court*, 107 Nev. 65, 68-69, 807 P.2d 201, 203 (1991).

4. Plaintiffs have failed to prove that either LANDRY'S, INC. or GOLDEN NUGGET, INC. operate the Golden Nugget Laughlin over and above mere corporate oversight.

**THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that summary judgment is granted in favor of LANDRY'S, INC. and GOLDEN NUGGET, INC., and both entities shall be dismissed and removed from the case caption.

**IT IS SO ORDERED** this \_\_\_\_ day of \_\_\_\_, 2019.

DISTRICT COURT JUDGE JOANNA KISHNER

Respectfully submitted by:

**GRANT & ASSOCIATES**



ALEXANDRA B. MCLEOD, ESQ.

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*Attorney for Defendants/Third-Party Plaintiffs,*

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& MITCHELL



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*Defendant, THYSSENKRUPP ELEVATOR CORPORATION*



agency. *Id.* at 130 Nev. at 380, 328 P.3d at 1160; *see also, MGM Grand, Inc. v. Eighth Judicial Dist. Court*, 107 Nev. 65, 68-69, 807 P.2d 201, 203 (1991).

4. Plaintiffs have failed to prove that either LANDRY'S, INC. or GOLDEN NUGGET, INC. operate the Golden Nugget Laughlin over and above mere corporate oversight.

**THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that summary judgment is **granted** in favor of LANDRY'S, INC. and GOLDEN NUGGET, INC., and both entities shall be dismissed and removed from the case caption.

IT IS SO ORDERED this 27 day of Aug, 2019.

  
JOANNA S. KISHNER  
DISTRICT COURT JUDGE JOANNA KISHNER

Respectfully submitted by:

GRANT & ASSOCIATES



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Attorney for Defendants/Third-Party Plaintiffs,

GNL, CORP., LANDRY'S, INC. & GOLDEN NUGGET, INC.

Approved as to form & content:

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JOE N. BROWN and NETTIE J. BROWN

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& MITCHELL

  
REBECCA L. MASTRANGELO, ESQ.

Nevada Bar No. 5417

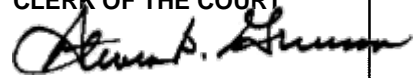
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Attorneys for Defendant/ Third-Party

Defendant, THYSSENKRUPP ELEVATOR  
CORPORATION





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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; DOE INDIVIDUALS 1-100,  
ROE BUSINESS ENTITIES 1-100,

Defendants.

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

GNL, CORP., a Nevada corporation;

Third-Party Plaintiff,

vs.

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

Third-Party Defendants.

**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that an Order in the above-entitled action was entered and

JNB02609

1 filed on the 13<sup>TH</sup> day of March, 2019, a copy of which is attached hereto.

2 DATED this 19<sup>th</sup> day of March, 2019.

3 ROGERS, MASTRANGELO, CARVALHO &  
4 MITCHELL

5 /s/ Rebecca L. Mastrangelo

6 REBECCA L. MASTRANGELO, ESQ.

7 Nevada Bar No. 5417

700 S. Third Street

Las Vegas, Nevada 89101

Attorney for Defendant

8 THYSSENKRUPP ELEVATOR CORPORATION

9 **CERTIFICATE OF SERVICE**

10 Pursuant to N.R.C.P. 5(a), E.D.C.R. 7.26(a), and Rule 9 of the N.E.F.C.R. I hereby  
11 certify that I am an employee of Rogers, Mastrangelo, Carvalho & Mitchell, and on the 19<sup>th</sup> day  
12 of March, 2019, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER**  
13 was served via electronic means with the Eighth Judicial District Court, addressed as follows,  
14 upon the following counsel of record:

15 Mohamed A. Iqbal, Jr., Esq.  
16 Christopher Mathews, Esq.  
101 Convention Center Drive, Suite 1175  
17 Las Vegas, Nevada 89109  
Attorneys for Plaintiffs

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

22 /s/ Laura Fitzgerald

23 An employee of ROGERS, MASTRANGELO,  
24 CARVALHO & MITCHELL



SAO  
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Attorneys for Defendant/Third-Party Defendant  
THYSSENKRUPP ELEVATOR CORPORATION

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

GNL, CORP., a Nevada corporation;

Third-Party Plaintiff,

vs.

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

Third-Party Defendants.

CASE NO.: A-16-739887-C

DEPT. NO.: XXXI

**STIPULATION AND ORDER TO CONTINUE PRETRIAL CONFERENCE**

IT IS HEREBY STIPULATED BY AND BETWEEN the parties by and through their  
attorneys of record, to respectfully request that the Court continue the Pretrial Conference  
currently scheduled to occur on March 21, 2019 at 10:15 a.m. based upon trial counsel for

MAR 01 '19 AM 10:43#

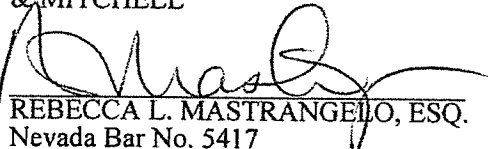
1 THYSSENKRUPP ELEVATOR CORPORATION'S (Rebecca L. Mastrangelo) intention and  
2 necessity to be out of the country during the week of March 17, 2019.

3 IT IS FURTHER STIPULATED AND AGREED to respectfully request that the Court  
4 conduct the Pretrial Conference on March 28, 2019, at 10:00 a.m., in conjunction with the  
5 hearings on the parties' Motions in Limine or any other date agreeable to the court.

6 DATED this 26<sup>th</sup> day of February, 2019.

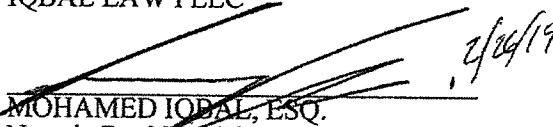
7 ROGERS, MASTRANGELO, CARVALHO  
& MITCHELL

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9 REBECCA L. MASTRANGELO, ESQ.  
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12 Attorney for Defendant THYSSENKRUPP  
ELEVATOR CORPORATION

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Attorney for Defendant LANDRYS

13 IQBAL LAW PLLC

14   
15 MOHAMED IQBAL, ESQ.  
16 Nevada Bar No. 10623  
101 Convention Center Drive, Suite 1175  
17 Las Vegas, Nevada 89109  
Attorney for Plaintiffs

18  
19 **ORDER**

20 BASED UPON the foregoing Stipulation and good cause appearing therefore,

21 IT IS HEREBY ORDERED that the Pretrial Conference be continued to March 28  
22 2019 at the hour of 10:00 a.m.

23 DATED this 4 day of Mar 2019.

24  
25   
26 DISTRICT JUDGE

JOANNA S. KISHNER

1 THYSSENKRUPP ELEVATOR CORPORATION'S (Rebecca L. Mastrangelo) intention and  
2 necessity to be out of the country during the week of March 17, 2019.

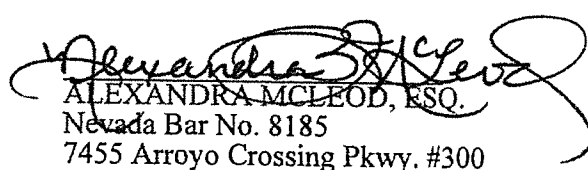
3 IT IS FURTHER STIPULATED AND AGREED to respectfully request that the Court  
4 conduct the Pretrial Conference on March 28, 2019, at 10:00 a.m., in conjunction with the  
5 hearings on the parties' Motions in Limine or any other date agreeable to the court.

6 DATED this 25 day of February, 2019.

7 ROGERS, MASTRANGELO, CARVALHO  
& MITCHELL

GRANT & ASSOCIATES

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9 REBECCA L. MASTRANGELO, ESQ.  
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12 ELEVATOR CORPORATION

  
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17 Attorney for Plaintiffs

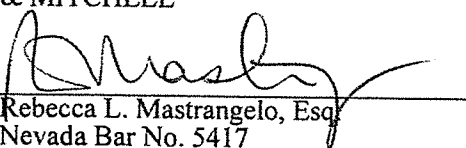
18  
19 **ORDER**

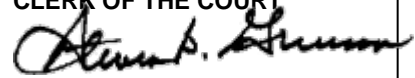
20 BASED UPON the foregoing Stipulation and good cause appearing therefore,

21 IT IS HEREBY ORDERED that the Pretrial Conference be continued to \_\_\_\_\_,  
22 2019 at the hour of \_\_\_\_\_ a.m.

23 DATED this \_\_\_\_ day of \_\_\_\_\_, 2019.

24  
25  
26 DISTRICT JUDGE  
27  
28

1 SUBMITTED BY:  
2 ROGERS, MASTRANGELO, CARVALHO  
3 & MITCHELL  
4   
5 Rebecca L. Mastrangelo, Esq.  
6 Nevada Bar No. 5417  
7 700 S. Third Street  
8 Las Vegas, Nevada 89101  
9 Attorney for Defendant  
10 THYSSSENKRUPP ELEVATOR CORPORATION  
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**RPLY**

IQBAL LAW PLLC

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Christopher Mathews (NSB #10674)

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[info@ilawlv.com](mailto:info@ilawlv.com)

*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

**REPLY IN SUPPORT OF PLAINTIFFS'  
MOTION IN LIMINE #2  
REGARDING CERTAIN OPINION  
TESTIMONY OF DAVIS L. TURNER**

**Date of hearing: March 28, 2019**

**Time of hearing: 9:00 am**

Plaintiffs JOE N. AND NETTIE J. BROWN ("Plaintiffs") hereby file this Reply in Support of Plaintiffs' Motion in Limine #2 Regarding Certain Opinion Testimony of Davis L. Turner ("Plaintiffs' MiL #2").

**I. INTRODUCTION.**

As noted in Plaintiffs' opening brief, the requirements for expert testimony in this State are codified in NRS 50.275 and explained in *Hallmark v. Eldridge*, 189 P.3d 646 (Nev. 2008). To testify as an expert, the proffered witness must fulfill three requirements: "(1) he or she must be

**REPLY IN SUPPORT OF PLAINTIFFS' MOTION IN LIMINE #2  
REGARDING CERTAIN OPINION TESTIMONY OF DAVIS L. TURNER**



1 qualified in an area of ‘scientific, technical or other specialized knowledge’ (the qualification  
2 requirement); (2) his or her specialized knowledge must ‘assist the trier of fact to understand the  
3 evidence or to determine a fact in issue’ (the assistance requirement); and (3) his or her testimony  
4 must be limited ‘to matters within the scope of [his or her specialized] knowledge’ (the limited  
5 scope requirement).” *Hallmark*, 189 P.3d at 650 (bracketed text in original; internal citations  
6 omitted).

7 The proposed testimony of Mr. Turner that alcohol consumption was the cause of the  
8 injuries in this case (described in his supplemental report attached to Plaintiffs’ MiL #2 as Exhibit  
9 A) meets ***none*** of these three requirements. The opposition brief filed by Defendants does not cure  
10 the defects in that testimony. Accordingly, Plaintiffs’ MiL #2 should be granted.

## 11 **II. LAW AND ARGUMENT.**

### 12 **A. The Proposed Testimony Fails the Qualification Requirement.**

13 Defendants implicitly concede their proposed expert has no “special knowledge, skill,  
14 experience, training or education” regarding intoxication that would permit him to offer expert  
15 opinion testimony under NRS 50.275.<sup>1</sup> They cannot cite a single example of Mr. Turner’s  
16 specialized knowledge in this area: he evidently has no training, no education, nor even personal  
17 experience regarding the effect of alcohol. Indeed, the only supposed qualification cited by  
18 Defendants’ opposition is the one offered by Mr. Turner himself: that he has a California driver’s  
license.

19 Rather than address these deficiencies squarely, Defendants cite cases from outside Nevada  
20 in which various state courts discuss forms of “common knowledge” regarding behavior indicative  
21 of intoxication. Mr. Turner’s report, however does not cite any such behavior. Even if it did, of  
22 course, cases from outside this State cannot negate the mandate of our legislature and Supreme  
23 Court that expert testimony requires something more: *special* knowledge rather than so-called

24 \_\_\_\_\_  
25 <sup>1</sup> Opposition at p. 3, ll. 3-4 (“While Davis Turner is not an expert in BAC levels, it is  
common knowledge that ...”).

1 common knowledge is required. NRS 50.275; *Hallmark v. Eldridge*, 189 P.3d at 650-51 (Nev.  
2 2008).

3 **B. Even If the Qualification Requirement is Assumed -- the Proposed Testimony Still**  
4 **Fails the Assistance Requirement.**

5 Even assuming Mr. Turner were qualified to offer expert testimony in the field of alcohol  
6 consumption, his conclusion – that Mr. Brown’s injuries occurred “because of the effects of  
7 intoxication” – does not satisfy the assistance requirement of NRS 50.275. To meet this  
8 requirement, the Defendants must show that Mr. Turner’s expert opinion would be (1) relevant  
9 and (2) the product of reliable methodology. *Hallmark*, 189 P.3d at 651.

