

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellant,

vs.

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

Respondents.

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No. 80581

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APPENDIX TO APPELLANT'S OPENING BRIEF
VOLUME 18

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INDEX TO APPELLANT'S OPENING BRIEF APPENDIX
VOLUME 18

<u>Document</u>	<u>Page Number</u>
TKE's 7.27 Civil Trial Memo 1_16Dec19	JNB03370-03385
GNL's 7.27 Brief ISO Anticip Oral Mot for Judg_16Dec19	JNB03386-03391
GNL's 7.27 Trial Brief on Medical Bills_17Dec19	JNB03392-03395
P's 7.27 Civil Trial Memo 4 Reading Christopher Dutcher Depo_18Dec19	JNB03396-03396
Jury Instructions_18Dec19	JNB03397-03435
Jury Trial Verdict_18Dec19	JNB03436-03436
NEOJ Jury Verdict_09Jan20	JNB03437-03441
P's Not of Appeal on Jury Verdict_08Feb20	JNB03442-03448
P's Case Appeal Statement_09Feb20	JNB03449-03452
Mot for Leave to Proceed on Appeal In Forma Pauperis_24Feb20	JNB03453-03460
GNL's Oppo to P's Mot for Leave Pauperis_09Mar20	JNB03461-03463
Not of Evidenciary Hearing_13Apr20	JNB03464-03465
CM Evidentiary Hearing_23Apr20	JNB03466-03466
P's Supp Mot for Leave Pauperis_28Apr20	JNB03467-03480
P's Not of Appeal Attorneys' Fees Award_05May20	JNB03481-03491
P's Case Appeal Statem Attorneys' Fees Award_05May20	JNB03492-03495
Order Granting In Forma Pauperis_06May20	JNB03496-03498
Court's 2nd Order Req for Transcripts Clarification_04Oct21	JNB03499-03502
P's Not of Transcript Clarification_03Jun20	JNB03503-03508

INDEX TO APPELLANT'S OPENING BRIEF APPENDIX
VOLUMES 1-18

<u>Document</u>	<u>Page Number</u>
Complaint in Case no. A-16-739887-C_12Jul16	JNB00001-00006 (Volume 1)
First Amended Complaint_01Sep16	JNB00007-00012 (Volume 1)
[GNL's] Answer to First Amended Complaint_21Sep16	JNB00013-00019 (Volume 1)
[GNL's] First Amended Answer to FAC_26Sep16	JNB00020-00026 (Volume 1)

[GNL's] Third-Party Complaint_23Jan17	JNB00027-00036 (Volume 1)
TKE Demand Prior Pleadings & Disc_17Feb17	JNB00037-00039 (Volume 1)
Landry & GNL's Demand Jury Trial_03Apr17	JNB00040-00041 (Volume 1)
Landry & GNL's MSJ_23May17	JNB00042-00082 (Volume 1)
Oppo to MSJ and P's Req for Disc Under 56f_07Jun17	JNB00083-00206 (Volume 1)
Landry & GNL's Reply ISO MSJ_20Jun17	JNB00207-00214 (Volume 1)
CM re Landry & GNL's MSJ_27Jun22	JNB00215-00216 (Volume 1)
NEOJ Denying MSJ & Granting P's Countermot for Disc Under 56f 31Jul17	JNB00217-00220 (Volume 1)
Landry & GNL's Mot for Recon_01Aug17	JNB00221-00251 (Volume 2)
Oppo to Mot for Recon_18Aug17	JNB00252-00258 (Volume 2)
Mot to Compel Disc from Landry & GNL and Req for Sancts 23Aug17	JNB00259-00277 (Volume 2)
Landry and GNL's Reply ISO Mot for Recon_24Aug17	JNB00278-00283 (Volume 2)
Exhs of Erra to Mot to Compel Disc & Req for Sancts 24Aug17	JNB00284-00370 (Volume 2)
Supp Oppo to Landry & GNL' Reply ISO Mot for Recon 30Aug17	JNB00371-00378 (Volume 2)
GNL's Oppo to Mot to Compel Discovery_11Sep17	JNB00379-00389 (Volume 2)
Reply ISO of P's Mot to Compel Discovery & Req for Sancts_06Oct17	JNB00390-00397 (Volume 2)
NEOJ Denying GNL's Mot for Recon_31Oct17	JNB00398-00404 (Volume 2)
Iqbal's Decl ISO Mot for Leave SAC_05Jul18	JNB00405-00515 (Volume 3)
TKE's Oppo to Mot for Leave to File SAC_20Jul18	JNB00516-00535 (Volume 3)
GNL's Oppo to Mot for Leave to File SAC_23Jul18	JNB00536-00591

	(Volume 3)
Reply ISO Mot for Leave to File SAC_02Aug18	JNB00592-00603 (Volume 3)
Transcript 07Aug18 Mot for Leave to File SAC_10Aug18	JNB00604-00619 (Volume 3)
NEOJ Granting Leave to File SAC_12Sep18	JNB00620-00621 (Volume 3)
SAC_18Sep18	JNB00622-00628 (Volume 3)
TKE's Answer to SAC_11Oct18	JNB00629-00635 (Volume 3)
Landry & GNL's MSJ_01Nov18	JNB00636-00709 (Volume 3)
Landry & GNL's MSJ on Liability & Punitive Damages 01Nov18	JNB00710-00856 (Volume 4)
Landry's MTD for Jurisdiction_01Nov18	JNB00857-00870 (Volume 4)
Landry & GNL's Err to MSJ on Liability & Punitive Damages 08Nov18	JNB00871-00874 (Volume 4)
Landry & GNL's MiL 1 to Excl Nalamachu for Unauth MD Practice in NV 13Nov18	JNB00875-00914 (Volume 4)
Landry & GNL's MiL 2 Other Incidents or Repairs 3 Disc Matters 13Nov18	JNB00915-00935 (Volume 4)
TKE's MiL 3 Responsibility Avoid & Reptile Theory Args 13Nov18	JNB00936-00951 (Volume 4)
TKE's MiL 4 Improper Voir Dire_13Nov18	JNB00952-00960 (Volume 5)
TKE's MiL 6 Excl of Evidence_13Nov18	JNB00961-00980 (Volume 5)
[TKE's] MiL 7 Claim TKE Hid Evidence_13Nov18 (part 1)	JNB00981-01050 (Volume 6)
[TKE's] MiL 7 Claim TKE Hid Evidence_13Nov18 (part 2)	JNB01051-01078 (Volume 7)
P's MiL 1 Excl Expert Davis Turner_13Nov18	JNB01079-01087 (Volume 7)
Mohamed Iqbal Jr.'s Decl ISO P's MiL 1_14Nov18 (part 1)	JNB01088-01200 (Volume 7)
Mohamed Iqbal Jr.'s Decl ISO P's MiL 1_14Nov18 (part 2)	JNB01201-01334 (Volume 8)

TKE's MiL 8 Excl Testim Sheila Nabors Swett_14Nov18	JNB01335-01427 (Volume 8)
TKE's Joinder ISO GNL's MSJ on Punitive Damages_16Nov18	JNB01428-01437 (Volume 9)
Err to TKE's MiL 7_19Nov18	JNB01438-01443 (Volume 9)
Oppo to Landry & GNL's MSJ_19Nov18	JNB01444-01531 (Volume 9)
P's Oppo to MTD_19Nov18	JNB01532-01578 (Volume 9)
TKE's Joinder to GNL's MiL 1 Excl Nalamachu_19Nov18	JNB01579-01581 (Volume 9)
TKE's Joinder to GNL's MiL 2 & 3_19Nov18	JNB01582-01584 (Volume 9)
Err to P's Oppo to MTD & MSJ_20Nov18	JNB01585-01718 (Volume 10)
Reply ISO of Landry's MTD_27Nov18	JNB01719-01735 (Volume 10)
GNL Reply ISO Landry & GNL's MSJ_28Nov18	JNB01736-01746 (Volume 10)
Reply ISO MSJ Liability & Punitive Damages_28Nov18	JNB01747-01753 (Volume 10)
P's Resp to TKE's Joinder and Brief ISO GNL's MSJ Pun Damages_30Nov18	JNB01754-01800 (Volume 10)
Landry & GNL's Oppo to P's Mils 1 Excl Davis_03Dec18	JNB01801-01806 (Volume 10)
TKE's Oppo to P's Mils 1 Exlc Davis_03Dec18	JNB01807-01819 (Volume 11)
CM Open Matters and TKE's Joinder to GNL's MSJ Pun Damages_04Dec18	JNB01820-01821 (Volume 11)
P's Emerg Mot Reopen Disc & Sancts w Exhs_10Dec18 (part 1)	JNB01822-02029 (Volume 11)
P's Emerg Mot Reopen Disc & Sancts w Exhs_10Dec18 (part 2)	JNB02030-02104 (Volume 12)
TKE's Oppo to Emerg Mot to Reopen Disc etc_20Dec18 (part 1)	JNB02105-02258 (Volume 12)
TKE's Oppo to Emerg Mot to Reopen Disc etc_20Dec18 (part 2)	JNB02259-02313 (Volume 13)
GNL's Joinder to TKE's Oppo to Emerg Mot_20Dec18	JNB02314-02320