10 With respect to the first prong: Mr. Turner says that consumption of alcohol can impair the  
11 “motor skills and cognitive acuity” needed to operate a motor vehicle. But this case does not  
12 involve driving, and neither Mr. Turner nor the Defendants’ opposition brief cite any evidence  
13 suggesting that the ability to drive a car is in any way relevant to the skills needed to stand on an  
14 escalator and passively be moved from one floor to another.

15 With respect to the second prong: when determining whether an expert's opinion is based  
16 upon reliable methodology, “a district court should consider whether the opinion is (1) within a  
17 recognized field of expertise; (2) testable and has been tested; (3) published and subjected to peer  
18 review; (4) generally accepted in the scientific community (not always determinative); and (5)  
19 based more on particularized facts rather than assumption, conjecture, or generalization.”  
20 *Hallmark*, 189 P.3d at 651-2 (internal citations omitted).

21 Neither Mr. Turner’s supplemental report nor the opposition brief offer any hint of any  
22 recognition, testing, review, or acceptance of Mr. Turner’s opinion on the proper standards for  
23 alcohol consumption by the general public prior to boarding an escalator. His opinion in this area  
24 is simple conjecture.

25 **C. The Proposed Testimony Also Fails the Limited Scope Requirement.**

26 Finally, the requirement that an expert’s opinion be limited to matters within the scope of  
27 his or her specialized knowledge, *Hallmark*, 189 P.3d at 650 (citing NRS 50.275), is unaddressed

**REPLY IN SUPPORT OF PLAINTIFFS’ MOTION IN LIMINE #2  
REGARDING CERTAIN OPINION TESTIMONY OF DAVIS L. TURNER**

1 by the Defendants' opposition. This is unsurprising, as Defendants have no good answer; because  
2 Mr. Turner has no "specialized knowledge" relating to alcohol use, he is incapable of offering any  
3 expert testimony within its scope.

4 **III. CONCLUSION.**

5 For all the foregoing reasons, Plaintiffs' Mil #2 should be granted.

6 Dated March 20, 2019.

Respectfully Submitted,

7 IQBAL LAW PLLC

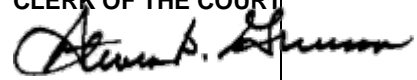
8 By: /s/ Mohamed A. Iqbal, Jr.  
9 Mohamed A. Iqbal, Jr. (NSB #10623)  
10 Christopher Mathews (NSB #10674)  
11 *Attorneys for Plaintiffs*

12 **CERTIFICATE OF SERVICE**

13 I HEREBY CERTIFY that I am an employee of IQBAL LAW PLLC, and that on this 20th  
14 day of March 2019, I caused to be served a true and correct copy of the foregoing **REPLY IN**  
15 **SUPPORT OF PLAINTIFFS' MOTION IN LIMINE #2 REGARDING CERTAIN**  
16 **OPINION TESTIMONY OF DAVIS L. TURNER** by transmitting the same via the Court's  
17 electronic filing services to the Counsel and other recipients set forth on the service list.

18 /s/ Marie-Claire Alsanjakli  
19 An employee of IQBAL LAW PLLC  
20  
21  
22  
23  
24  
25

26 **REPLY IN SUPPORT OF PLAINTIFFS' MOTION IN LIMINE #2**  
27 **REGARDING CERTAIN OPINION TESTIMONY OF DAVIS L. TURNER**



RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

|            |   |                        |
|------------|---|------------------------|
| JOE BROWN, | ) | CASE NO. A-16-739887-C |
| Plaintiff, | ) | DEPT. NO. XXXI         |
| vs.        | ) |                        |
| GNL CORP,  | ) |                        |
| Defendant. | ) |                        |

BEFORE THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE

THURSDAY, MARCH 28, 2019

**RECORDER'S TRANSCRIPT OF HEARING:**

**ALL PENDING MOTIONS**

APPEARANCES:

For the Plaintiff: MOHAMED A. IQBAL, ESQ.

For the Defendant  
ThyssenKrupp: REBECCA L. MASTRANGELO, ESQ.

For the Defendant  
GNL Corp: ALEXANDRA B. MCLEOD, ESQ.

RECORDED BY: SANDRA HARRELL, COURT RECORDER

1 Las Vegas, Nevada; Thursday, March 28, 2019

2 \* \* \* \* \*

3 [Hearing commenced at 10:06 a.m.]

4 THE COURT: Okay, so now we're going to move onto our  
5 10 'o clock matter, which is Joe Brown versus GNL Corps, 739887.

6 Counsel, feel free to come forward and we'll start; thank  
7 you so much.

8 Okay. And before -- Madam Court Recorder, could we go off  
9 the record for just one quick sec?

10 THE COURT RECORDER: Just where?

11 THE COURT: Just go off the record for just one quick  
12 second.

13 THE COURT RECORDER: Off the -- okay, hold on.

14 [Pause in proceedings]

15 [Resumed proceedings at 10:13 a.m.]

16 THE COURT RECORDER: On the record.

17 THE COURT: Okay. We're on the record in case number  
18 739887, Brown versus GNL Corp, et al.

19 Counsel, can I have your appearances please?

20 MR. IQBAL: Good morning, Your Honor, Mohamed Iqbal on  
21 behalf of Plaintiffs, Joe Brown and Nettie Brown.

22 MS. MCLEOD: Good morning, Your Honor, Alexandra  
23 McLeod, 8185 on behalf of GNL Corporation.

24 MS. MASTRANGELO: Rebecca Mastrangelo for  
25 ThyssenKrupp Elevator.

1 THE COURT: Okay, so counsel, today was going to be some  
2 outstanding motions and so is there any particular order pursuant to  
3 your prior stipulation from February 12<sup>th</sup>, in which you'd like to hear the  
4 motions? And then I understand in light of, I guess, some confusion  
5 which apologies as to whatever confusion occurred. The Court can hear  
6 whatever you'd like to be heard today and then as far as -- let's get  
7 through what we can hear today and then figure out the next day you all  
8 would like to hear whatever if it is still outstanding. Does that work for  
9 the parties?

10 MS. MCLEOD: Works for me.

11 MR. IQBAL: Yes, Your Honor. I believe the parties are  
12 aligned to hear the motion for summary judgment today and Plaintiffs  
13 motions in limine and Golden Nugget's motions in limine. And if we  
14 could request a continuance for ThyssenKrupp's motions in limine?

15 THE COURT: Sure. Okay, which one do you want to do first?

16 MR. IQBAL: Counsel, I'm going to defer to you.

17 MS. MCLEOD: Okay.

18 THE COURT: Pick whichever one you want to do first and  
19 we'll just get that taken care of.

20 MR. IQBAL: Why don't we do motion for summary judgment  
21 first and get that --

22 MS. MASTRANGELO: Kind of makes sense.

23 MR. IQBAL: Want to do that?

24 MS. MCLEOD: Sure.

25 MR. IQBAL: Okay.

1 THE COURT: Okay, that's the binder. Go ahead.

2 MS. MCLEOD: This motion for summary judgment is different  
3 than the issues we talked about last time we were all together. The  
4 focus of this motion is the actual liability allegations against the  
5 Defendant, but also the necessary standard to prove-up punitive  
6 damages in the case. The allegations against the Defendants sounded  
7 negligence, that's the only cause of action that had been stated. We  
8 believe that's insufficient to carry punitive damages claim through to the  
9 jury at trial.

10 MS. MCLEOD: If the Court has specific questions on the  
11 pleadings, I'd be happy to address those but overall we're happy to  
12 submit them on the brief's pending opposition from Plaintiff.

13 THE COURT: Really, my -- go ahead. You had joinder.

14 MS. MASTRANGELO: We joined in the motion for summary  
15 judgment as it pertains to the punitives, Judge.

16 MS. MASTRANGELO: And just to respond to some of the  
17 things that were referenced in the opposition. Just because this Court  
18 gave leave to amend to allow Plaintiff to assert those prayers for punitive  
19 damages, doesn't mean that they get punitive damages to the jury. Of  
20 course, there's two different standards. Leave to amend is freely given  
21 while punitives are subject to a very high standard that of clear and  
22 convincing evidence --

23 MS. MASTRANGELO: -- of fraud, malice or oppression. And  
24 this is a question of law under the Nevada cases cited in the brief for the  
25 Court to decide as sort of a gatekeeper function. And in this case, there



1 was one error, I believe, in Plaintiff's opposition where they reference  
2 TK, ThyssenKrupp as being the manufacturer --

3 THE COURT: Right.

4 MS. MASTRANGELO: -- is not disputed in this case that it's  
5 not the manufacturer. This is solely a case of whether or not there was  
6 negligent maintenance. And the evidence which has been presented in  
7 this case primarily through Plaintiff's expert is that the steps in her  
8 opinion were dirty and the dirtiness of the steps caused the  
9 ThyssenKrupp mechanic not to see the cracks in the steps. If that is  
10 true and if that's what the jury believes then that may well be negligence,  
11 but it certainly doesn't arise to a clear and convincing standard or  
12 punitive damages under the fraud, oppression, malice.

13 It's important to note, Judge, that clear and convincing  
14 evidence of punitive damages requires a culpable state of mind. It can't  
15 just be negligence, it can't even be gross negligence, it can't even be  
16 recklessness.

17 MS. MASTRANGELO: It has to arise to that ill-will, desire to  
18 harm, intention for harm, truly despicable conduct. One of the cases we  
19 cited states that even unconscionable irresponsibility doesn't arise to the  
20 level of punitive damages. So here, if ThyssenKrupp didn't properly  
21 clean the escalator, that could be negligence but it doesn't arise to  
22 punitives under any of the standards, thank you.

23 THE COURT: Go ahead, Counsel.

24 MR. IQBAL: Thank you, Your Honor. Yeah, I'll address the  
25 liability portion first, Your Honor, and then the punitive damages. So the

1 motion for summary judgment initially, Your Honor, was based on the  
2 premise that all of the cracked steps had been replaced in 2012. We're  
3 not just talking about unclean or dirty steps; we're talking about cracked  
4 steps, Your Honor.

5 THE COURT: Okay.

6 MR. IQBAL: And -- in fact, the technician -- ThyssenKrupp's  
7 own technician responsible for maintaining the escalator testified that  
8 this was not true. And this is in our opposition brief Exhibit B. And this  
9 testimony is more than enough to establish a triable issue of material  
10 fact. It's at a point that's essentially conceded in the reply brief, page 4;  
11 lines 21 to 23. But then we get movement by the Defendant's moving to  
12 another argument.

13 The first argument was that all the cracked steps in the down  
14 escalator were replaced in 2012. The second argument is that, well  
15 they -- they had no notice that no repairs were -- or the repairs were not  
16 completed. But that merely means, Your Honor, that the repair  
17 company they hired, ThyssenKrupp, did not perform adequately.

18 Now, that's a problem for the Nugget Defendant who hired  
19 ThyssenKrupp and according to our expert testimony, failed to  
20 adequately supervise ThyssenKrupp's work. The evidence here, Your  
21 Honor, is not just the expert testimony but really the mechanic; the  
22 mechanic for ThyssenKrupp who repeatedly brought this issue up. The  
23 emails we've discussed before, the Court has seen those emails talking  
24 about a safety concern for the riding public. Cracked steps that were not  
25 replaced from 2012 to our accident in 2015, May; there -- and when we

1 get to the other motions in limine, there were over double digit incidents  
2 with this escalator. Two weeks after Plaintiff's injury, a broken neck,  
3 there was another accident on the same escalator.

4 The ThyssenKrupp mechanic's testimony, the evidence shows  
5 that the Defendants were told the cracked steps posed a serious safety  
6 issue. They were advised to replace all the steps in the escalator. He  
7 stated that in his deposition. They were warned that the escalator had a  
8 known design flaw from the manufacturer, KONE, that rendered its steps  
9 prone to cracking. And they were advised to replace the escalator  
10 altogether by the mechanic. Instead, the Defendant's chose the  
11 cheapest possible option leaving --

12 THE COURT: Okay. I need you to focus between  
13 Defendants -- and sorry I interrupted you but --

14 MR. IQBAL: No problem.

15 THE COURT: -- I've got both a motion for summary judgment  
16 and a joinder and I need them --

17 MR. IQBAL: Absolutely, Your Honor, absolutely.

18 THE COURT: Sure.

19 MR. IQBAL: The focus is on both Defendants. When we look  
20 at Golden Nugget's conduct, they were negligent in their own decisions  
21 regarding the escalator. Golden Nugget, based on the information they  
22 were receiving from the ThyssenKrupp mechanic, the mechanic who  
23 was assigned to that escalator for eight years. They were also negligent  
24 in their hiring and supervision of ThyssenKrupp. ThyssenKrupp was  
25 negligent in their servicing and maintenance of the escalator not

1 replacing the cracked steps. And separately, Golden Nugget bears  
2 responsibility for ThyssenKrupp's performance because ThyssenKrupp  
3 worked for Golden Nugget. And so we have three basis of negligence  
4 with respect to Golden Nugget.

5 The fact that they were negligent with respect to the steps,  
6 they were negligent in the hiring and supervising ThyssenKrupp and  
7 they bear responsibility for ThyssenKrupp's performance having hired  
8 them. Those three basis of negligence for Golden Nugget and then  
9 respect to ThyssenKrupp, Your Honor, the negligence is in actually not  
10 maintaining, not fixing the escalator even though the mechanic had  
11 seen, even in 2012, that these steps were cracked.