	(Volume 13)
TKE's Reply ISO Joinder & GNL's MSJ Pun Damages 21Dec18	JNB02321-02330 (Volume 13)
P's Reply ISO Emerg Mot_28Dec18	JNB02331-02422 (Volume 13)
CM P's Emerg Mot_08Jan19	JNB02423-02423 (Volume 13)
NEOJ Granting P's Emerg Mot_11Feb19	JNB02424-02433 (Volume 13)
P's Oppo to TKE's MiL 7 TKE Hid Evidence_15Feb19	JNB02434-02447 (Volume 13)
P's Oppo to TKE's MiL 8 Excl Sheila Nabors Swett_15Feb19	JNB02448-02451 (Volume 13)
P's Oppo to TKE's MiL 3 Responsib Avoid & Reptile Theory_15Feb19	JNB02452-02455 (Volume 13)
P's Oppo to TKE's MiL 6 Excl Evidence_15Feb19	JNB02456-02467 (Volume 13)
P's Oppo to Landry & GNL's MiL 1 Excl Nalamachu_15Feb19	JNB02468-02505 (Volume 14)
P's Oppo to Landry & GNL's MiL 2 Other Incidents_15Feb19	JNB02506-02509 (Volume 14)
P's Oppo to TKE's MiL 4 Improper Voir Dire_15Feb19	JNB02510-02514 (Volume 14)
P's MiL 2 Davis Lee Turner Testimony_25Feb19	JNB02515-0254 (Volume 14)
TKE's Reply ISO MiL 3 Responsib Avoid & Reptile Theory Arguments_28Feb19	JNB0255-02546 (Volume 14)
TKE's Reply ISO MiL 4 Improper Voir Dire_28Feb19	JNB02547-02550 (Volume 14)
TKE's Reply ISO MiL 6 Excl Evidence_28Feb19	JNB02551-02565 (Volume 14)
TKE's Reply ISO MiL 7 TKE Hid Evidence_28Feb19	JNB02566-02577 (Volume 14)
TKE's Reply ISO MiL 8 Excl Testim Sheila Nabors Swett_28Feb19	JNB02578-02582 (Volume 14)
TKE's Reply ISO Joinder to GNL's MiL 2 Other Incidents_28Feb19	JNB02581-02586 (Volume 14)
GNL's Reply ISO GNL's MiLs 1-3_28Feb19	JNB02587-02592 (Volume 14)

TKE's Oppo to P's MiL 2 Turner's Opinions on Alcohol Use_08Mar19	JNB02593-02597 (Volume 14)
GNL's Joinder to TKE's Oppo to P's MiL 2 Excl Turner's Opinions on Alcohol Use_11Mar19	JNB02598-02600 (Volume 14)
NEOJ Granting SJ to Landry's & GNL_11Mar19	JNB02601-02608 (Volume 14)
NEOJ TKE's SAO to Cont Pretrial Conf_19Mar19	JNB02609-02614 (Volume 14)
P's Reply ISO P's MiL 2 Turner's Opinions on Alcohol Use_20Mar19	JNB02615-02618 (Volume 14)
Transcript 28Mar19 MiL 1 Excl Nalamachu_10Dec21	JNB02619-02669 (Volume 14)
NEOJ Liability & Pun Damages_19Apr19	JNB02670-02675 (Volume 14)
SAO Disc Matters & Trial Stack_22Apr19	JNB02676-02678 (Volume 14)
NEOJ TKE's MiLs 1-6_27Jun19	JNB02679-02683 (Volume 14)
MTEX Deadline for Court-Ordered Disc_27Jun19	JNB02684-02718 (Volume 15)
TKE's Obj to Panero Subpoena_01Jul19	JNB02719-02727 (Volume 15)
TKE's Oppo to MTEX Deadline for Court-Ordered Disc_03Jul19	JNB02728-02750 (Volume 15)
GNL's Joinder to TKE's Oppo to MTEX Disc_05Jul19	JNB02751-02753 (Volume 15)
Reply ISO MTEX Deadline for Court-Ordered Disc_08Jul19	JNB02754-02759 (Volume 15)
TKE's Joinder to GNL's MSJ Punitive Damages_26Jul19	JNB02760-02769 (Volume 15)
P's Omnibus Oppo to GNL's MSJ Punitive and TKE's Joinder_06Aug19	JNB02770-02783 (Volume 15)
Exhs to P's Omnibus Oppo to MSJ_07Aug19 (part 1)	JNB02784-02889 (Volume 15)
Exhs to P's Omnibus Oppo to MSJ_07Aug19 (part 2)	JNB02890-02995 (Volume 16)
NEOJ Denying P's MTEX Court-Ordered Disc_07Aug19	JNB02996-02999 (Volume 16)
NEOJ TKE's MiLs 7 Granted and 8 Deferred_07Aug19	JNB03000-03003

	(Volume 16)
NEOJ Granting GNL's MSJ & TKE's Joinder Pun Damages 27Sep19	JNB03004-03012 (Volume 16)
Transcript 07Oct19_10Dec21 (part 1)	JNB03013-03130 (Volume 16)
Transcript 07Oct19_10Dec21 (part 2)	JNB03131-03168 (Volume 17)
GNL's Object to Depo Excerpts 24Jan18 Don Hartmann 07Oct19	JNB03169-03176 (Volume 17)
GNL's Object to Depo Excerpts 17May19 Don Hartmann 07Oct19	JNB03177-03181 (Volume 17)
CM Further Proceedings_11Oct19	JNB03182-03182 (Volume 17)
NEOJ GNL's MiLs 1 Deferred, 2-3 Granted_16Oct19	JNB03183-03188 (Volume 17)
NEOJ TKE's MiL 8 Granted_24Oct19	JNB03189-03197 (Volume 17)
Not of P's Appeal Pun Damages & TKE's MiL 8 Excl Sheila Nabors Swett 28Oct19	JNB03198-03214 (Volume 17)
P's Case Appeal Statement_28Oct19	JNB03215-03219 (Volume 17)
GNL's Revised Obcts Depo Excerpts 24Jan18 Hartmann 14Nov19	JNB03220-03227 (Volume 17)
GNL's Rev Objects to P's Depo Excerpts 24Jan18 Hartmann 15Nov19	JNB03228-03230 (Volume 17)
SAO TKE & GNL's Dism 3P Complaint_22Nov19	JNB03231-03233 (Volume 17)
NEOJ Dism 3P Complaint_27Nov19	JNB03234-03238 (Volume 17)
P's 7.27 Civil Trial Memo 1 Open Statms & Demost Exhs 05Dec19	JNB03239-03243 (Volume 17)
P's 7.27 Civil Trial Memo 2 Med Bills from P's Exh30 16Dec19	JNB03244-03247 (Volume 17)
P's 7.27 Civil Trial Memo 3_16Dec19	JNB03248-03254 (Volume 17)
P's 7.27 Civil Trial Memo 3 Depo Excerpts Into Rec 16Dec19	JNB03255-03261 (Volume 17)
P's 7.27 Civil Trial Memo 3 Depo Excerpts Into Rec_16Dec19	JNB03262-03268 (Volume 17)

P's 7.27 Civil Trial Memo 3 Depo Excerpts Into Rec with Excerpts_16Dec19	JNB03269-03369 (Volume 17)
TKE's 7.27 Civil Trial Memo 1_16Dec19	JNB03370-03385 (Volume 18)
GNL's 7.27 Brief ISO Anticip Oral Mot for Judg_16Dec19	JNB03386-03391 (Volume 18)
GNL's 7.27 Trial Brief on Medical Bills_17Dec19	JNB03392-03395 (Volume 18)
P's 7.27 Civil Trial Memo 4 Reading Christopher Dutcher Depo_18Dec19	JNB03396-03396 (Volume 18)
Jury Instructions_18Dec19	JNB03397-03435 (Volume 18)
Jury Trial Verdict_18Dec19	JNB03436-03436 (Volume 18)
NEOJ Jury Verdict_09Jan20	JNB03437-03441 (Volume 18)
P's Not of Appeal on Jury Verdict_08Feb20	JNB03442-03448 (Volume 18)
P's Case Appeal Statement_09Feb20	JNB03449-03452 (Volume 18)
Mot for Leave to Proceed on Appeal In Forma Pauperis_24Feb20	JNB03453-03460 (Volume 18)
GNL's Oppo to P's Mot for Leave Pauperis_09Mar20	JNB03461-03463 (Volume 18)
Not of Evidenciary Hearing_13Apr20	JNB03464-03465 (Volume 18)
CM Evidentiary Hearing_23Apr20	JNB03466-03466 (Volume 18)
P's Supp Mot for Leave Pauperis_28Apr20	JNB03467-03480 (Volume 18)
P's Not of Appeal Attorneys' Fees Award_05May20	JNB03481-03491 (Volume 18)
P's Case Appeal Statem Attorneys' Fees Award_05May20	JNB03492-03495 (Volume 18)
Order Granting In Forma Pauperis_06May20	JNB03496-03498 (Volume 18)
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P's Not of Transcript Clarification_03Jun20	JNB03503-03508

Dated June 10, 2022.