12 We're not just talking about dirty steps; we're talking about  
13 cracked steps. We're talking about emails that the Court has seen  
14 between both Defendant's saying this is an -- a safety issue for the  
15 riding public. The cracked steps and the manufacturer component is  
16 that KONE, the manufacturer, years before this had sent out a bulletin  
17 about this -- the design flaw and the fact that these kinds of steps are  
18 prone to cracking.

19 So Your Honor's question about the parsing out and  
20 separating Golden Nugget's conduct versus ThyssenKrupp's conduct;  
21 Golden Nugget is the property owner.

22 MR. IQBAL: Golden Nugget, that is their down escalator, that  
23 is their down escalator in a casino. And the fact is they took the  
24 cheapest possible routes between 2012, even before that and through  
25 2015. The cracked steps -- the escalator responsible for breaking my

1 client's neck in May of 2015, those steps weren't actually even fixed until  
2 early 2016. So the original premise of the motion for summary judgment  
3 that the cracked steps were repaired in 2012 is simply wrong.

4 When you look at the deposition of Chris Dutcher, as it's cited  
5 in our opposition, he was the mechanic, he was the ThyssenKrupp  
6 mechanic. So we have two streams of negligence here with respect to  
7 Nugget, we have three separate points of negligence. Failure to do  
8 anything about this escalator, when they knew for years that these  
9 cracked steps were an issue and they knew from the manufacturer, then  
10 they hired ThyssenKrupp and they failed to supervise them. And they  
11 were negligent in the hiring and supervision of ThyssenKrupp. And  
12 third, they bear responsibility for ThyssenKrupp's performance.

13 Now, separate from that you have ThyssenKrupp's just  
14 absolute clear negligence on servicing the escalator and they could've  
15 shut it down -- they could've shut it down when they saw -- when they  
16 knew about the cracked steps. There are emails going back and forth  
17 about cracked steps and safety for -- of the riding public for months in  
18 2015. There are -- there was emails and there was notice back in 2012.

19 Now, so -- and the standard for the motion for summary  
20 judgment, *Wood v. Safeway*; when you look at -- when you look at just  
21 the testimony of Chris Dutcher, it raises issues that are reasonable trier of  
22 fact can -- has to consider. So under the *Wood v. Safeway* standard,  
23 the negligence of Golden Nugget and the negligence of ThyssenKrupp  
24 and it's kind of convoluted but the negligence of Golden Nugget in  
25 overseeing ThyssenKrupp as the vendor responsible for supervising the

1 escalator. All of those parts of the negligence equation have to be  
2 considered by a trier of fact under *Wood versus Safeway*.

3 Now moving to the punitive damages, counsel is right. The  
4 punitive damages question is for the jury and in that prior motion to  
5 amend -- motion for leave to amend.

6 THE COURT: Counsel.

7 MR. IQBAL: There was that -- a punitive damages  
8 component. The standard for motion to amend its -- it is definitely less  
9 than the standard for punitive damages which is clear and convincing,  
10 absolutely, but that is for the jury to consider. And what do we have  
11 here? We have some arguments that, well, there was no intention to  
12 actually harm these Plaintiffs. Under NRS 42, under the case law, you --  
13 there's no requirement that you intended to harm the Plaintiff  
14 specifically. It's enough that Defendants never cared who may be  
15 maimed or crippled as a result of their actions. Based on Dutcher's  
16 testimony, Your Honor, based on the evidence, based on the emails,  
17 here's what we do know with respect to punitive damages, Your Honor.

18 The Defendant's and when I say Defendant's, Your Honor, it's  
19 Golden Nugget and ThyssenKrupp. They knew the escalator was  
20 defective, number one. They knew the escalator was defective from the  
21 cracked steps and also KONE's manufacturer of the recommendation  
22 bulletin. Number two, they knew its defects had manifested into  
23 dangerous cracking that put the public at risk. Otherwise, you wouldn't  
24 have those emails going back and forth saying this is a serious safety  
25 issue for the riding public; that's number two.

1           And number three, they knew their proposed and adopted  
2 course of action would at best be a half measure. Let's just replace a  
3 couple of the old cracked steps. Well, okay, why are you taking your  
4 time several, several months? Multiple injuries on this escalator and  
5 there's one email where Nugget is asking for an invoice to be cut in half  
6 and it was like \$8,000 or \$10,000. I'm paraphrasing here but it sounds  
7 like a broke college student. You're a multimillion dollar casino with lots  
8 and lots and lots of people riding down a defective escalator that has  
9 resulted in ten plus incidents that resulted in two serious hospital  
10 requiring injuries in May of 2015.

11           Under Nevada law -- and the last thing, they knew the public  
12 was still in danger. They just -- they either didn't care enough or it was  
13 too expensive or too costly. They didn't care enough even to take the  
14 steps recommended by the manufacturer. And critically, the guy who  
15 was assigned to the escalator for eight years, Chris Dutcher, he made  
16 recommendations. He made recommendations throughout his tenure.  
17 He made recommendations to replace the escalator; he made  
18 recommendations to replace the steps; they ignored him. They never  
19 replaced the escalator and the cracked steps were only replaced in  
20 2016. There were a few steps that were replaced in 2012, but there  
21 were still cracked steps, there were still cracked steps.

22           And he testified that when he found them, those cracks didn't  
23 just happen in that short period of time between his inspections. Those  
24 cracks took years and those cracks -- you got Nevada residents, you  
25 had out of state international tourists using that escalator and Nugget



1 just didn't care enough to fix them until it became, not just a problem,  
2 until multiple people got hurt. Your Honor, they knew the escalator was  
3 defective. They knew its defects had manifested into dangerous  
4 cracking, they knew the proposed and adopted course of action was at  
5 best a half measure. And they knew the public was still in danger and  
6 that's what we see in those emails.

7           We're not standing here -- I'm not standing here today asking  
8 for punitive damages. It is only for the ability to present punitive  
9 damages to the trier of fact to the jury, that's it. We -- the clear and  
10 convincing standard, the jury will have to address. But at this point, just  
11 like with the prior motion practice, Plaintiff has satisfied the burden to at  
12 least present and request and put a case on for punitive damages.

13           Thank you, Your Honor.

14           THE COURT: Thank you. Go ahead, counsel.

15           MS. MCLEOD: Thank you, Your Honor. Addressing Plaintiff's  
16 points in opposition, there are several things that he states that Golden  
17 Nugget knew. He has -- Plaintiffs have not come forward with proof of  
18 that knowledge. That list of knew -- they knew this and they knew that is  
19 argument brought forth through the Court here. What the evidence that  
20 Plaintiff has uncovered in discovery has shown is that there was repair  
21 recommendations for cracked steps in 2012; that those repair  
22 recommendations were considered. Other proposals were subsequently  
23 considered and the proposal that was ultimately accepted was that all of  
24 the cracked steps would be removed; that the down escalator, which is  
25 the escalator that Plaintiff fell on would receive new steps, and that the

1 salvage steps that were not cracked would be put on the up escalator.  
2 There is purchase orders made and checks cut, payment made for that  
3 repair work to be done.

4 Plaintiff points out, and I think I would too if I were arguing the  
5 case from his perspective, that there should be a material issue of fact  
6 because of Chris Dutcher's testimony. And Chris Dutcher says, hey I  
7 don't think all those steps were replaced. But there's no evidence that  
8 that was ever communicated to the Golden Nugget when they had gone  
9 back and forth with the proposals, agreed to a proposal, paid for that  
10 work to be done. The next time that Golden Nugget is made aware of  
11 any issue with cracked steps is subsequent to Mr. Brown's fall.

12 The other piece that is missing from Plaintiff's proof on liability  
13 is any causational link between the alleged cracked steps and Mr.  
14 Brown's very unfortunate fall. The escalator was shut down after  
15 Mr. Brown's incident, as required by law, and it is locked until the state  
16 inspector can come and investigate the incident. He did so, he put that  
17 escalator back into service, he rode the escalator, did not complain  
18 about any wobbly, shaky, rocking steps, did not flag it for further repairs.  
19 And yes, there were subsequent notifications of cracked steps on the  
20 down escalator again but that was subsequent to the Plaintiff's fall.  
21 That's what the evidence in the case shows, not just the argument.

22 And with that evidence of what has gone on, what Plaintiff  
23 may -- we don't believe that Plaintiff has met the elements to prove  
24 negligence. But even if all of Plaintiff's allegations are taken as true for  
25 purposes of deciding this motion and considering the question of

1 punitive damages, those questions still sound in the cause of action of  
2 negligence. And the Court is very aware of the briefing on both sides.  
3 We do not believe that that rises to the level under Nevada law to the  
4 culpable state of mind, the clear and convincing standard to put the  
5 question of punitive damages to the jury.

6 THE COURT: Okay, thank you.

7 Joinder party, go ahead.

8 MS. MASTRANGELO: Three quick points, Your Honor. It  
9 absolutely is Your Honor's purview to decide whether or not the Plaintiff  
10 can even put on evidence for punitive damages. The case that we cited  
11 in one of the briefs was *Smith's Food versus Bellegarde*, wherein it says  
12 the trial court is responsible to determine as a matter of law whether the  
13 Plaintiff has offered substantial evidence of malice in fact to support  
14 punitive damages. So it is your -- it's in your Court to make this  
15 decision, we can't just put it out there and see what the jury says if they  
16 don't have the requisite evidence.

17 Secondly, Judge, it hasn't been discussed that this safety  
18 issue to the public, which was discussed in those emails, which was  
19 discussed in the KONE bulletin that they put out about the potential for  
20 cracking of these steps. The whole reason that that's a safety issue to  
21 the public is not because cracked steps can make them shaky, it's  
22 because a cracked step can crack all the way through. Now you have a  
23 cracked step going down the escalator and when it gets to the bottom,  
24 the whole thing crashes and everybody on it is going to fall. That's the  
25 danger to the public, it's not that one cracked step that never cracks all

1 the way through is going to cause somebody to fall. It's causing the  
2 whole escalator to crash and that didn't occur here.

3 And finally, Judge, counsel mentioned several times that there  
4 were 10 or 12 other incidents of people falling due to cracked steps.  
5 There is no evidence whatsoever on that and that's the subject of a  
6 second -- or another motion in limine that you're going to hear today.  
7 But in conjunction with their argument and the motion for punitive  
8 damages, those prior incidents -- and there were some subsequent  
9 incidents of people falling on that escalator.

10 And what the evidence shows, through those incident reports  
11 from Golden Nugget, is one woman dropped loose change on the  
12 escalator stairs; she fell when she tried to pick them up, nothing to do  
13 with cracked steps. Second one, a boy's thong footwear came off on  
14 the escalator causing a cut to his foot, nothing to do with cracked steps.  
15 Another one, an intoxicated and obscenity spewing man claims to have  
16 fallen on the escalator, no cracked step mentioned. Woman lost her  
17 balance and fell but was not injured, no allegations of cracked steps.  
18 Another one, I was goofing around and tripped on the bottom step, a  
19 man said; no cracked steps allegation. Another one, intoxicated;  
20 another one intoxicated; one where unknown person shoved a man  
21 causing him to fall into his wife; another cut foot. Someone on a walker  
22 that fell; a shoelace that got caught. Yeah there were a lot of other  
23 incidents with this escalator but none of them have anything to do with  
24 steps being alleged to be shaky or alleged cracked steps so those  
25 shouldn't even be considered.

1 ThyssenKrupp has not moved for summary judgment on the  
2 negligence claims, but we have joined in on the punitive damages  
3 claims because this is a negligence case. Counsel said it many times,  
4 this is a pure negligence case and there's no basis for punitive damages  
5 in the record, thank you.

6 THE COURT: Now I was looking at the cases cited; it's a  
7 question for the two movants. Looking at the cases cited on the punitive  
8 damages standard -- KONE and the *Smith's* case and the *Woodcliff*  
9 [phonetic] and everything. Any of those on the summary judgment  
10 versus -- I mean, *Woodcliff* [phonetic] is the time of trial; *Smith's* is  
11 JNOV, right? They're jury instruction cases, aren't they?

12 MS. MASTRANGELO: I'm looking.

13 THE COURT: The context -- I'm not disagreeing with context  
14 if a matter of law for a Court to decide, I just was trying to find punitive  
15 damages case on a summary judgment that was cited to this Court.

16 MS. MASTRANGELO: I'm actually not sure, Your Honor. I'd  
17 be happy to go back and take another look at it but I don't -- I do not  
18 know.

19 MR. IQBAL: I'm not sure for certain, Your Honor, but I believe  
20 those were at the later stage of in front of the jury which is not where we  
21 are.

22 THE COURT: And I only know *Woodcliff* [phonetic] and  
23 *Smith* off the top of my head. I didn't --

24 MR. IQBAL: Yeah.

25 THE COURT: -- go back and look at every single case on the

1 summary judgment standard.

2 MS. MCLEOD: I don't know either, Your Honor. I'd be happy  
3 to brief it supplementally if the Court wishes but I don't -- I can't answer  
4 the Court's question sitting here today.