Respectfully submitted,

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CERTIFICATE OF SERVICE

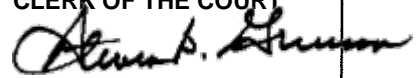
I certify that I am an employee of IQBAL LAW PLLC and that on June 10, 2022, I caused a true and correct copy of the **APPENDIX TO APPELLANT’S OPENING BRIEF VOLUME 18** to be served as follows:

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

/s/ Marie-Claire Alsanjakli
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DISTRICT COURT
CLARK COUNTY, NEVADA

JOE N. BROWN, an individual,
Plaintiffs,

vs.

GNL, CORP., a Nevada corporation;
THYSSENKRUPP ELEVATOR CORP.
a foreign corporation,
Defendants.

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

**DEFENDANT THYSSENKRUPP ELEVATOR CORPORATION'S
CIVIL TRIAL MEMORANDA IN ACCORDANCE WITH EDCR 7.27**

COMES NOW, Defendant, THYSSENKRUPP ELEVATOR CORPORATION
(hereinafter "TKE"), by and through its counsel of record, Rebecca L. Mastrangelo, Esq., of the
law firm of ROGERS, MASTRANGELO, CARVALHO & MITCHELL, and hereby submits its
Civil Trial Memoranda in accordance with EDCR 7.27 in support of its anticipated motion for
judgment as a matter of law.

I

SUMMARY OF ARGUMENT

Plaintiff's Second Amended Complaint alleges only negligence. Plaintiff Joe Brown
testified that the escalator was shaking at the time of his fall. Plaintiff presented no expert
testimony of any kind to support his claim of negligent maintenance of the escalator. He

JNB03370

1 presented no evidence that cracked steps were the cause of his Brown's fall. In fact, the only
2 testimony on the subject of cracked steps was that of the third party inspector, William Schaefer,
3 who testified that the risk associated with cracked steps is that the crack(s) will progress until the
4 point of a catastrophic failure, which everyone agrees did not occur here.

5 Without expert testimony criticizing thyssenkrupp's maintenance of the escalator and
6 without expert testimony that Joe Brown was on a cracked steps, which made the step shaky and
7 which caused him to fall, a directed verdict in favor of thyssenkrupp is required.

8 II

9 LEGAL ANALYSIS

10 A. Standard for Judgment as a Matter of Law

11 NRCP 50(a) provides that after a party has been fully heard on an issue during a jury trial
12 and at any time before the case is submitted to the jury, the court may grant a motion for
13 judgment as a matter of law upon a finding that "a reasonable jury would not have a legally
14 sufficient evidentiary basis to find for the party on that issue."

15 Without expert testimony, Plaintiff herein is unable to show that thyssenkrupp was
16 negligent in its maintenance of the escalator and that such negligence resulted in his falling on
17 the escalator. As such, Plaintiff cannot proceed to a jury on his claim for negligent maintenance,
18 and judgment as a matter of law should be directed.

19 B. Negligence

20 As the Court is aware, in order to proceed with a claim of negligence, Plaintiff has
21 the burden of proving:

- 22 1. A duty of care owed by the defendant;
- 23 2. A breach of the duty;
- 24 3. Proximate cause between the breach of duty and plaintiff's alleged
damages; and
4. Damages sustained by the Plaintiff.

25 *Joynt v. California Hotel & Casino*, 108 Nev. 539, 835 P.2d 799 (1992); *Klasch v. Walgreen*
26 *Co.*, 127 Nev. 832, 264 P.3d 1155, 1158 (2011).

1 Further, it is well settled law in the state of Nevada that in the absence of negligence,
2 there is no liability and “[t]he mere fact that there was an accident and someone was injured is
3 not of itself sufficient to predicate liability.” *Gunlock v. New Frontier Hotel Corp.*, 78 Nev.
4 182, 370 P.2d 682, 684 (1962), citations omitted (abrogated on other grounds).

5 The absence of expert testimony to support Plaintiff’s allegations further mandates
6 judgment as a matter of law as case law throughout the entire United States is consistent in
7 holding that expert testimony is necessary in a negligence action where the conduct at issue is
8 outside of the realm of ordinary lay knowledge. In this case, how an escalator should be
9 maintained and with what frequency it should be inspected and maintained is certainly outside
10 the realm of the knowledge of lay jurors.

11 The Nevada Supreme Court has discussed this matter specifically. In *Daniel, Mann,*
12 *Johnson & Mendenhall v. Hilton Hotels Corp.*, 98 Nev. 113, 115, 642 P.2d 1086 (1982), our
13 high court ruled:

14 It is well settled that the standard of care must be determined by expert testimony
15 unless the conduct involved is within the common knowledge of lay persons.
16 *Bialer v. St. Mary’s Hospital*, 83 Nev. 241, 427 P.2d 957 (1967) (overruled on
other grounds).

17 There is a wealth of case law in other jurisdictions around the country supporting this
18 philosophy. See: *Oliver v. Amity Mutual Irrigation Co.*, 994 P2d 495 (Ct. App. Colo. 1999),
19 holding that expert testimony is required in negligence cases to establish the standard of care
20 when the standard is outside the common knowledge and experience of ordinary persons;
21 *DeJonghe v. E.F. Hutton & Co., Inc.*, 830 P2d 862 (Ct. App. Ariz. 1991), holding that expert
22 testimony is necessary unless the negligence is so grossly apparent that a lay person would have
23 no difficulty recognizing it; *McLaughlin v. Cooke*, 774 P2d 1171 (Wash.1989), holding that
24 expert testimony is necessary to prove whether a particular practice is reasonably prudent under
25 the applicable standard of care; *McKee Electric Co., Inc. v. Carson Oil Co.*, 688 P2d 1360 (Ct
26 App. Or. 1984), holding that expert testimony is an indispensable part of a prima facie case of
27

1 negligence if the average juror could not be expected to have knowledge of the issues involved,
2 and further holding that this logic applies even if plaintiff relies on the theory of res ipsa
3 loquitur; *Stundon v. Stadnik*, 469 P2d 16 (Wyo. 1970), holding that res ipsa loquitur is not to be
4 applied where a determination of the alleged negligence is not within common knowledge of
5 man. In such case, plaintiff must establish and prove the lack of requisite care and skill by
6 expert testimony.

7 In addition to the cases cited above, several jurisdictions have specifically held that
8 escalators and elevators are “complex machinery” such that expert testimony is required to prove
9 negligence.

10 “[A]n expert is required to testify that the malfunction is of a sort that would not occur
11 absent some negligence.” *Holzhauer v. Saks & Co.*, 346 Md. 328, 341, 697 A.2d 89, 95 (1997)
12 (citing *Dover Elevator Co. v. Swann*, 334 Md. 231, 254, 638 A.2d 762, 773-74 (1994)). The
13 court in *Holzhauer* explained the rationale for the necessity for expert testimony:

14 Mechanical, electrical, and electronic devices fail or malfunction routinely-some more
15 routinely than others. A speck of dust, a change in temperature, misuse, an accidental
16 unforeseen trauma-many things can cause these devices to malfunction. To allow an
inference that the malfunction is due to someone's negligence when the precise cause
cannot be satisfactorily established appears ... to be unwarranted.

17 *Id.* at 340, 697 A.2d at 95 (quoting *Dover Elevator Co. v. Swann*, 334 Md. at 255 n. 4,
18 638 A.2d at 774 n. 4) (quoting *Swann v. Prudential Ins.*, 95 Md.App. 365, 419, 620 A.2d
989, 1015-16 (1993)).

19 Escalators are complex machines, and “Thus, whatever a layperson may infer from ‘everyday
20 experience’ has ... been overcome by the more particularized and informed knowledge on
21 [escalator] operation presented” at trial.” *Barretta v. Otis Elevator Company*, 698 A.2d 810
22 (Conn. 1997). Simply put, a lay person cannot be expected to know the mechanics of how
23 escalators function and how they should be maintained, which is why expert testimony is
24 required in such cases.

25 C. Res Ipsa Loquitur

26 Plaintiff may argue that he will rely on the doctrine of res ipsa loquitur in order to
27
28

1 advance his negligence claim. As the Court is aware, the elements of res ipsa loquitur are:

- 2 (1) That the accident is of a kind that ordinarily does not occur in the absence of
3 negligence;
- 4 (2) That the accident was caused by an agency or instrumentality over which the
5 defendant had exclusive control; and
- 6 (3) That the plaintiff's comparative negligence (if any) is not greater than the
7 negligence of defendant.

8 *Woosley v. State Farm Ins. Co.*, 117 Nev. 182, 18 P.3d 317 (2001).

9 However, the Supreme Court of Nevada has indicated in an unpublished disposition that
10 the element of exclusive control does not exist in a case such as this. In *Clark v. Coast Hotels*
11 *and Casinos, Inc.*, 2014 WL 3784262 (a copy of which is attached for the Court's convenience)¹,
12 the plaintiff, who had fallen on an escalator that came to a sudden stop, argued that the doctrine
13 of res ipsa loquitur allowed her to raise an inference of negligence so that she could proceed
14 without a liability expert at trial. Our high court, in agreeing with courts in other jurisdictions,
15 held that res ipsa loquitur is "inappropriate" in escalator-related cases due to a lack of exclusive
16 control of a machine which is subject to extensive public contact and also because the application
17 of the doctrine would make the owner of the escalator an insurer of all who use it. *Id.* at 5. The
18 Nevada Supreme Court went on to state that expert testimony is required in such case to establish
19 that the incident was caused by negligence. *Id.*

20 *Clark* is persuasive because it is in line with longstanding Nevada law as well as cases in
21 other jurisdictions. Simply put, an assertion of res ipsa (not pled by Plaintiff but expected to be
22 raised at trial) does not relieve Plaintiff of carrying his burden of proof:

23 Res ipsa loquitur is a balancing doctrine, and while the plaintiff need not show the exact
24 cause of an injury, he must at least show that it is more probable than not that the injury
25 resulted from the defendant's breach of duty.

26 *American Elevator Company v. Briscoe*, 93 Nev. 665, 669, 572 P.2d 534 (1977). In order to
27 carry this burden of proof, the defense would again submit, in accordance with *McKee Electric*

28 ¹ Although NRAP 36(c) does not expressly allow citation to Supreme Court dispositions prior to
January 1, 2016, there is also no express prohibition to citing prior cases.

1 *Co., Inc. v. Carson Oil Co, supra*, and *Stundon v. Stadnik, supra*, that Plaintiff
2 must produce expert testimony:

3 To establish that the res ipsa loquitur doctrine applies, a plaintiff must first establish that
4 the event does not normally occur unless someone has been negligent. *Woodard v. Univ*
5 *of Michigan Med Ctr*, 473 Mich. 1, 7, 702 NW2d 522 (2005). Further, “the fact that the
6 injury complained of does not ordinarily occur in the absence of negligence must either
7 be supported by expert testimony or must be within the common understanding of the
8 jury.” *Id.* (internal citation and quotation marks omitted.) Here, plaintiff has not provided
9 any expert testimony, nor can it be said that elevator maintenance is within the common
10 understanding of the average juror.

11 *Hearon v. Lafayette Towers Apartments*, 2006 WL 1042110 (Mich.App., 2006.)

12 In *Hailey v. Otis Elevator Company*, 636 A.2d 426 (Ct. App. D.C. 1994), plaintiff
13 Hailey sued Otis Elevator Company for personal injuries she sustained as a result of falling on
14 an escalator. The Court of Appeals upheld the trial court’s directing of a verdict in favor of Otis
15 at the close of evidence, finding that plaintiff did not present sufficient evidence, even under a
16 theory of res ipsa loquitur. *Id.* at 428. In *Hailey*, plaintiff alleged that she fell as a result of the
17 escalator making a “jerk.” *Id.* Hailey’s testimony was supported by another witness who was
18 on the escalator and felt a “thrust.” *Id.* The evidence presented by Otis showed that prior and
19 subsequent inspections of the escalator found it to be operating properly. *Id.*

20 The Hailey court held that plaintiff failed to show that the happening of her incident was
21 not of the kind that does not ordinarily occur in the absence of negligence. *Id.* at 429. In
22 upholding that ruling, the higher court stated:

23 The harmful mechanism cases present a different problem of proof from cases
24 which involve injury from the actual movement of a conveyance. The fact of
25 movement with its permissible vagaries is inherent in a mechanism which must
26 be in motion to achieve its purpose. While it may be common knowledge that
27 moving escalators do not catch the feet or hands of riders unless someone is
28 negligent, we fail to see how it can be said to be common knowledge that moving
escalators do not normally act in the manner described here, that is, with a “little
funny jerk,” a “thrust,” or a “bump,” much less that such motions are “ordinarily”
the result of negligence.

Id.

The court went on to hold:

Here, the jury would have been speculating on possibilities rather than weighing

1 probabilities based on the evidence. No expert was called to testify that escalators
2 do not act in the manner described without some negligence in their maintenance.
3 Moreover, we are unable to discern in the record sufficient evidence that the
4 escalator exhibited a severe or unusual motion; it was variously described simply
5 as a “thrust,” a “bump,” or a “little funny jerk.” The other shoppers on the
6 escalator were not thrown off balance by the movement. In summary, the evidence
7 did not suffice to show that the event was one that would not ordinarily occur
8 without someone’s negligence. Therefore, the first element of res ipsa loquitur
9 was not met and the trial court correctly granted the motion for a directed verdict
10 in favor of Otis.

11 *Id.*

12 In a similar case, *Crenshaw v. Washington Metropolitan Area Transit Authority*, 731
13 A.2d 381 (Ct. App. D.C. 1999), plaintiff Crenshaw fell on an escalator which she contended
14 “jerked violently.” After plaintiff failed to present expert testimony establishing the standard of
15 care, any deviation from the standard of care, and evidence of the cause of the event, the trial
16 court granted summary judgment in favor of the escalator owner and the maintenance company.

17 *Id.* at 382. On appeal, plaintiff argued that the doctrine of res ipsa loquitur allowed her to
18 proceed with the case even in the absence of expert testimony. *Id.*

19 The higher court disagreed. In so doing, it noted that the record established (as here)
20 that the escalator was operating smoothly before and after the alleged incident. *Id.* at 383. In
21 response to Crenshaw’s argument that escalators don’t normally jerk violently in the absence of
22 negligence, the Court of Appeals responded that expert testimony was necessary to establish
23 that and, without such expert testimony, “the jury would still be left to speculate on possibilities
24 rather than weighing the probabilities based on credible evidence.” *Id.*

25 Lastly, Plaintiff herein is unable to establish causation in this case as he has no evidence
26 of the same outside of his own self-serving testimony. His burden must be shouldered by
27 producing evidence independent of his own belief. *See Mora v. Walgreen Co.* 2014 WL
28 6747152, holding that even if there was evidence of a “dangerous condition,” plaintiff failed to
show that the condition caused her fall other than by her own testimony as to causation.

1 III

2 CONCLUSION

3 The defense submits that in order to prove negligence in a case involving complex
4 machinery such as an escalator, expert testimony is indispensable and is required by Nevada law.
5 Absent such testimony, the only evidence heard by the jury was the testimony of the Mr. Brown
6 and his son-in-law (a convicted felon) that the escalator seemed “shaky,” and the testimony of
7 Mr. Brown’s daughter who was on the escalator at the same time and testified that she did not
8 notice anything unusual during her ride. There was no testimony that the alleged “shakiness” of
9 the escalator was due to neglect in maintenance, there was no evidence that the escalator step Mr.
10 Brown was on was cracked, and there was no evidence that Mr. Brown fell because of a cracked
11 step, shakiness, or neglect in maintenance.

12 With Plaintiff having failed to establish duty, breach, or causation, his claim for
13 negligence fails as a matter of law. *Butler ex rel. Biller v. Bayer*, 123 Nev. 450, 168 P.3d 1055
14 (2007).