5 THE COURT: Okay. Let me -- I'm going to give you a quick  
6 inclination and let you each have a few moments to each argue. We  
7 can probably get some -- okay. My inclination on the liability portion is to  
8 deny without prejudice. While I appreciate the argument on the movant  
9 in that regard, that's not -- this one -- this one is my ruling actually how  
10 the liability is to deny without prejudice because I appreciate the  
11 movant's argument.

12 It's -- the Court finds there's material issues of fact in dispute  
13 as to what Golden Nugget may or may not have known and  
14 I -- the different distinction here between what may be evidence versus  
15 argument is somewhat unclear at this juncture because of the way the  
16 deposition testimony is; what is or is not known. And so in that regard,  
17 the Court's going to deny without prejudice because there's material  
18 issues of fact and dispute. The Court takes no position with what they  
19 did or did not know but material issues of fact in dispute. Since  
20 ThyssenKrupp did not join in that portion, the Court need not rule with  
21 regards to ThyssenKrupp in that regard.

22 Punitive damages are more challenging. When I look at what  
23 Plaintiff has presented in response, the Court has challenges on  
24 whether there would be enough at this juncture. But what I'm really  
25 looking at whether or not that's more appropriate to decide at the time

1 after hearing the evidence, since that would be a bifurcated portion  
2 anyway and would only come up at the time to determine whether or not  
3 that would be something that would come up in a jury instruction it would  
4 be bifurcated anyway, you know? But then the Court's also cognizant  
5 that parties may be asking me about that at the time of voir dire.

6           Therein lies a challenge for this Court. Because when I look  
7 at what you all have presented today from an evidentiary standpoint,  
8 taking the two parties differently, it's pretty darn compelling on behalf of  
9 Golden Nugget to grant there's on punitive damages because they didn't  
10 have control of the escalator, they didn't have any aspect. The only  
11 thing at best you have is trying to do, even though it would not be  
12 respondent superior under even the *Smith* case because they're not, but  
13 that's the most even analogous or you've got the landowner concept.  
14 But you haven't established anything that they in any way would've  
15 known. You have the Exhibit H and I, the prior reports from the agency  
16 in charge. I'm not looking at the subsequent afterwards but even if  
17 you've added in the subsequent afterwards, you know what I mean?

18           MR. IQBAL: Right.

19           THE COURT: So you have both before and after, nothing's  
20 even shown so to -- to say that they ever meet that clear and convincing.  
21 You haven't presented a single -- your only witnesses are potentially a  
22 recommendation. And a recommendation in and of itself and I'm not  
23 taking any advance position on -- even taking into account if you were to  
24 say that each and every one of the other incidences would somehow  
25 kind of go noticed. I don't see and -- I'm not seeing it. But why the



1 Court is -- after I just said all that, right -- is wondering on behalf of the  
2 summary judgment standard, is it more -- is it better to address that right  
3 now on behalf of Golden Nugget or is it better to wait to the time of trial?  
4 But where you're at is, what else could possibly come in? So that's  
5 where I'm giving you an inclination, that's why I'm going to give you all a  
6 moment.

7 ThyssenKrupp is a little bit different because that -- you know,  
8 the service and the maintenance issue and so it's -- it's -- the Court  
9 views that a little bit different. And I mean because Golden Nugget's  
10 one up the chain. Wouldn't have had the -- it's the lack of notice.  
11 There's nothing that the Court can see that there's any connection if the  
12 notice is ever going to get Plaintiff's the clear and convincing standard to  
13 get to all those magic words that punitive damages has.

14 ThyssenKrupp's a little bit different so the Court's more inclined on  
15 ThyssenKrupp really to defer to the time of trial, but I'm somewhat  
16 inclined to grant Golden Nugget's right now.

17 MR. IQBAL: Your Honor?

18 THE COURT: So, I'll let you go first because the movant is  
19 Golden Nugget so I would -- seems like I should give you last word if  
20 that's okay with you, unless you want to go first. It's your motion so you  
21 can choose whether as a movant you want to go first, you want to have  
22 last word?

23 MS. MCLEOD: I'll take the last word, Your Honor.

24 THE COURT: Go ahead, counsel for Plaintiff.

25 MR. IQBAL: Thank you, counsel. And, Your Honor, the initial

1 inclination by the Court at this stage it would be premature at the  
2 summary judgment at stage. But -- and then the Court has concerns  
3 about the evidence. Here's the evidence that we do have.

4 We have emails going back and forth between Golden Nugget  
5 and ThyssenKrupp where ThyssenKrupp is informing Golden Nugget of  
6 this is a safety issue for the riding public. When you -- when you look at  
7 those emails and the dates of those emails. Now, the one I'm  
8 specifically quoting is from June of 2015. Nothing was done, Your  
9 Honor, those cracked steps and --

10 THE COURT: Wait, June 2015?

11 MR. IQBAL: Yes.

12 THE COURT: I don't think you --

13 MR. IQBAL: And our accident was -- but there were also  
14 emails and there were -- the cracked steps -- steps were identified in  
15 2012, as well. This was also an issue in 2012. This is not just an issue  
16 with respect to subsequent measures or anything happening after our  
17 accident. The cracked steps were identified in 2012; our accident was  
18 May of 2015.

19 THE COURT: That's why I was asking about June --

20 MR. IQBAL: Right.

21 THE COURT: -- 2015.

22 MR. IQBAL: Right, but Golden Nugget had notice in 2012.  
23 They knew the cracked steps were a problem in 2012. They could have  
24 very well replaced the escalator steps with new steps. They could have  
25 checked the escalator steps and they could've gotten replacements

1 steps, not even new steps.

2           What we have, Your Honor, just based on the evidence is  
3 notice in 2012, continuing to rely on ThyssenKrupp. And at the end of  
4 the day, ThyssenKrupp is who they hired to service the escalator but it  
5 was their escalator. It was their escalator with the cracked steps. There  
6 is one down escalator in the Golden Nugget, Laughlin; one, Your Honor;  
7 this one. There is one up escalator in the Golden Nugget, Laughlin.  
8 And that's the one right next to the down escalator. So the evidence -- it  
9 shows that the cracked steps -- Golden Nugget knew about them in  
10 2012. Three years -- three years before our accident. You know about  
11 cracked steps, the mechanic, Chris Dutcher and in the recent emails  
12 that were disclosed after discovery and it shows that he references  
13 conversations with Don Hartmann.

14           Don Hartmann is the Director of Facilities for Golden Nugget  
15 at this time. Don Hartmann knew about the cracked steps. Golden  
16 Nugget knew about the cracked steps. They knew about the cracked  
17 steps from 2012, Your Honor. And they looked for all sorts of half  
18 measures. Well let's do this, no that's too expensive. We see --  
19 counsel's right, there were lots of purchase orders. There were lots of  
20 repair orders, none of them were executed. They had to dwindle down  
21 until the -- the last one was executed -- now when I say executed, they  
22 may have been signed but like actually put into practice, actually  
23 replacing the steps. When did that happen?

24           There were a few steps that were replaced in 2012 and then  
25 the bulk were replaced in January or February of 2016. Seven months,

1 eight months after two major incidents on the escalator including ours,  
2 including a Plaintiff, a Vietnam war vet, who had no idea who -- who had  
3 no idea that he was on a death machine. I mean, we -- again, Your  
4 Honor, at this point, it's premature to take punitive damages off the  
5 table. We're not asking for any conclusions, any holdings, any findings.

6 At the stage where evidence is presented to the jury, where  
7 we can get Chris Dutcher on the stand, where we can ask him about his  
8 conversations with the director of facilities, Don Hartmann; where we  
9 can ask Don Hartmann and other Golden Nugget personnel about their  
10 knowledge back in 2012, three years before. When we get to that stage,  
11 if the evidence is not there, then the evidence is not there. But to  
12 foreclose on that when just on the basis of the language of the emails  
13 and the fact is, Nugget can't just -- can't just say, oh it's ThyssenKrupp's  
14 issue. No, that is your escalator and Thyssen, to their credit, at least to  
15 the mechanic's credit, communicated his concerns.

16 The mechanic communicated his concerns and nothing was  
17 done that was a full measure, it was all half measures, Your Honor. It  
18 was all -- well, can we cut this invoice in half? And, you know, send  
19 another purchase order, send another purchase order. You don't want  
20 to replace the escalator, you don't want to put new steps in; you are  
21 what, considering replacement steps, salvage steps? This isn't a factory  
22 for Goodwill out in Nye County; this is a casino in Laughlin where you  
23 are making millions of dollars as Golden Nugget. And so based on that,  
24 at least at this stage, punitive damages should not be taken off the table.

25 THE COURT: Okay, counsel.

1 MR. IQBAL: Yes?

2 THE COURT: Appreciate what you said.

3 MR. IQBAL: Yeah.

4 THE COURT: I mentioned Exhibit H, okay, as something that  
5 the Court was specifically looking at, right? Okay.

6 MR. IQBAL: Yes, Your Honor.

7 THE COURT: H, to their motion which is Nevada Department  
8 of Business and Industry, Division of Industrial Relations, Mechanical  
9 Compliance Section which was the elevators/ related equipment  
10 operating permit which was specifically referenced in their motion and  
11 attached thereto, right?

12 MR. IQBAL: Yes, Your Honor.

13 THE COURT: The 2014, where it specifically references  
14 Mr. Hartmann as the person that they -- and it has everything checked  
15 off as their inspection guy. That's what Golden Nugget relies on and  
16 that Mr. Hartmann so I -- what the Court -- reason why I was saying its  
17 inclination is at this juncture; hearing everything you're saying is 2012,  
18 right?

19 MR. IQBAL: Yes, Your Honor.

20 THE COURT: But then Golden Nugget has provided the  
21 Court -- you've got a 2012 rubric, right? They've got 2014, the  
22 governmental entity in charge of inspecting escalators with the very  
23 individual -- putting the very individual that you're saying is the Golden  
24 Nugget person, right? Hartmann --

25 MR. IQBAL: Yes, Your Honor, but those inspections -- the

1 expert testimony will show that those are rubber stamps. Expert  
2 testimony is going to show that the state inspector who opened up the  
3 Nugget escalator again didn't even -- didn't open up the escalator and  
4 look in -- in May of 2015 opening up --

5 THE COURT: Was your expert there?

6 MR. IQBAL: What's that, Your Honor?

7 THE COURT: Was your expert there?

8 MR. IQBAL: My expert was not there but has the lots of  
9 experience with state inspectors. The point is, Your Honor, I understand  
10 that you're talking about 2012, 2014. There was a -- there was an  
11 inspection that Chris Dutcher did May 7<sup>th</sup>, 2015. About a week before  
12 the accident and that's where he found the cracked steps.

13 THE COURT: But what you don't have -- anything you've  
14 presented to this Court -- that's --

15 MR. IQBAL: Right.

16 THE COURT: -- what the end of my sentence was going to  
17 be.

18 MR. IQBAL: Right.

19 THE COURT: And that's why distinction where the Court was  
20 saying between the two parties. Is that --

21 MR. IQBAL: Understood, Your Honor.

22 THE COURT: -- Nugget knew anything with regards to -- the  
23 only thing that the parties have presented me is the last thing that  
24 Nugget knew was Exhibit H, which was --

25 MR. IQBAL: Yes, Your Honor.

1 THE COURT: -- the agency in charge of. Checks every box,  
2 says no discrepancies found during inspection. Maintenance  
3 programming records on-site and up-to-date, okay to issue the operating  
4 [indiscernible] notice acts, okay. It's -- it has this all so when I carefully  
5 looked at every single piece that everyone cited, right? And you did --  
6 thank you, very nice, you know, charted what the disputed aspects were.  
7 And I went back and cross referenced it with what everyone provided  
8 me. I kind of did my listing of what Nugget and then did ThyssenKrupp,  
9 you know, did separate little columns if you all want to know how I was  
10 doing this.

11 I -- the last thing I saw that Nugget was on notice of from the  
12 very person that you were referencing, you know, Hartmann? Was this  
13 Exhibit H, 2014? So everything -- taking everything that Plaintiff's  
14 saying, right -- to 56, everything Plaintiff true, right? All the evidence --  
15 everything for Plaintiff, you may have Nugget with the issues in 2012 but  
16 everything Nugget, 2014 forward, last thing I have is Nevada  
17 Department of Industry. I don't have any --

18 MR. IQBAL: And that's an important --

19 THE COURT: -- don't have any Nugget information with your  
20 Dutcher email assuming that it was authenticated, assuming everything  
21 was true in that regard --

22 MR. IQBAL: Right.

23 THE COURT: -- that Nugget was on notice and that's why the  
24 Court's inclination is taking that totality and I'll look at everything from a  
25 chronological standpoint, right?

1 Dividing it between the two defendants, everything you're saying so --

2 MR. IQBAL: I -- and just one last point.

3 THE COURT: Sure.

4 MR. IQBAL: It's a very -- to address that question, Your  
5 Honor, and then I'll sit down. Discovery was re-opened regarding those  
6 emails and so at this point, the -- given that Nugget did not reveal all of  
7 these emails and we had find them from ThyssenKrupp, you know, well  
8 after they were requested given that discovery is -- has been re-opened  
9 with respect to emails that list Don Hartmann. The evidentiary body of --  
10 the body of evidence is not yet complete, that's one point.