15 DATED this 16th day of December, 2019.

16 ROGERS, MASTRANGELO, CARVALHO &
17 MITCHELL

18 /s/ Rebecca L. Mastrangelo

19 Rebecca L. Mastrangelo, Esq.
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23 Attorney for Defendant thyssenkrupp Elevator
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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 16th day of
4 December, 2019, a true and correct copy of the foregoing **DEFENDANT**
5 **THYSSENKRUPP ELEVATOR CORPORATION'S CIVIL TRIAL MEMORANDA IN**
6 **ACCORDANCE WITH EDCR 7.27** was served via electronic means with the Eighth Judicial
7 District Court, addressed as follows, upon the following counsel of record:

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18
19 /s/ Laura Fitzgerald

20
21 An employee of ROGERS, MASTRANGELO,
22 CARVALHO & MITCHELL
23
24
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26
27
28

JNB03379

2014 WL 3784262

Unpublished Disposition

Only the Westlaw citation is currently available.

An unpublished order shall not be regarded as precedent and shall not be cited as legal authority. SCR 123. Supreme Court of Nevada.

Donna CLARK, Appellant,

v.

COAST HOTELS AND CASINOS, INC. d/b/
a Gold Coast Hotel and Casino, Respondent.

No. 62603.

July 30, 2014.

Synopsis

Background: Patron filed personal injury action against hotel and casino, arising out of injuries sustained when **escalator** stopped. The Eighth Judicial District Court, Clark County, Michael Villani, J., granted summary judgment in favor of hotel and casino. Patron appealed.

Holdings: The Supreme Court held that:

[1] trial court abused its discretion in excluding safety engineering **expert** on basis that he was unqualified;

[2] safety engineer's opinion regarding applicable safety standard for **escalator** was inadmissible;

[3] doctrine of res ipsa loquitur did not apply to patron's claims;

[4] trial court acted within its discretion in denying patron's motion to extend discovery; and

[5] trial court acted within its discretion in denying patron leave to add **elevator** company in place of Doe defendant.

Affirmed.

West Headnotes (6)

[1] Appeal and Error

⚙ Time for Filing

Hotel and casino patron's motion for reconsideration of trial court's decision granting summary judgment in personal injury action in favor of casino was properly treated as motion to amend a judgment, thus tolling the time to file notice of appeal, where patron's motion was filed within 10 days of patron receiving notice of entry of judgment. Rules Civ.Proc., Rule 59(e).

[2] Evidence

⚙ Machinery and Mechanical Devices and Appliances

Trial court abused its discretion in excluding testimony of patron's safety engineering **expert** on the basis that he was unqualified, in patron's personal injury action against hotel and casino for injuries sustained when **escalator** stopped; **expert's** lengthy curriculum vitae showed that he had a Ph.D. in occupational safety and health engineering, numerous certifications, and a lengthy work history relevant to that field, and **expert's** work history included employment as the risk manager of another hotel and casino. West's NRSA 50.275.

[3] Evidence

⚙ Elevators

Evidence

⚙ Necessity and Sufficiency

Safety engineer's proffered **expert** opinion, in patron's personal injury action against hotel and casino arising from injuries sustained when **escalator** stopped, that the applicable safety standard required **escalator** to come to a gradual stop in a maximum of three seconds was not based on any recognized methodology and, thus, did not satisfy assistance prong of test for admitting **expert** testimony; **expert** did not provide basis for determining how fast the **escalator** stopped besides a "guesstimate" from

watching the surveillance video, engineer did not offer opinion on the correct stopping time, much less a methodology for calculating a non-negligent stopping time, and engineer did not provide any explanation for the relative risk involved between a sudden stop and a gradual stop. West's NRS 50.275.

[4] **Carriers**

☞ Injuries Due to **Elevators, Escalators, Etc**

Carriers

☞ As to Negligence in Management of Conveyances in General

Doctrine of *res ipsa loquitur* did not apply to hotel and casino patron's claims that she was injured when **escalator** on which she was riding stopped, and thus patron was not entitled to raise an inference of negligence without **expert** testimony.

[5] **Pretrial Procedure**

☞ Sequence and Timing; Condition of Cause

Trial court acted within its discretion in denying patron's motion to extend discovery to obtain new **expert** witness, following trial court's striking of proffered safety engineering **expert**, on the ground that patron failed to show excusable neglect for delay in making request beyond time allowed in local rule, in personal injury action against hotel and casino arising out of injuries sustained when **escalator** on which she was riding stopped; that patron would need an **expert** with specialized knowledge of **escalators** was not unusual or novel, and allowing patron to reopen discovery upon losing motion to strike would unnecessarily burden resolution of litigation.

[6] **Parties**

☞ Misnomer or Misdescription in General

Parties

☞ Time for Amendment, and Proceedings

Trial court acted within its discretion in denying patron leave to file amended complaint to add **elevator** company in place of a Doe

defendant listed in the original complaint, in personal injury action against hotel and casino arising out of injuries sustained when **escalator** stopped; although patron's complaint contained Doe defendants in the caption, the body only mentioned Doe Defendants in a vague and cursory manner, without any mention of an entity responsible for maintenance or operation of the **escalator**, and patron waited over a year after **elevator** company's identity had been disclosed to patron to file motion to amend. Rules Civ.Proc., Rules 10(a), 15(a, c).

Attorneys and Law Firms

Christensen Law Offices, LLC

Rogers, Mastrangelo, Carvalho & Mitchell, Ltd.

ORDER OF AFFIRMANCE

*1 This is an appeal of a district court order granting summary judgment in a personal injury action. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Appellant Donna Clark was injured when she fell after an **escalator** she was riding at respondent Coast Hotels and Casinos, Inc., d.b.a. Gold Coast Hotel and Casino came to a stop. After striking Clark's proffered **expert**, the district court granted Gold Coast's motion for summary judgment. Clark filed a motion for reconsideration, which the district court denied. This appeal followed.

In this appeal, we address whether the district court erred by excluding Clark's **expert**. We conclude that her **expert** did not satisfy the assistance requirement of NRS 50.275, thus the district court properly excluded his testimony. We also conclude that the doctrine of *res ipsa loquitur* is inapplicable. We conclude that Clark's remaining arguments are unpersuasive or have been waived. Accordingly, we affirm the district court's order.

This court has jurisdiction to consider this appeal

[1] As an initial matter, Gold Coast argues that this court lacks jurisdiction to hear this appeal because Clark did not

timely file the notice of appeal. Because Clark's motion for reconsideration was filed within ten days of Clark receiving notice of the entry of judgment, the motion is properly treated as a Rule 59 motion that tolls the time to appeal. *See AA Primo Builders, L.L.C. v. Washington*, 126 Nev. —, —, 245 P.3d 1190, 1194–95 (2010) (treating a timely filed motion to reconsider as a Rule 59 motion). Accordingly, this court has jurisdiction to hear this appeal.

The district court did not abuse its discretion by excluding Clark's expert's testimony

Clark argues that the district court abused its discretion in excluding the testimony of her **expert**, Joseph DeMaria. This court reviews a district court's decision to allow **expert** testimony for an abuse of discretion. *Hallmark v. Eldridge*, 124 Nev. 492, 498, 189 P.3d 646, 650 (2008).

[2] A witness may testify as an **expert** if (1) the witness is “qualified in an area of ‘scientific, technical or other specialized knowledge’ (the qualification requirement);” (2) the **expert's** “specialized knowledge must ‘assist the trier of fact to understand the evidence or to determine a fact in issue’ (the assistance requirement);” and (3) the **expert's** testimony is “limited ‘to matters within the scope of [the **expert's** specialized] knowledge’ (the limited scope requirement).” *Hallmark*, 124 Nev. at 498, 189 P.3d at 650 (quoting NRS 50.275).

Hallmark provides the following nonexhaustive list of factors to consider in determining whether an **expert** is qualified in an area of scientific, technical, or other specialized knowledge: “(1) formal schooling and academic degrees, (2) licensure, (3) employment experience, and (4) practical experience and specialized training.” *Hallmark*, 124 Nev. at 499, 189 P.3d at 650–51.

*2 DeMaria is qualified to testify as an **expert** in safety engineering, the field in which Clark proffered him. His lengthy curriculum vitae shows that he has a Ph.D. in occupational safety and health engineering, numerous certifications, and a lengthy work history relevant to this field. This work history includes employment as the risk manager of Rio Suites Hotel and Casino. Accordingly, DeMaria satisfies the qualification requirement of NRS 50.275. Thus, the district court abused its discretion by excluding DeMaria on the basis that he was unqualified.

Under the assistance requirement, an **expert's** opinion must be relevant and the product of a reliable methodology.

Hallmark, 124 Nev. at 500, 189 P.3d at 651. To determine whether an **expert's** opinion is based upon reliable methodology, “a district court should consider whether the opinion is (1) within a recognized field of expertise; (2) testable and has been tested; (3) published and subjected to peer review; (4) generally accepted in the scientific community ...; and (5) based more on particularized facts rather than assumption, conjecture, or generalization.” *Id.* at 500–01, 189 P.3d at 651–52. “[T]hese factors are not exhaustive, may be accorded varying weights, and may not apply equally in every case.” *Id.* at 502, 189 P.3d at 652.

[3] In the present case, DeMaria's opinion was that the applicable safety standard requires the **escalator** to come to a gradual stop, while here the **escalator** came to a sudden stop. According to DeMaria, that standard requires an **escalator** to stop within a maximum of three seconds. The standard does not mention a minimum stopping time. Gold Coast's **expert** stated in his report that the **escalator** is designed to stop quickly when the safety switch is activated in order to prevent injury if a person is caught in the machinery. DeMaria did not provide a basis for determining how fast the **escalator** in question actually stopped besides a guestimate from watching the surveillance video. Furthermore, he did not offer an opinion on the correct stopping time (much less a methodology for calculating a non-negligent stopping time), and he did not provide any explanation for the relative risk involved between a sudden stop and a gradual stop. Because DeMaria's opinion is not based on any recognized methodology, the district court did not abuse its discretion in striking DeMaria as an **expert** after concluding that DeMaria's opinion “is not of an **expert** nature.” *See Hallmark*, 124 Nev. at 500–01, 189 P.3d at 651.

Because the district court did not abuse its discretion in concluding that DeMaria's opinion did not satisfy the assistance requirement, we affirm the district court's decision to exclude DeMaria's testimony. *See Hotel Riviera, Inc. v. Torres*, 97 Nev. 399, 403, 632 P.2d 1155, 1158 (1981) (“If a decision below is correct, it will not be disturbed on appeal even though the lower court relied upon wrong reasons.”).

Res ipsa loquitur is inapplicable

*3 [4] Clark next argues that the doctrine of *res ipsa loquitur* allows her to raise an inference of negligence without **expert** testimony. We conclude that the doctrine of *res ipsa loquitur* is inapplicable.

An inference of negligence may be raised where the plaintiff shows (1) the defendant was in exclusive control of the instrumentality causing injury, (2) the accident causing injury does not ordinarily happen in the absence of negligence, and (3) the defendant is in a better position than the plaintiff to explain the cause of the accident. *Otis Elevator Co. v. Reid*, 101 Nev. 515, 519, 706 P.2d 1378, 1380 (1985).

Other jurisdictions have held that *res ipsa loquitur* is inappropriate in similar **escalator**-related cases because a plaintiff cannot show exclusive control where the machine was subject to extensive public contact or because applying the doctrine would make the owner the insurer of all who use the **escalator**. See, e.g., *Parris v. Port of N.Y. Auth.*, 47 A.D.3d 460, 850 N.Y.S.2d 53, 54–55 (App.Div.2008); *Tinder v. Nordstrom, Inc.*, 84 Wash.App. 787, 929 P.2d 1209, 1213–14 (Wash.Ct.App.1997). Other jurisdictions have also held that **expert** testimony is required to establish that sudden **escalator** stoppage was caused by negligence and thus the doctrine of *res ipsa loquitur* is inapplicable. See, e.g., *Holzhauser v. Saks & Co.*, 346 Md. 328, 697 A.2d 89, 95 (Md.1997). We find the reasoning of these cases persuasive and conclude that the facts of this case do not permit an inference of negligence in Clark's favor.

The district court did not abuse its discretion by denying Clark's motion to extend discovery

[5] Next, Clark argues that the district court abused its discretion by denying her motion to extend discovery because she satisfied her burden of showing excusable neglect. The phrase “excusable neglect,” as used in the applicable local rule, EDCR 2.35, has not been defined by this court.

This court reviews a district court's decision on discovery matters for an abuse of discretion. *Club Vista Fin. Servs., L.L.C. v. Eighth Judicial Dist. Court*, 128 Nev. —, —, 276 P.3d 246, 249 (2012). This court reviews de novo the district court's legal conclusions regarding court rules. *Casey v. Wells Fargo Bank, N.A.*, 128 Nev. —, —, 290 P.3d 265, 267 (2012).

EDCR 2.35(a) provides that a request for additional time for discovery made later than 20 days from the close of discovery “shall not be granted unless the moving party, attorney or other person demonstrates that the failure to act was the result of excusable neglect.” The meaning of the term excusable neglect appears well settled. For example, *Black's Law Dictionary* defines “excusable neglect” as follows:

A failure—which the law will excuse—to take some proper step at the proper time (esp. in neglecting to answer a lawsuit) not because of the party's own carelessness, inattention, or willful disregard of the court's process, but because of some unexpected or unavoidable hindrance or accident or because of reliance on the care and vigilance of the party's counsel or on a promise made by the adverse party.

*4 *Black's Law Dictionary* 1133 (9th ed.2009). A number of Nevada cases have applied “excusable neglect” as grounds for enlarging time under NRCP 6(b)(2) and as a basis for setting aside a judgment under NRCP 60(b)(1). The concept of “excusable neglect” does not apply to a party losing a fully briefed and argued motion; instead, the concept applies to instances where some external factor beyond a party's control affects the party's ability to act or respond as otherwise required. See, e.g., *Moseley v. Eighth Judicial Dist. Court*, 124 Nev. 654, 667–68, 188 P.3d 1136, 1145–46 (2008) (concluding that, under NRCP 6(b)(2), excusable neglect may justify an enlargement of time to allow for substitution of a deceased party where the delay was caused by a lack of cooperation from the decedent's family and attorney); *Stoecklein v. Johnson Elec., Inc.*, 109 Nev. 268, 273, 849 P.2d 305, 308 (1993) (affirming a district court's finding of excusable neglect under NRCP 60(b)(1) where default judgment resulted from a lack of notice); *Yochum v. Davis*, 98 Nev. 484, 486–87, 653 P.2d 1215, 1216–17 (1982) (reversing a district court's order denying a motion to set aside a default judgment under NRCP 60(b)(1) where default resulted from a lack of procedural knowledge).

In the present case, the district court entered its order striking DeMaria as an **expert** witness in June 2012, after briefing by both parties and a hearing. Clark filed her motion in July 2012, over three months after discovery closed, seeking additional time to secure a new **expert** witness. Clark argues that “[t]here was no way for Ms. Clark's attorneys to have foreseen the district court going so far afield of the rules for admissibility of **experts** in premises liability.” The notion that one would need an **expert** with specialized knowledge of **escalators** in such a case is not unusual or novel, however, and allowing a

party to reopen discovery upon losing a motion to strike or a motion in limine would unnecessarily burden the timely and efficient resolution of litigation. Accordingly, we conclude that “excusable neglect” as used in EDRC 2.35(a) does not include circumstances where a party loses a fully briefed and argued motion on its merits. Accordingly, we affirm the district court's order adopting the discovery commissioner's finding refusing to reopen discovery.

The district court did not abuse its discretion by denying Clark leave to file an amended complaint to add Otis Elevator Company as a defendant

[6] Last, we reject Clark's argument that the district court abused its discretion by denying Clark leave to file an amended complaint to add Otis **Elevator** Company, d.b.a. Nevada **Elevator** Company (Otis) as a defendant. Although NRCP 15(a) provides that leave to amend “shall be freely given when justice so requires,” leave to amend is not appropriate in the face of “undue delay, bad faith or dilatory motive.” *Stephens v. S. Nev. Music Co.*, 89 Nev. 104, 105–06, 507 P.2d 138, 139 (1973). NRCP 10(a) allows a party to designate an unknown defendant and later amend the pleadings once the name of the defendant becomes known. NRCP 15(c) allows amended pleadings to relate back to the time the original complaint was filed in certain circumstances.

*5 We have held that amending a complaint under Rule 10(a) requires that the party (1) plead a fictitious or Doe defendant in the caption of the original complaint; (2) plead the basis for naming defendants by other than their true identity, and clearly specify the connection between the intended defendants and the conduct, activity, or omission upon which the cause of action is based; and (3) exercise reasonable diligence in ascertaining the identity of the intended defendants and promptly move to amend the complaint. *Nurenberger Hercules-Werke GMBH v. Virostek*, 107 Nev. 873, 881, 822 P.2d 1100, 1106 (1991).

Although the complaint contains Doe defendants in the caption, the body of the complaint only mentions the Doe

defendants in a vague and cursory manner, without any mention of an entity responsible for maintenance or operation of the **escalator**.¹ Gold Coast avers that it produced the maintenance agreement between Otis and Gold Coast in June 2010, while the motion for leave to file an amended complaint was not filed until December 2011.

Clark acknowledges Gold Coast's argument that she waited well over a year to seek leave to file an amended complaint but does not actually address it. Instead, she argues that the statute of limitations had not yet run, thus there could not be any undue delay or lack of diligence. This argument is circular, and adopting Clark's reasoning here would undermine the purpose for having a timeliness requirement for adding a Doe defendant outside of the statute of limitations itself.