11 And so it would be premature to make a determination  
12 because discovery was re-opened as the Court recalls, there -- we  
13 finally got Chris Dutcher's emails well after discovery closed. We moved  
14 on that emergency motion. Those emails identify Don Hartmann,  
15 conversations with Don Hartmann about you know, 14, 15 -- 13 days  
16 ago we received Don Hartmann's address to subpoena him to appear  
17 because he's no longer an employee of Nugget.

18 So the evidentiary basis that the Court is considering, it may  
19 not be complete. I'm not going to make any representations before  
20 talking to Don Hartmann and having him under oath again. So that's  
21 one point, Your Honor, it goes to the aspect that this -- at this stage, it  
22 would be premature to rule out punitive damages with respect to  
23 Nugget. And number two, to the extent, Your Honor, in the briefing on  
24 this motion; it does not have the evidence attached. I would request an  
25 opportunity to do supplemental briefing with respect to Nugget's punitive



1 damages so just those two points, Your Honor, thank you.

2 THE COURT: Did I -- you know, I looked at this, right  
3 counsel? I didn't see a Rule 56(f) request and I didn't see anything on a  
4 *Troy versus AmeriStar* [phonetic] that would've complied 56(f). Did I  
5 miss it?

6 MR. IQBAL: I believe our opposition was filed before the --  
7 our opposition, Your Honor, to the motion for summary judgment -- give  
8 me one second.

9 THE COURT: It was filed?

10 MR. IQBAL: Our opposition was filed --

11 THE COURT: Was there supplement? Okay.

12 MR. IQBAL: -- was filed February. No, no our opposition --

13 THE COURT: Are you telling me it was before your  
14 emergency motions that we already had?

15 MR. IQBAL: Yeah. Our opposition, I believe, was filed before  
16 we got even Dutcher's emails, Your Honor, hold on. I will find this.

17 MS. MASTRANGELO: Was it November 19th?

18 THE COURT: Okay.

19 MR. IQBAL: Yes, so what -- our opposition was filed  
20 November 19<sup>th</sup>.

21 THE COURT: Okay.

22 MR. IQBAL: That day, Your Honor, the day we filed our  
23 opposition to the motion for summary judgment, that was the day later in  
24 the day where we -- where we got the late disclosure of Chris Dutcher's  
25 emails. Chris Dutcher's emails that, again, we went out and flew out to

1 New York, all that --

2 THE COURT: No, no. I remember that.

3 MR. IQBAL: Yeah.

4 THE COURT: Okay, so.

5 MR. IQBAL: So the opposition was really filed in November  
6 before we even had a single Dutcher email. So it's premature at this  
7 point to say that Nugget should not be at least contesting punitive  
8 damages here.

9 THE COURT: Okay. Counsel, you get last word. And then  
10 I'm going to have joinder party [indiscernible] on this portion, go ahead.

11 MS. MCLEOD: Did you?

12 MS. MASTRANGELO: Go ahead.

13 MS. MCLEOD: We believe that Plaintiff's argument that it's  
14 premature to have the Court's decision on March 28<sup>th</sup> when we're  
15 supposed to start trial April 22<sup>nd</sup> is grasping at straws. This was briefed  
16 a long time ago; Plaintiff's did not request to submit supplemental  
17 briefing. The non-movement in response to a summary judgment is  
18 called upon to bring forth, not argument but admissible evidence with  
19 proper foundation that the Court can consider to establish the facts. The  
20 only way in which the decision is premature is that this discovery which  
21 was granted by the Court in January still has not been completed.  
22 Counsel has recently disclosed some personal matters that made that  
23 difficult so I will not belabor the point on the timeliness but we do believe  
24 that there needs to be a finite amount of time if the Court is --

25 THE COURT: Without -- I'm not asking --

1 MS. MCLEOD: -- inclined to entertain additional  
2 submissions --

3 THE COURT: Sure.

4 MS. MCLEOD: -- from the Plaintiff.

5 THE COURT: I am not in any way asking anyone -- I just --  
6 when you're saying, counsel, it's the -- not the counsel who needed to  
7 provide the information, is that correct?

8 MS. MCLEOD: I'm sorry? I didn't hear you.

9 THE COURT: I just didn't know which counsel you were  
10 referencing.

11 MS. MCLEOD: Plaintiff's counsel has disclosed some --

12 THE COURT: Okay. I'm not asking the reason, I'm just -- I  
13 just -- I wasn't sure you if you were saying he should be given more time  
14 because it was one of the D's counsel or if you were saying, you were  
15 being accommodating because Plaintiff's counsel had issues.

16 MS. MCLEOD: I am saying that --

17 THE COURT: I just wasn't --

18 MS. MCLEOD: I would --

19 THE COURT: Okay.

20 MS. MCLEOD: -- like professional courtesies when those  
21 things happen to me and we are inclined to extend them to opposing --

22 THE COURT: Okay.

23 MS. MCLEOD: -- counsel as well. But again, the Court  
24 re-opened discovery in January; so more recent developments that  
25 complicate the ability to complete the discovery may not completely cure

1 the timeliness issue.

2           Plaintiff's counsel said in opposition that the Court's ruling at  
3 this time would be premature and need -- should wait until Dutcher could  
4 be put on the stand and see what testimony that they're able to illicit  
5 from him. He's out of this jurisdiction and I mean, maybe he will agree  
6 to come in but more likely than not, his deposition will be presented at  
7 trial as that testimony. And if there is deposition testimony that would  
8 defeat summary judgment, the time for that to be proffered to the Court  
9 is now.

10           He also -- Plaintiff's counsel also mentioned that expert  
11 testimony will show. The expert has submitted her reports, she's been  
12 deposed. And if there's something about her opinions, again, that would  
13 have defeated summary judgment -- if there was an opportunity to  
14 submit an affidavit or a declaration from their expert in support of their  
15 opposition for motion for summary judgment. For those reasons, we do  
16 not believe that it's premature for the Court to rule. However,  
17 considering the re-opening in discovery, if the Court wishes to deny the  
18 first part of the motion and have me renew the motion as to punitive  
19 damages once the last discovery is completed and we're across the final  
20 finish line, I would be happy to do so.

21           THE COURT: Okay. Counsel for --

22           MS. MASTRANGELO: Real briefly, Judge. This is the stage  
23 -- and it was an interesting issue that you raised whether or not there are  
24 any cases that talk about summary judgment on punitives prior to the  
25 evidence coming in at trial. And I'd be happy to supplement briefing if

1 you want to do that only because I think it's really interesting. But from a  
2 summary judgment standpoint, my co-counsel is correct. I mean, this is  
3 the time for the Plaintiff to come forward with admissible evidence, not  
4 let me cross-examine these witnesses on the stand and then see if we  
5 have enough for punitive damages. No, now is the time whether it's on  
6 liability or partial on punitive damages, now is the time and I don't think  
7 we would find any cases saying that it's not appropriate to do it at this  
8 time.

9 And secondly, Judge, on ThyssenKrupp's role in this case.  
10 ThyssenKrupp does not own those escalators, they don't operate them.  
11 They are not permitted to change them, replace them or do anything  
12 else. They belong to Golden Nugget and ThyssenKrupp is not permitted  
13 to do anything without Golden Nugget's permission. All it can do is  
14 inspect and relay their -- the issues they find to Golden Nugget and they  
15 did that through multiple recommendations and that's all they can do.  
16 They can't change someone else's equipment. So for that reason, I will  
17 leave it to you if you would like anything further.

18 THE COURT: Okay. You all have presented challenge when  
19 pleadings are done and then motions are continued for a long period of  
20 time there's intervening issues. Here's what the Court's going to do.  
21 Well, I think -- is Mr. Hartmann's deposition set for a particular date?

22 MR. IQBAL: It is not yet, Your Honor, not yet.

23 THE COURT: Was it April -- let's see. I don't remember off  
24 the top of my head which number you are on my stack on that April date.  
25 Are you April -- you're April 22<sup>nd</sup>, aren't you?

1 MR. IQBAL: Yes, Your Honor. And just -- just for --  
2 THE COURT: I don't actually [indiscernible].  
3 MR. IQBAL: -- to notify the Court. I approached --  
4 THE COURT: That's fine. I --  
5 MR. IQBAL: -- opposing counsel --  
6 THE COURT: Yeah.  
7 MR. IQBAL: -- regarding certain --  
8 [Colloquy between the Court and staff]  
9 THE COURT: Because we're doing the pre-trial conference  
10 today, you're in the five week stack. We're doing a pre-trial conference  
11 today, that's the reason I don't have you on a particular week in that five  
12 week stack, okay? That's what I was double-checking.  
13 MR. IQBAL: And on that point, Your Honor, I approached  
14 opposing counsel. Over the last several months, I've had a health issue  
15 and --  
16 MR. IQBAL: -- then separately there's been a health issue  
17 with my dad over the last two weeks.  
18 THE COURT: Sure.  
19 MR. IQBAL: So I requested a continuance from them.  
20 THE COURT: Removing you off the stack, anyways.  
21 MR. IQBAL: I requested a continuance from them --  
22 THE COURT: Okay.  
23 MR. IQBAL: And we'd be in agreement to limit discovery to a  
24 certain date for it -- to finish all of it.  
25 THE COURT: Okay, well. Let me tell you in light of that --

1 okay. Before you even said that, here's -- I was just looking at the  
2 specific date, five week stack so. You all wouldn't be at number one.  
3 Because in order to accommodate other requests and do your pre-trial  
4 conference today, of course that meant I schedule all the rest of them,  
5 right, on the stack? On the date that was given where you all would be  
6 as a 2016 case, you could probably all but one, maybe two -- but  
7 anyway, I got a 15 on the stack anyways so if you want to stay on the  
8 stack, you'd be on a particular place.

9 Just to let you know my very next stack as of yesterday -- not  
10 saying it's going to happen, construction defect case is said that it's  
11 going six to eight weeks starting May 29<sup>th</sup>. Not saying it's a reality, it's  
12 going to happen or not. I'm just letting counsel -- just sitting here, may  
13 know more than I do as of what I may have been told yesterday or it  
14 may be, you know, old news.

15 But in any event -- so I'm still placing, obviously, cases on that  
16 same stack and I re-stack thereafter because, you know, one day's  
17 news is different the next day and different the next minute and may be  
18 told one thing and it may not be that anyway. Sometimes I don't even  
19 find out when they settle, anyway but for a long time. But that being  
20 said, the Court's going to be fine to accommodate people, obviously we  
21 give accommodations, you know, for good cause all the time. Okay, get  
22 that taken care of.

23 Even before you said that, in light of the briefing issues, in  
24 light of the intervening facts with regards to the emails, this would fall  
25 within that special circumstance. I can't hold somebody accountable for

1 not doing a Rule 56(f) request when they didn't know that there was  
2 going to be emails that were going to show up on their doorstep later  
3 that day after they file an opposition. I think all parties would agree that  
4 that would not be appropriate to hold somebody accountable for  
5 something they did not yet know was going to exist in those emails that  
6 they were going to potentially contend could impact.

7           So it seems like this case is having its own unique issues in a  
8 variety different ways. So what I was going to say which I was still going  
9 to say is I was going to find it appropriate -- the reason why I was asking  
10 a depo date is there was going to be a depo date certain to say within X  
11 number of days of that depo date certain. I thought the fair thing to do  
12 would be to allow limited new summary judgment if either party wished  
13 to with regard to purely on punitive damages. And then that would allow  
14 Plaintiff to do an opposition with then the newest information and  
15 therefore, all parties, we're on equal footing.

16           That's where I was inclined to go because the only thing I  
17 would be doing would be opening up the dispositive motion deadline for  
18 the very limited purpose consistent for equity to all parties. That one  
19 side gets to address the new information and the other side gets to  
20 respond to the new information. The only thing I'm doing is opening up  
21 one deadline for that very limited purpose. That seemed it would be fair  
22 and equitable to all parties but also to see if anyone would object to that  
23 concept. Anybody object or does that seem fair to all?

24           MR. IQBAL: It -- that seems fair, Your Honor. And I just  
25 wanted to correct the factual record. Just a -- we -- on the 19<sup>th</sup>, we filed



1 our opposition. We had the submission of the emails was a few hours  
2 before that or several hours so -- but --

3 THE COURT: So --

4 MR. IQBAL: Just -- I --

5 THE COURT: -- okay, I'm sorry.

6 MR. IQBAL: -- wanted to make sure that it wasn't --

7 THE COURT: Same day.

8 MR. IQBAL: Same day, correct.

9 THE COURT: Presumably you had not had a full opportunity  
10 to look at things that had been delayed --

11 MR. IQBAL: Exactly.

12 THE COURT: -- the same day.

13 MR. IQBAL: Yeah, yeah.

14 MS. MASTRANGELO: Judge, are you saying the new  
15 briefing would just be on new information from this last round of  
16 discovery to add to the briefing or --

17 MR. IQBAL: Just on punitive damages, right? Just on the --

18 MS. MASTRANGELO: Right.

19 MR. IQBAL: -- issue of punitive damages?

20 THE COURT: I think it would be very -- okay. I would allow  
21 you all to come to an agreement how you want. Purely punitive  
22 damages, okay, that would be the only topic. If you all agreed that it  
23 was punitive damages and you could utilize the totality of the record, the  
24 Court would be fine with it. If you all did not agree that you could use  
25 the -- I think it would be hard on punitive damages not to use the totality

1 of the record from a realistic standpoint. But if somebody's arguing that  
2 you need to use something less than that, then I'd have to hear it. Does  
3 that make --

4 MS. MASTRANGELO: Okay. I just wanted to make sure  
5 what we were doing.

6 MR. IQBAL: I still don't know.

7 MS. MCLEOD: I think that the Court's solution is fair,  
8 certainly. This motion was fully briefed in December and we pushed it  
9 because discovery was being re-opened anticipating that that would be  
10 completed when -- like today when we were before the Court again. So  
11 I do believe that's fair. I would just want to make sure that I have very  
12 clear instructions from the Court since technically our dispositive  
13 deadline has passed.