Clark also argues that because Otis was indemnifying Gold Coast, Otis had notice of the action. Although notice is relevant for determining whether a pleading may relate back, *Costello v. Casler*, 127 Nev. —, —, 254 P.3d 631, 634 (2011), it is not a relevant factor in determining whether a new defendant may be named in place of a Doe defendant under NRCP 10. *See Nurenberger*, 107 Nev. at 881, 822 P.2d at 1106. Instead, we conclude that because Clark did not attempt to amend the complaint until over a year after Otis's identity had been disclosed, the circumstances of this case fall clearly outside of the factors set forth in *Nurenberger*, and thus the district court did not abuse its discretion by denying Clark's motion to file an amended complaint.² *See Holcomb Condo. Homeowners' Assoc., Inc. v. Stewart Venture, L.L.C.*, 129 Nev. —, —, 300 P.3d 124, 130–31 (2013) (providing that “this court will not disturb a trial court's denial of leave to amend absent an abuse of discretion”). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

All Citations

Slip Copy, 2014 WL 3784262 (Table)

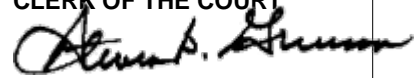
Footnotes

- 1 Clark argues that she made allegations against the installer or repairer of the **escalator**, but the actual complaint only names Gold Coast as said installer and repairer, and does not relate the installation or repair of the **escalator** to any mention of Doe or fictitious defendants.
- 2 We conclude that Clark waived her argument that Gold Coast did not timely file its motion for summary judgment. *See Thomas v. Hardwick*, 126 Nev. 142, 158–59, 231 P.3d 1111, 1121 (2010) (concluding that where a party raises an issue for the first time on a motion for reconsideration, and the trial court does not address the merits of the motion, the issue

is waived). For the same reasons, we also conclude that Clark waived her argument that she did not need an **expert** based on her theory that Gold Coast had a nondelegable duty to operate the **escalator** safely and that the sudden stop was unreasonably dangerous. *See id.*

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DISTRICT COURT

CLARK COUNTY, NEVADA

JOE N. BROWN, an individual,

Plaintiff,

v.

GNL, CORP., a Nevada corporation; and
THYSSENKRUPP ELEVATOR CORP.,

Defendants.

Case No.: A-16-739887-C

Dept. No.: XXXI

**DEFENDANT GNL, CORP'S EDCR
7.27 TRIAL BRIEF IN SUPPORT
OF ANTICIPATED ORAL
MOTION FOR JUDGMENT AS A
MATTER OF LAW AT CLOSE OF
PLAINTIFF'S CASE IN CHIEF**

COMES NOW Defendant GNL, Corp ("GNL"), by and through its undersigned counsel, and hereby submits this civil trial memorandum in accordance with EDCR 7.27. Given the state of the record and applying the controlling legal principles, GNL is entitled to judgment as a matter of law with respect to Plaintiff's negligence claim.

GNL also joins in the civil trial memorandum filed earlier today by THYSSENKRUPP ELEVATOR CORP. ("ThyssenKrupp"). Plaintiff has not carried his burden against ThyssenKrupp, and he has therefor also failed to meet his burden against GNL to the extent that he seeks to impose derivative liability on GNL for the negligence of ThyssenKrupp. To the extent that Plaintiff seeks to hold GNL liable for its independent alleged negligence, a reasonable jury would not have a legally sufficient evidentiary basis to find that any negligence by GNL caused Mr. Brown's fall or resulting damages. The evidentiary basis for both liability and





causation is impermissibly speculative and is not supported by required expert testimony. For these reasons and for the reasons set forth more fully below, the GNL is entitled to judgment as a matter of law

Argument

I. *STANDARD FOR GRANTING RULE 50(A) MOTION.*

NRCP 50(a)(1) provides:

(a) Judgment as a Matter of Law.

(1) If during a trial by jury, a party has been fully heard on an issue and on the facts and law a party has failed to prove a sufficient issue for the jury, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.

NRCP 50(a)(2) permits a party to move for judgment as a matter of law at the close of evidence offered by the nonmoving party or at the close of the case.

“Under NRCP 50(a)(1), the district court may grant a motion for judgment as a matter of law if the opposing party ‘has failed to prove a sufficient issue for the jury,’ so that his claim cannot be maintained under the controlling law. The standard for granting a motion for judgment as a matter of law is based on the standard for granting a motion for involuntary dismissal under former NRCP 41(b).” *Nelson v. Heer*, 123 Nev. 217, 222, 163 P.3d 420, 424 (2007). “In applying that standard and deciding whether to grant a motion for judgment as a matter of law, the district court must view the evidence and all inferences in favor of the nonmoving party.” *Id.* (citing *Chowdhry v. NLVH, Inc.*, 109 Nev. 478, 482, 851 P.2d 459, 461-62 (1993)). But to survive a Rule 50(a) motion, a plaintiff must be able to establish a *prima facie* case establishing any entitlement for relief. *Chowdhry*, 109 Nev. at 482, 851 P.2d at 461-62.

///

///



1 **II. JUDGMENT AS A MATTER OF LAW IS APPROPRIATE WITH RESPECT TO**
2 **PLAINTIFF’S NEGLIGENCE CLAIM.**

3 Plaintiff Joe Brown’s only claim against GNL is for “Negligence.” *See* First Cause of
4 Action in Second Amended Complaint filed 9/18/2018 (“Complaint”). Specifically, Plaintiff
5 claims that “Defendants Landry’s, Golden Nugget, and GNL breached their duties of care by
6 negligently designing, installing, operating, and maintaining the stairs, railings, and/or escalators
7 used to transport persons within the Laughlin Nugget”. (Complaint at para.28).

8 There is a complete lack of any evidence that GNL negligently “designed, installed, or
9 operated” the escalator in question. The only issue left is maintenance. The evidence is
10 undisputed that GNL hired ThyssenKrupp to maintain the escalator that Mr. Brown fell on in
11 1994, and that ThyssenKrupp maintained the escalator continuously until the time of Mr.
12 Brown’s fall in 2015. If there is insufficient evidence that ThyssenKrupp negligently maintained
13 the escalator, then there is by definition insufficient evidence that GNL negligently maintained
14 the escalator.
15

16 There is also no evidentiary basis to find GNL breached any independent duty as a
17 premises owner. The evidence is unrebutted that GNL hired a licensed maintenance contractor
18 to maintain the escalator and properly permitted the escalator with the State. There is no
19 evidence in the record that the standard of care for a premises owner required anything more. In
20 fact, Plaintiff produced no evidence that the standard of care was breached or that any alleged
21 breach caused Mr. Brown’s fall.
22

23 To establish the standard of care in a negligence case, expert testimony is necessary when
24 the conduct involved is not within the common knowledge of a layperson. *Daniel, Mann,*
25 *Johnson & Mendenhall v. Hilton Hotels Corp.*, 98 Nev. 113, 115, 642 P.2d 1086, 1087 (1982)
26 (“It is well settled that the standard of care must be determined by expert testimony unless the
27 conduct involved is within the common knowledge of laypersons”) *citing Bialer v. St. Mary’s*
28



1 *Hospital*, 83 Nev. 241, 427 P.2d 957 (1967). *See also Iazzetta v. Smith's Food & Drug Ctrs.*,
2 *Inc.*, 99 Fed. R. Evid. Serv. 820, at *4 (D. Nev. 2016) (“It is well settled [in Nevada] that
3 the standard of care must be determined by expert testimony *unless* the conduct involved is
4 within the common knowledge of laypersons. When the service rendered does not involve
5 esoteric knowledge or uncertainty that calls for the professional's judgment, it is not beyond the
6 knowledge of the jury to determine the adequacy of performance.”) (alteration in original)
7 (emphasis added) (citation omitted); *McConnell v. Wal-Mart Stores, Inc.*, 995 F. Supp. 2d 1164,
8 1169 (D. Nev. 2014) (“A layman may evaluate reasonable behavior in the context of everyday
9 events, such as mopping a floor in a retail store, without resort to expert assistance.”).

11 There is no expert testimony that GNL or its agent ThyssenKrupp violated the standard of
12 care. The required maintenance of an escalator is not within the knowledge of a common juror.
13 Judgement as a matter of law is required to prevent the jury from basing a verdict on speculation.

14 While Plaintiff has elicited some testimony of cracks, old style steps and rollers, there is a
15 complete absence of evidence the escalator was unreasonable dangerous at the time of the
16 incident. The fact that the escalator could have been made “safer” is not sufficient for a jury to
17 impose liability. No qualified expert has inspected the escalator and opined of a defect which
18 both existed on the day of the incident and could have caused the steps to shake at the time of the
19 incident. In fact, State Inspector Robertson found the escalator was safe for the public and
20 returned it to service with no repairs after Mr. Brown’s incident.