14 THE COURT: So I said.

15 MS. MCLEOD: Is the Court going to set a deadline for that or  
16 just like two weeks after the discovery is completed? I just want to make  
17 sure that I'm dotting I's and crossing T's in that regard.

18 THE COURT: And that's where I was trying to -- okay. So  
19 here's where the Court was inclined to go unless there is an objection. If  
20 there is an objection, I'm going to hear the objection, okay? Because it  
21 seemed to me in fairness to all parties, the Court was inclined to do the  
22 following.

23 You all have one deposition, right, Mr. Hartmann? That would  
24 relate to punitive damages. The only two people that have been brought  
25 forth for punitive damages are a deposition that's already been taken,

1 right? Emails and Mr. Hartmann's deposition, is that correct?

2 MR. IQBAL: That's correct. The emails involve some  
3 ThyssenKrupp folks but with respect to punitive damages, if we could  
4 have the deposition of Don Hartmann. That would work, Your Honor.

5 THE COURT: Okay. What would be needed in order for all  
6 parties to feel that they can do an appropriate motion on punitive  
7 damages and respond to a motion on punitive damages for summary  
8 judgment? I'll ask each of you all. What do you think you each need?

9 Plaintiff's counsel, what do you think you need?

10 MR. IQBAL: One deposition from ThyssenKrupp's side, Your  
11 Honor, and one deposition from Golden Nugget's side being Don  
12 Hartmann.

13 THE COURT: Okay. Don Hartmann and ThyssenKrupp was  
14 at -- already notices that pursuant to a prior order of the Court or are you  
15 asking for something new for the ThyssenKrupp person?

16 MR. IQBAL: I --

17 THE COURT: Because the intention is not to open up  
18 something that I have not yet already opened up.

19 MR. IQBAL: Understood.

20 THE COURT: What I was really trying to do is -- here's what I  
21 understand the fabric was, right? I understood that the landscape, the  
22 fabric, however you'd like to phrase it is that the following happened.  
23 Motion was filed; opposition was filed the same day as the opposition. I  
24 thought the chronology was opposition then emails but same day as  
25 opposition was filed, the emails came in.

1           Then because of emails, there was needed -- discovery  
2 needed to be re-opened for the very limited purposes as articulated in  
3 the Court's order that I am in no way expanding on the Court's order.  
4 Then, as a result of that limited discovery due to unforeseen  
5 circumstances, unfortunately some medical related issues have  
6 happened. As a result of those medical related issues, although the  
7 parties have been diligent, certain things have not occurred that  
8 otherwise would've occurred within the timeframe originally anticipated  
9 by the parties. Is that correct landscape?

10           MR. IQBAL: That's --

11           MS. MCLEOD: Yes, Your Honor.

12           MR. IQBAL: -- fair, Your Honor.

13           MS. MASTRANGELO: That's fair.

14           THE COURT: Okay. In light of that -- well -- and then also  
15 there was an accommodation to change another date to accommodate  
16 somebody's previously scheduled for today and then there was, well the  
17 oops on certain motions in limine really doesn't play into today's but  
18 anyway, okay, so. If that's the landscape, it seems from a fair and  
19 equitable standpoint that the original intention of opening up the limited  
20 discovery was to allow all parties to be on equal footing so the case  
21 could move forward fair and equitably to all parties. No one gets  
22 advantages; no one gets disadvantages, right?

23           So if Plaintiff is stating that because of the unforeseen medical  
24 aspects and because of the emails that may not have done the  
25 opposition that Plaintiff made -- would've done with regards to a motion

1 for summary judgment which is a dispositive motion and therefore wants  
2 to be able to do a more in depth opposition than by definition,  
3 defendants should have an opportunity to do new punitive damages  
4 motions because they shouldn't be hamstrung where Plaintiff got to hear  
5 everything the Court's inclinations were and everything that came  
6 forward today so both sides get to take it, you know what I mean?

7           So both sides start, right and the deadlines that everybody  
8 utilizes so that nobody gets an advantage and nobody gets a  
9 disadvantage. But I'm not opening up more than just punitive damages  
10 because that's the sole issue that this has arisen from, right? So that's  
11 the landscape.

12           I don't know what and I'm not asking you to disclose any  
13 medical, okay? And I'm not -- once again no advantages or  
14 disadvantages. I don't know where everybody lives right now, as far as  
15 your witness, and et cetera, so I don't know the feasibility of getting  
16 people in for the depo, et cetera. So the Court can't put an arbitrary  
17 date that may not meet you all's needs. Seems to me, as very  
18 sophisticated counsel, you could work together and pick dates that meet  
19 your needs but at the same time, you've got a 2016 case. You've got to  
20 be realistic in trying to get this case appropriately done.

21           So to kind of answer the panel plea of questions, I've -- the  
22 Court was really thinking that you could come up with a schedule that  
23 made sense if you all think that somebody is not playing nice in the  
24 sandbox or coming, you know what I mean? And I have to come up with  
25 dates and give you all basically a week to come up with your own dates.

1 And if that doesn't work then I impose dates that I think are appropriate  
2 that gives you an opportunity. This is sophisticated, organized,  
3 experienced counsel that you are to come up and if you need a week  
4 and a half, you know what I mean, to do what you need to do. And if  
5 not, then the Court jumps in and gives dates and you all deal with it.

6 So that really was where the Court was finding would balance  
7 everybody's needs but once again, I'm only dealing with the rubric that I  
8 understand. And if I don't have the full landscaping as it might seem  
9 cliché, somebody needs to let me know. So does that work for parties?  
10 If it doesn't, somebody's got to let me know.

11 MR. IQBAL: That does work, Your Honor.

12 MS. MCLEOD: It works.

13 MR. IQBAL: And I just want to note that opposing counsel  
14 had been incredibly gracious and it's been very -- it's been a pleasure  
15 working with opposing counsel. And I want -- I appreciate their  
16 accommodations so that works with Plaintiffs, Your Honor.

17 THE COURT: Okay. And if someone thinks on behalf of their  
18 parties that they're going to be prejudice by what the Court was just  
19 trying to do, you've got to let me know. Because this idea is really just to  
20 get fair and impartial for everyone so everyone's on the same footing.  
21 So if you get a ruling and if you don't like it, then you have your  
22 processes but everyone's not saying it's because there was some delay  
23 in time and other factors, you kind of have like a clean sweep of it, so.

24 MR. IQBAL: And perhaps the Court can set a timeframe for  
25 the parties to get together and get a stipulation and order.

1 THE COURT: That's what I was saying. A week to a week  
2 and a half and if not then I jump in with dates but.

3 Counsel for defendants, does that work for you? Does it not  
4 work for you, do you need guidance? What's up?

5 MS. MCLEOD: I --

6 THE COURT: Do you need a five minute break? You want to  
7 talk --

8 MS. MCLEOD: I believe the Court's solution again is fair.  
9 We've just struggled to follow up in the past, so I want --

10 THE COURT: Okay.

11 MS. MCLEOD: -- to make sure that we do that. And I also  
12 would like some direction from the Court as to whether there's an order  
13 expected from this hearing today or if we are reserving it until the motion  
14 is renewed at the close of the discovery?

15 THE COURT: Depends on what you're requesting. Because  
16 the only potential order would be on the portion of the motion affecting  
17 your clients and so it would be what you are requesting. If you want an  
18 order for your portion of the motion for whatever purposes you may wish  
19 an order from your portion, the Court's going to hear that. If you'd rather  
20 delay, the Court's going to hear that and if all parties are in agreement  
21 with what you're requesting then the Court's going to be fine with it  
22 either way. Does that make sense?

23 MS. MCLEOD: Yes.

24 THE COURT: Okay, so now that answers that question.

25 Counsel for ThyssenKrupp?

1 MS. MASTRANGELO: I don't have anything else to add.

2 THE COURT: Does it work for you?

3 MS. MASTRANGELO: Yes.

4 THE COURT: Do you disagree? Does it not --

5 MS. MASTRANGELO: No, it works.

6 THE COURT: Okay. So my calendar is not letting me get out  
7 of this case. Okay, so working on the summary -- so counsel for Global  
8 Net, would you rather hold up on your order or do you want it to be  
9 triggered from today on your portion? I -- it -- you know, it's up to you or  
10 -- the Court's going to be fine either which way on your first portion.

11 MR. IQBAL: If you have no position, I would request that the  
12 portion of the order on liability be denied and the --

13 THE COURT: Without prejudice.

14 MR. IQBAL: -- without prejudice. And the -- with respect to  
15 punitive damages, that the hearing be continued to a later date to be  
16 determined by the Court.

17 THE COURT: Let me find out what the movant would like  
18 because she -- movant did it as a combined motion so if you want to  
19 give us two separate orders or not. Depends on what you want to  
20 trigger and all that type of stuff so I think the movant gets to choose  
21 because it's the movant's motion and --

22 MS. MCLEOD: I certainly think that Plaintiff's counsel  
23 proposal is consistent with what the Court has indicated today. I think it  
24 would be helpful to at least have some determination on part of the  
25 issues, especially since we've taken up the Court's time and you've



1 heard the argument on that. And that will allow us to narrow the issues  
2 moving forward so.

3 THE COURT: Okay. So then -- although the motion was  
4 viewed as a two-part motion, is that okay for you? Since you didn't join  
5 the other one so it fully doesn't impact you, right?

6 MS. MASTRANGELO: Yeah, it doesn't matter to me.

7 THE COURT: Okay. So on behalf of -- I'm just going to call it  
8 the Golden Nugget party's motion with regards to liability is denied  
9 without prejudice for the reasons stated. It is so ordered. The second  
10 portion of the motion for summary judgment with relationship to punitive  
11 damages in ThyssenKrupp's joinder thereto is going to be continued so  
12 that the -- now, do you want it continued so that the party's are doing  
13 supplemental briefing that adds to it or do you want that to be vacated  
14 and that you're going to file new motions then the Court takes the new  
15 motions in their entirety?

16 The Court's going to be fine either which way you want to do  
17 it. It's really a matter from your standpoint how you want your  
18 documents, you know what I mean, and how you want your record and  
19 whether you want to pay another fee for filing the motion. So the Court's  
20 going to be fine either which way and if you need a moment to talk about  
21 it, that's fine. If you need a moment, we can take care of that as well. If  
22 you want to wait until the end of the hearing to make that decision, that's  
23 going to be fine too.

24 [Colloquy between the counsel]

25 MS. MCLEOD: After a brief sidebar with my counsel here, we

1 -- since it's Golden Nugget's motion, we would agree to withdraw the  
2 portion of the motion on punitive damages at this time with the  
3 agreement of Court and counsel, it will be resubmitted once discovery is  
4 completed and then that we would have a new date completely.

5 THE COURT: Okay. In light of that and the Court's going to  
6 find it specifically that that motion for punitive damages will be allowed  
7 and will be viewed timely as long as it meets whatever new date is going  
8 to be provided by the Court with the agreement of the parties, okay?  
9 Does that work for all parties?

10 MS. MCLEOD: Yes.

11 MS. MASTRANGELO: Yes, Your Honor.

12 MR. IQBAL: Yes, Your Honor.

13 THE COURT: Okay, so got it, okay. Now would you -- so  
14 we're utilizing your time appropriately, do you want the Court -- do you  
15 all have any idea when Hartmann's depositions going to take place? Do you  
16 want me to give you a ballpark date and give you -- are you all  
17 amenable to continuing the trial to a different date? Do you want me to  
18 deal with that right now and then we circle back with all other dates now  
19 or do you want me to move forward with your motions in limine and then  
20 do trial setting at the end? What makes the most sense for you all?

21 MS. MCLEOD: I'm fine with moving the motions in limine and  
22 recalling them closer and date to the actual trial date, especially since  
23 we're not hearing ThyssenKrupp's motion today. But I'm aware of the  
24 Court's time in preparing so I don't -- I don't want to have to put that  
25 burden on the Court to prepare again, but I am cognizant of the hour so

1 I'm happy to push them forward but.

2 THE COURT: The Court's fine either which way.

3 MR. IQBAL: It makes sense. I want to echo counsel's  
4 sentence. We appreciate the Court's time and efforts here. It does  
5 make sense to have all the motions in limine heard on the same day and  
6 given that we are going to be meeting here within the next week to  
7 discuss our schedule and everything. Perhaps we can come back with  
8 a -- go to the Court with --

9 THE COURT: Do you want to do scheduling today or do you  
10 want to do scheduling -- I mean, what do you all want to do? Do you  
11 want to take the week and you want me -- let me give you a couple of  
12 options, okay?

13 You don't want -- your ThyssenKrupp's counsel. Okay, I'm  
14 actually not in trial next week so I have a little bit of flexibility. I can take  
15 you all after my CV calendar next Wednesday, if you wish to. So I can  
16 have you come in at 10 o'clock on the 3<sup>rd</sup>, if you want to come in for a  
17 special setting on Wednesday, the 3<sup>rd</sup>, if that meets everybody's needs,  
18 okay. If it does not meet everybody's needs, I can have you come in on  
19 my regular calendar on the 4<sup>th</sup> at 10 o'clock as well. Either of those days  
20 the Court is going to be fine next week.

21 And if that gives you all enough time to coordinate among  
22 yourselves to see your trial stack time, your depo time, when you want  
23 to do your motion for summary judgment time. Does that give you -- you  
24 know, gives you about a week -- less than a week to get that taken care  
25 of. If that doesn't work, then here's what I'm going to do. I'm going to

1 excuse myself for about five minutes so that you all don't feel like you're  
2 talking right, okay. So you all can relax for a few moments, talk among  
3 yourselves. We're going to go off the record.

4 I gave you a couple of those proposed dates. If those dates  
5 don't work then I can put you on any Tuesday and Thursday thereafter  
6 on a regular motion calendar, okay? You want a special setting; I've  
7 actually got a little bit more flexibility next week. If not, you can go with  
8 any regular case on a Tuesday and Thursday thereafter, okay? So  
9 we're going to go off the record for about five, ten minutes. When you  
10 all are ready, can you let the marshal know? He'll come grab me and  
11 we'll come back on the record, okay?

12 MR. IQBAL: Thank you, Your Honor.

13 MS. MCLEOD: Thank you.

14 THE COURT: And if you want motions in limine still some  
15 heard today, I'm fine with that. If you want everything pushed off to a  
16 different day, I'm fine with that.

17 [Pause in proceedings]

18 [Resumed proceedings at 11:30 a.m.]

19 [Colloquy between the Court and counsel]

20 THE COURT: Okay.

21 THE COURT RECORDER: Just a moment, Judge.

22 MS. MCLEOD: Your Honor, we've discussed the --

23 THE COURT: Just one -- just one sec.

24 MS. MCLEOD: I'm sorry.

25 THE COURT: Madam Court Recorder takes a second. Our

1 system once we turn it off takes a second to -- no worries.

2 THE COURT RECORDER: On the record.

3 THE COURT: Thanks so much.

4 Go ahead, counsel, for GNLV?

5 MS. MCLEOD: Your Honor, we've discussed amongst  
6 ourselves and come to an agreement. We would like to have the Court  
7 hear all motions in limine on April 3<sup>rd</sup> at 10:00 a.m.

8 THE COURT: Okay.

9 MS. MCLEOD: We would request that the April 22<sup>nd</sup> trial date  
10 be vacated at this time. We have agreed to meet together to submit a  
11 stipulation with regard to trial and all other scheduling as soon as  
12 possible, but no later than April 15<sup>th</sup>, if agreeable to the Court.

13 THE COURT: That is going to be fine. So you will vacate  
14 your calendar call and your trial stack date are vacated at request of the  
15 parties. In your new trial order that we'll review once we see the  
16 stipulation. No dates are going to be opened up other than the motion  
17 for summary judgment date with regards to punitive damages; is that  
18 correct by agreement of the parties?

19 MS. MCLEOD: Yes, Your Honor.

20 MR. IQBAL: That's correct, Your Honor.

21 THE COURT: So all dates will be viewed as closed, correct?  
22 Okay. As far as stack dates, just so I give you a little bit of frame of  
23 reference so that it's not an open ended stipulation. The Court -- what is  
24 -- since it's a 2016 case, stacks are about every month. You know, five  
25 week stacks. What stack are you thinking ballpark or should I just say

1 no later than X stack, the Court would be amenable to? Are you thinking  
2 the fall? Are you thinking the summer?

3 MS. MCLEOD: We're thinking --

4 MR. IQBAL: Summer, July?

5 MS. MASTRANGELO: I'm completely out of touch August,  
6 September due to a month long trial in another department so before or  
7 after that I can agree to.

8 MS. MCLEOD: I have a 2015 case in Department 30 that's  
9 set to go May 20<sup>th</sup> and then I'm scheduled for three trials in July. One of  
10 those is older than this case so.

11 MR. IQBAL: How's the --

12 THE COURT: Are you thinking my October 14<sup>th</sup> stack? Is  
13 that the one you're probably thinking of? In light of what everyone said.

14 MS. MASTRANGELO: We could make that work.

15 MS. MCLEOD: Yeah.

16 MR. IQBAL: Yes, Your Honor.

17 THE COURT: Okay.

18 MR. IQBAL: That works.

19 THE COURT: So the Court's going to be amenable if you are  
20 stipulating to do a trial stack no later than our October 14<sup>th</sup> stack, okay?  
21 In light of your stipulation, does that seem to kind of -- and then you can  
22 trigger your outstanding motion for summary judgment on the punitive  
23 damage issue consistent there with that to get your depo taken care of  
24 and whatever else you need. Does that meet your needs?

25 MS. MCLEOD: That'll work.

1 THE COURT: Okay, and if you were to pick that October 14<sup>th</sup>  
2 stack that -- we'll pick your pre-trial conference and your calendar call  
3 dates consistent with the stack you'll want. If you were to pick the  
4 September stack, that stack is September 9<sup>th</sup>. If you were to pick the  
5 August stack, that stack is October -- August, sorry, August 5<sup>th</sup>. August  
6 5<sup>th</sup>, September 9<sup>th</sup>, October 14<sup>th</sup> or if you were picking July, it starts July  
7 1. Okay? So that gives you -- or you can just phrase it as July, August,  
8 September and October and we would tell you the date of the stack so if  
9 that's easier for you.

10 MS. MCLEOD: I volunteer to contact your JEA once we've  
11 got our proposed stipulations to make sure our dates match with the  
12 Court's dates and.

13 THE COURT: If you just say the month, this -- you know, we'll  
14 put it in the specific start of the stack date. If you -- if that makes it  
15 easier for you all.

16 MS. MCLEOD: Very well, Your Honor.

17 THE COURT: Or you can contact, whichever's easier for you.  
18 We'll get that taken care of for you. So we vacated what you need to  
19 vacate, we've got you set for April 3<sup>rd</sup> at 10:00 a.m. We've got  
20 everything we need. Your order only on the liability portion on behalf of  
21 Golden Nugget was ordered for today so you've got your 10 days EDCR  
22 7.21. If you need an extra 10 days, I'll just say 20 days from today.  
23 Circulate it to the other parties before you provide it back to the Court  
24 and that one was denied without prejudice. So that takes care of that  
25 one.

1 And we'll see you on April 3<sup>rd</sup> at 10:00 a.m. and if we see  
2 anything before then, great and if not, we'll see you on April 3<sup>rd</sup>, okay?  
3 Thank you so much.

4 MS. MCLEOD: Thank you.

5 MR. IQBAL: Thank you, Your Honor.

6 THE COURT: Have a great --

7 MS. MASTRANGELO: Thank you very much, Your Honor.

8 THE COURT: -- rest of your day and week.

9 [Colloquy between the Court and staff]

10 MS. MCLEOD: I'm happy to do the order under these  
11 circumstances, Your Honor.

12 THE COURT: I just thought in light of what you were saying, I  
13 thought you were saying you wanted to do it so. My clerk was quietly  
14 reminding me normally we had the non -- the other side do it but since I  
15 thought you said you were going to do it then.

16 MS. MCLEOD: I'm happy to do it.

17 THE COURT: Okay.

18 MS. MCLEOD: I think it will simplify things and we'll just get it  
19 done and taken care of.

20 THE COURT: Okay. Sounds wonderful, we'll see you on the  
21 3<sup>rd</sup>. Thank you so much for your time. I hope everyone had nice  
22 wherever they were and we'll see you next week.

23 MS. MASTRANGELO: Thank you.

24 MR. IQBAL: Thank you, Your Honor.

25 //



1 MS. MCLEOD: Thank you very much; we appreciate the  
2 Court's time.

3 THE COURT: Of course.

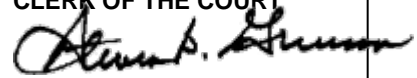
4 [Hearing concluded at 11:35 a.m.]

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

24 

25 \_\_\_\_\_  
Angelica Michaux  
Court Recorder/Transcriber



1 **NEOJ**

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14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

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

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

**Dept. No.: XXXI**

19 vs.

20 LANDRY'S, INC., a foreign corporation;  
21 GOLDEN NUGGET, INC. a Nevada  
22 corporation, d/b/a GOLDEN NUGGET  
23 LAUGHLIN; GNL, CORP., a Nevada  
24 corporation; THYSSENKRUPP ELEVATOR  
25 CORP., a foreign corporation; DOE  
26 INDIVIDUALS 1-100,  
27 ROE BUSINESS ENTITIES 1-100,

28 Defendants.

GNL, CORP., a Nevada corporation;

Third-Party Plaintiff,

vs.

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

Third-Party Defendants

**NOTICE OF ENTRY OF ORDER**

1 PLEASE take notice, that an *Order* was entered on the Court's docket on the 19<sup>th</sup> day of  
2 April, 2019 in this matter. A Copy of which is attached hereto.

3 DATED this 19<sup>th</sup> day of April, 2019.

4 GRANT & ASSOCIATES

5 

6 ALEXANDRA B. MCLEOD, ESQ.

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

**CERTIFICATE OF SERVICE**

I certify that I am an employee of GRANT & ASSOCIATES and that on this 19<sup>th</sup> day of April, 2019 I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** 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

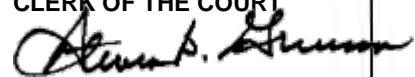
X Pursuant to EDCR 7.26, by transmitting via the Court's electronic filing services by the document(s) listed above to the Counsel set forth on the service list.

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*/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.

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**

**ORDER ON DEFENDANT GNL,  
CORP.'S MOTION FOR  
SUMMARY JUDGMENT ON  
LIABILITY AND PUNITIVE  
DAMAGES**

**Date of hearing: March 28, 2019**

**Time of hearing: 10:00 a.m.**

Defendant, **GNL, Corp.'s**, Motion for Summary Judgment on Liability and Punitive  
Damages,<sup>1</sup> having come on for hearing before the above-entitled Court on the 28<sup>th</sup> day of

<sup>1</sup> The Subject Motion was originally filed on Nov 1, 2018 and titled, "Defendants' Motion for Summary Judgment on Liability and Punitive Damages." Since that time, Defendants LANDRY'S, INC. and GNI have been dismissed on other grounds.

*me*  
*4-11-19*

1 March, 2019, at the hour of 10:00 a.m.; and this Honorable Court having considered all of the  
2 papers and pleadings on file herein, including the Joinder filed by Defendant THYSSENKRUPP  
3 ELEVATOR CORPORATION (TKE), as well as the argument of counsel for the parties hereto;  
4 and good cause appearing therefor;

5 **THE COURT FINDS** that triable issues of fact remain on the issue of Liability for  
6 determination by a jury. **THEREFORE, IT IS HEREBY ORDERED** that the Motion for  
7 Summary Judgment is denied in part, and without prejudice, with regard to Liability only.

8 **THE COURT FURTHER FINDS** that the Motion with regard to Punitive Damages is  
9 not yet ripe due to the re-opening of discovery. The Motion for Summary Judgment on Punitive  
10 Damages is hereby withdrawn without prejudice to re-file or re-notice the Motion once  
11 discovery is again closed. **THE COURT EXPLICITLY FINDS** that Defendants GNL or TKE

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Order on Defendant's MSJ on Liability & Punitive Damages

shall not be prohibited from re-filing the Motion due to the running of the previous dispositive motion deadline. *The parties, however, must file the motion timely with the new deadline.*

DATED this 15 day of April, 2019.

JOANNA S. KISHNER

DISTRICT JUDGE JOANNA S. KISHNER

Approved as to form & content:

**IQBAL LAW, PLLC**

4/9/19

MOHAMED A. IQBAL, JR., ESQ.  
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101 Convention Center Drive, Suite 1175  
Las Vegas, Nevada 89109  
*Attorney for Plaintiffs, JOE N. & NETTIE J. BROWN*

**ROGERS, MASTRANGELO, CARVALHO & MITCHELL**

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Las Vegas, Nevada 89101  
*Attorney for Defendant/ Third-Party Defendant, THYSSENKRUPP ELEVATOR*

Submitted by:

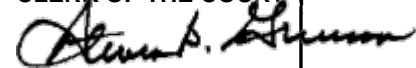
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1 **SAO**  
2 **IQBAL LAW PLLC**  
3 Mohamed A. Iqbal, Jr. (NSB #10623)  
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8 [info@ilawlv.com](mailto:info@ilawlv.com)

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

10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

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

14 **Plaintiffs,**

15 **vs.**

16 **LANDRY'S, INC., a foreign corporation;**  
17 **GOLDEN NUGGETT, INC., a Nevada**  
18 **corporation, d/b/a GOLDEN NUGGET**  
19 **LAUGHLIN; GNL, CORP.; a Nevada**  
20 **corporation; THYSSENKRUPP ELEVATOR**  
21 **CORP., a foreign corporation; DOE**  
22 **INDIVIDUALS 1-100; ROE BUSINESS**  
23 **ENTITIES 1-100,**

24 **Defendants.**

25 **AND ASSOCIATED CASES**

Case No.: A-16-739887-C

Dept. No.: XXXI

26 **STIPULATION AND ORDER**  
27 **REGARDING DISCOVERY MATTERS**  
28 **AND TRIAL STACK**

COME NOW the Parties, by and through their respective counsel of record, and hereby stipulate to the following:

1. Defendants GNL, Corp.'s:

- a. Motion *in Limine* #1 to Exclude Srinivas Nalamachu, MD for Unauthorized Practice of Medicine in Nevada; and
- b. Motions *in Limine* #2 Regarding Other Incidents or Repairs And #3 Regarding Discovery Matters,

STIPULATION AND ORDER REGARDING DISCOVERY MATTERS AND TRIAL STACK

1 of 3

APR 17 '19 PM 08:16\*  
JNB0267631



1 shall be heard on April 22, 2019 at 8:30 a.m.

2 2. Defendant/Third Party Defendant ThyssenKrupp Elevator Corporation's:

- 3 a. Motion in Limine #1 Re: Computation of Damages;
- 4 b. Motion in Limine #3 Re: Responsibility Avoidance and Reptile Theory Arguments;
- 5 c. Motion in Limine #4 Re: Improper Voir Dire;
- 6 d. Motion in Limine #6 Re: Exclusion of Evidence of Subsequent Incidents;<sup>1</sup>
- 7 e. Motion in Limine #7 Re: Claim that Thyssenkrupp "Hid" or Failed to Produce
- 8 Evidence; and
- 9 f. Motion in Limine #8 Re: Exclude the Testimony of Sheila Nabors Swett,

10 shall be heard on April 22, 2019 at 8:30 a.m.

11 3. Plaintiffs filed a notice of limited non-opposition to:

- 12 a. Defendant/Third Party Defendant ThyssenKrupp Elevator Corporation's Motion in
- 13 Limine #2 Re: Treating Physicians; and
- 14 b. Defendant/Third Party Defendant ThyssenKrupp Elevator Corporation's Motion in
- 15 Limine #5 Re: Limit Experts to Opinions and Matters Set Forth in Their Reports,
- 16 and these two Motions may be granted and vacated from the April 22, 2019 hearing.

17 4. Plaintiffs will schedule, subpoena, and depose Don Hartmann at a time and location to be

18 determined.

19 5. Discovery, the limits of which have been set by the Court pursuant to prior order and

20 rulings (including at a prior hearing on March 28, 2019), shall conclude by June 17, 2019.

21 6. The Parties agree that trial for this matter is currently set for the October 14, 2019 trial

22 stack, and respectfully request from the Court a pre-trial order to this effect.

23 IT IS SO STIPULATED.

24 [Signatures follow on the next page]

25 \_\_\_\_\_

26 <sup>1</sup> Plaintiffs and Defendant/Third Party Defendant ThyssenKrupp Elevator Corporation are

27 discussing a resolution that will allow this motion in limine to be granted and removed from the

28 Court's hearing calendar.

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DATED this 16th day of April 2019.

IQBAL LAW PLLC

*James E. Iqbal, Jr. NSB#17116*  
*For Mohamed A. Iqbal, Jr.*

MOHAMED A. IQBAL, JR., ESQ.

Nevada Bar No. 10623

101 Convention Center Drive, Suite 1175

Las Vegas, Nevada 89109

*Attorneys for Plaintiffs,*

*JOE N. BROWN and NETTIE J. BROWN*

DATED this 16th day of April 2019.

ROGERS, MASTRANGELO, CARVALHO

& MITCHELL

*Rebecca L. Mastroangelo*

REBECCA L. MASTRANGELO, ESQ.

Nevada Bar No. 5417

700 S. 3rd Street

Las Vegas, NV 89101

*Attorneys for Defendants/Third-Party Defendants,*

*THYSSENKRUPP ELEVATOR CORPORATION*

DATED this 16th day of April 2019.

GRANT & ASSOCIATES

*Alexandra M. Leod*

ALEXANDRA M<sup>C</sup>LEOD, ESQ.

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*Attorneys for Defendants, GNL, CORP.,*

*LANDRY'S, INC., and GOLDEN NUGGET, INC.*

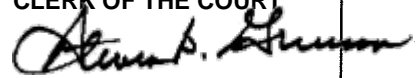
**ORDER**

IT IS SO ORDERED.

DATED this 17 day of April 2019.

*Joanna S. Kishner*  
DISTRICT COURT JUDGE JOANNA S. KISHNER  
DEPARTMENT XXXI

STIPULATION AND ORDER REGARDING DISCOVERY MATTERS AND TRIAL STACK



1 **NEO**  
2 REBECCA L. MASTRANGELO, ESQ.  
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10 Attorneys for Defendant  
11 THYSSENKRUPP ELEVATOR CORPORATION

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

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

13 Plaintiffs,

14 vs.

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

21 Defendants.

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

22 GNL, CORP., a Nevada corporation;

23 Third-Party Plaintiff,

24 vs.

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

Third-Party Defendants.

**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that an Order in the above-entitled action was entered and

JNB02679

1 filed on the 25<sup>th</sup> day of June, 2019, a copy of which is attached hereto.

2 DATED this 27<sup>th</sup> day of June, 2019.

3 ROGERS, MASTRANGELO, CARVALHO &  
4 MITCHELL

5 /s/ Rebecca L. Mastrangelo

6 REBECCA L. MASTRANGELO, ESQ.

7 Nevada Bar No. 5417

8 700 S. Third Street

9 Las Vegas, Nevada 89101

10 Attorney for Defendant

11 THYSSENKRUPP ELEVATOR CORPORATION

12 **CERTIFICATE OF SERVICE**

13 Pursuant to N.R.C.P. 5(a), E.D.C.R. 7.26(a), and Rule 9 of the N.E.F.C.R. I hereby  
14 certify that I am an employee of Rogers, Mastrangelo, Carvalho & Mitchell, and on the 27<sup>th</sup>  
15 day of June, 2019, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER**  
16 was served via electronic means with the Eighth Judicial District Court, addressed as follows,  
17 upon the following counsel of record:

18 Mohamed A. Iqbal, Jr., Esq.  
19 Christopher Mathews, Esq.  
20 101 Convention Center Drive, Suite 1175  
21 Las Vegas, Nevada 89109  
22 Attorneys for Plaintiffs

23 Annalisa N. Grant, Esq.  
24 GRANT & ASSOCIATES  
25 7455 Arroyo Crossing Parkway, Suite 300  
26 Las Vegas, Nevada 89113  
27 Attorneys for Defendant/Third-Party Plaintiff

28 /s/ Laura Fitzgerald

An employee of ROGERS, MASTRANGELO,  
CARVALHO & MITCHELL



1 ORDR  
2 REBECCA L. MASTRANGELO, ESQ.  
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9 rmastrangelo@rmcmlaw.com  
10 Attorneys for Defendant/Third-Party Defendant  
11 THYSSENKRUPP ELEVATOR CORPORATION

12  
13 **DISTRICT COURT**  
14  
15 **CLARK COUNTY, NEVADA**

16 JOE N. BROWN, an individual, and his wife,  
17 NETTIE J. BROWN, an individual,  
18  
19 Plaintiffs,

CASE NO.: A-16-739887-C

DEPT. NO.: XXXI

20 vs.

21 GNL, CORP., a Nevada corporation  
22 DOE INDIVIDUALS 1-100,  
23 ROE BUSINESS ENTITIES 1-100,  
24  
25 Defendants.

26 GNL, CORP., a Nevada corporation;  
27  
28 Third-Party Plaintiff,

29 vs.

30 THYSSENKRUPP ELEVATOR CORPORATION  
31 a foreign corporation; DOES 1-75; ROE  
32 CORPORATIONS 1-75 and ROE  
33 CORPORATIONS 1-25,  
34  
35 Third-Party Defendants.

36 **ORDER REGARDING THYSSENKRUPP ELEVATOR**  
37 **CORPORATION'S MOTIONS IN LIMINE 1-6**

38  
39 DEFENDANT/THIRD PARTY DEFENDANT THYSSENKRUPP ELEVATOR  
40 CORPORATION'S Motion in Limine #1 Re: Computation of Damages, Defendant/Third Party  
41 Defendant Thyssenkrupp Elevator Corporation's Motion in Limine #2 Re: Treating Physicians,  
42 Defendant/Third Party Defendant Thyssenkrupp Elevator Corporation's Motion in Limine #3 Re:

1 Responsibility Avoidance and Reptile Theory Arguments, Defendant/Third Party Defendant  
2 Thyssenkrupp Elevator Corporation's Motion in Limine #4 Re: Improper Voir Dire,  
3 Defendant/Third Party Defendant Thyssenkrupp Elevator Corporation's Motion in Limine #5 Re:  
4 Limit Experts to Opinions and Matters Set Forth in Their Reports, Defendant/Third Party  
5 Defendant Thyssenkrupp Elevator Corporation's Motion in Limine #6 Re: Exclusion of Evidence  
6 of Subsequent Incidents, having come on for hearing on the 4<sup>th</sup> day of June, 2019, and Rebecca  
7 L. Mastrangelo, Esq., of the law firm of Rogers, Mastrangelo, Carvalho & Mitchell, appearing on  
8 behalf of Defendant THYSSENKRUPP ELEVATOR CORPORATION, and Alexandra McLeod,  
9 Esq., of the law firm of GRANT & ASSOCIATES, appearing on behalf of Defendant GNL,  
10 CORP. and Mohamed Iqbal, Esq., of the law firm of IQBAL LAW PLLC, appearing on behalf of  
11 Plaintiffs and the court having reviewed the pleadings and papers on file herein, and entertained  
12 oral argument; and good cause appearing

13 IT IS HEREBY ORDERED, ADJUDGED and DECREED that:

14 (1) Thyssenkrupp Elevator Corporation's Motion in Limine #1 Re: Computation of  
15 Damages is granted as to future medical expenses as the same were not timely disclosed.  
16 *Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. Adv. Op. 37, 396 P.3d 783 (2017). Plaintiffs'  
17 computation of past damages in the amount of \$200,271 is not affected by this ruling.

18 (2) Thyssenkrupp Elevator Corporation's Motion in Limine #2 Re: Treating Physicians is  
19 granted as unopposed.

20 (3) Thyssenkrupp Elevator Corporation's Motion in Limine #3 Re: Responsibility  
21 Avoidance and Reptile Theory Arguments and Thyssenkrupp Elevator Corporation's Motion in  
22 Limine #4 Re: Improper Voir Dire are deferred until a date closer in time to the calendar call.  
23 Counsel is to remind the court at the time of the pretrial conference and to set a date by which the  
24 parties must submit their proposed voir dire to the court after which time the court will hear  
25 argument on the propriety of the individual voir dire questions.

1 (4) Thyssenkrupp Elevator Corporation's Motion in Limine #5 Re: Limit Experts to  
2 Opinions and Matters Set Forth in Their Reports is granted as unopposed.

3 (5) Thyssenkrupp Elevator Corporation's Motion in Limine #6 Re: Exclusion of  
4 Evidence of Subsequent Incidents is granted in part in that Yolanda R. Moreno aka Yolanda  
5 Ruelas and Hector Ruelas are excluded as witnesses as to their proffered testimony relative to  
6 their own experience on the escalator on or about May 25, 2015 (13 days after Plaintiff Joe  
7 Brown's fall).

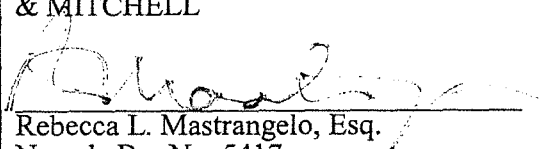
8 DATED this 18 day of June, 2019.

9 JOANNA S. KISHNER

10   
DISTRICT JUDGE

11 SUBMITTED BY:

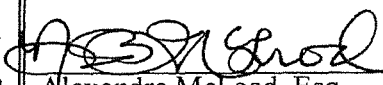
12 ROGERS, MASTRANGELO, CARVALHO  
13 & MITCHELL

14   
15 Rebecca L. Mastrangelo, Esq.  
16 Nevada Bar No. 5417  
17 700 S. Third Street  
18 Las Vegas, Nevada 89101  
19 Attorney for Defendant  
20 THYSENKRUPP ELEVATOR CORPORATION

21 APPROVED AS TO FORM AND CONTENT:

22 NO RESPONSE

23 Mohamed Iqbal, Esq.

24   
25 Alexandra McLeod, Esq.