22 **III. PLAINTIFF FAILED TO INTRODUCE EVIDENCE AT TRIAL OF HIS PAST**
23 **MEDICAL EXPENSES.**

24 A party seeking damages has the burden of proving the fact that he was damaged
25 and the amount thereof. *See Gibellini v. Klindt*, 885 P.2d 540, 543 (Nev.1994). To meet
26 this burden, the plaintiff must provide an evidentiary basis upon which the jury may
27 properly determine a reasonably accurate amount of damages. *See Frantz v. Johnson*, 116
28 Nev. 455, 469-70, 999 P.2d 351, 360 (2000) (citing *Mort Wallin v. Commercial Cabinet*,



1 105 Nev. 855, 857, 784 P.2d 954, 955 (1989)); *see also* *Gramanz v. T-Shirts and*
2 *Souvenirs, Inc.*, 111 Nev. 478, 484 (1995). “Although the amount of damages need not be
3 proven with mathematical certainty, *testimony on the amount may not be speculative.*”
4 *Clark Cty. Sch. Dist. v. Richardson Const., Inc.*, 123 Nev. 382, 397, 168 P.3d 87, 97
5 (2007) (footnotes omitted and emphasis added).

6 Indeed, Nevada law prevents Plaintiff from simply presenting bald damages
7 allegations. *See Bond v. Stardust*, 82 Nev. 47, 410 P.2d 472 (1966). Thus, Plaintiff’s
8 undocumented medical expense claims cannot go to the jury. *See, Matthews v.*
9 *Consolidated Companies, Inc.*, 657 S.2d 765 (4th Cir. 1995).

10 Dated this 16th day of December 2019.

11
12 WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC

13 /s/D. Lee Roberts, Jr.
14 D. Lee Roberts, Jr., Esq.
15 Phillip N. Smith, Jr., Esq.
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Las Vegas, Nevada 89118

16 *Attorneys for Defendant*
17 *GNL, CORP.*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 1 day of December, 2019, a true and correct copy of the foregoing **DEFENDANT GNL, CORP'S EDCR 7.27 TRIAL BRIEF IN SUPPORT OF ANTICIPATED ORAL MOTION FOR JUDGMENT AS A MATTER OF LAW AT CLOSE OF PLAINTIFF'S CASE IN CHIEF** was electronically filed and served on counsel through the Eighth Judicial District Court's electronic service system pursuant to Administrative Order 14-2 and NEFCR 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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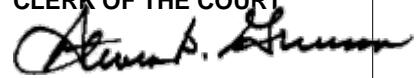
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Attorneys for Defendant

GNL, CORP.

DISTRICT COURT

CLARK COUNTY, NEVADA

JOE N. BROWN, an individual,

Plaintiff,

v.

GNL, CORP., a Nevada corporation; and
THYSSENKRUPP ELEVATOR CORP.,

Defendants.

Case No.: A-16-739887-C

Dept. No.: XXXI

**DEFENDANT GNL, CORP'S EDCR
7.27 TRIAL BRIEF ON WHETHER
PLAINTIFF CAN LAY
FOUNDATION TO ADMIT
MEDICAL BILLS HE RECEIVED
FROM PROVIDERS**

COMES NOW Defendant GNL, Corp ("GNL"), by and through its undersigned counsel,
and hereby submits this civil trial memorandum in accordance with EDCR 7.27.

Plaintiff intends to try to introduce medical bills through the testimony of Plaintiff.
Defendants object to this testimony because Plaintiff cannot lay a foundation for the
business records exception to hearsay. *Wilson v. Biomat USA, Inc.*, No. 2:10-CV-1657-
GMN-RJJ, 2011 WL 4916550, at *3 (D. Nev. Oct. 17, 2011) is instructive on this point:

Plaintiff would also like the Court to admit medical records and bills from
Southern Nevada Medical Group, Wellcare Pharmacy, Las Vegas
Pharmacy and Radiology Associates of Nevada based on the testimony of
Dr. Anthony and Plaintiff. First of all, the Court fails to see how Dr.
Anthony would be qualified to testify regarding the business activities of
businesses where he has not been employed. Similarly, Plaintiff would also





1 not be qualified to authenticate the medical records and bills of a business
2 where he has not been employed. Plaintiff could testify regarding whether
3 he received or paid bills when purchasing a prescription or visiting a
4 doctor, however Plaintiff would not be qualified to testify if a specific
5 medical record or billing record was created in the regular course of
6 business, etc. as required to satisfy the requirements under Fed. R. of Evid.
7 803(6) and 902(11). Therefore, unless another basis for authentication is
8 provided to the Court, it appears that these exhibits will not be admissible at
9 trial.

6 Even Plaintiff could lay a foundation under the business records exception, he is
7 not qualified to testify to the causal relation to the fall (especially as to more remote
8 billings after his stroke) and whether the bills represent a fair and reasonable charge for
9 the services rendered. It is beyond question that plaintiff must prove medical expenses
10 claimed are reasonable and necessary, as well as causally related. See, e.g., 2018 Nevada
11 Jury Instruction 5.1 (“...The reasonable medical expenses plaintiff has necessarily incurred as
12 a result of the [accident] [incident]...”); 2011 Pattern Jury Instruction PERSONAL
13 INJURY DAMAGES INSTRUCTION 5PID.1 (“....The reasonable medical expenses
14 plaintiff has necessarily incurred as a result of the [accident] [incident] ...”).

15 In *Quintero v. McDonald*, 116 Nev. 1181, 1184, 14 P.3d 522, 523 (2000),
16 Quintero contended that the district court erred by refusing to grant judgment
17 notwithstanding the verdict or a new trial in light of the failure by the jury to award
18 damages. In this connection, Quintero relied on a stipulation to the admission into
19 evidence of her medical bills, that McDonald failed to procure the testimony of an expert,
20 and that her evidence of damages was uncontroverted. The Nevada Supreme Court
21 disagreed:

22 As noted, Quintero presented evidence that she incurred \$1,885.00 in
23 medical expenses. ***However, she offered no conclusive evidence of the***
24 ***reasonableness of the expenses or the necessity of the treatment.***
25 Although McDonald did not present expert testimony challenging
26 causation, testimony elicited from Quintero's witnesses on cross-
27 examination controverted Quintero's claim as to the extent of her injuries.
28 Further, cross-examination of Quintero's evidence revealed that Quintero
suffered from a pre-existing back injury, which could have caused her
symptoms.

116 Nev. at 1184 (emphasis added).



1 Plaintiff has no remaining witness who can prove that the costs claimed are
2 reasonable and necessary. For example, Plaintiff may know that he got a bill for a
3 lifeflight to Las Vegas. He has no foundation to testify that the lifeflight was medically
4 necessary or that the amount billed for it was reasonable. No other witness can lay this
5 foundation, and without it the jury will be left to speculate on these issues, making the
6 admission of the bare fact that Plaintiff received bills more prejudicial than probative.

7 Dated this 17th day of December 2019.

8
9 WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC

10 /s/D. Lee Roberts, Jr.
11 D. Lee Roberts, Jr., Esq.
12 Phillip N. Smith, Jr., Esq.
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13 *Attorneys for Defendant*
14 *GNL, CORP.*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 17th day of December, 2019, a true and correct copy of the foregoing **DEFENDANT GNL, CORP'S EDCR 7.27 TRIAL BRIEF ON WHETHER PLAINTIFF CAN LAY FOUNDATION TO ADMIT MEDICAL BILLS HE RECEIVED FROM PROVIDERS** was electronically filed and served on counsel through the Eighth Judicial District Court's electronic service system pursuant to Administrative Order 14-2 and NEFCR 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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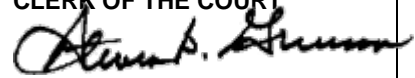
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Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JOE N. BROWN, an individual;

Plaintiff,

vs.

GNL, CORP., a Nevada corporation;
THYSSENKRUPP ELEVATOR CORP., a
foreign corporation;

Defendants.

Case No.: A-16-739887-C

Dept. No.: XXXI

**PLAINTIFF'S EDCR 7.27 CIVIL TRIAL
MEMORANDUM #4, REGARDING:
READING OF CHRISTOPHER
DUTCHER DEPOSITION EXCERPTS ON
DECEMBER 16**

Pursuant to Rule 7.27, Plaintiff Joe Brown ("*Plaintiff*"), by and through his counsel of record, hereby respectfully submits Plaintiff's Civil Trial Memoranda #4:

Yesterday, on Tuesday, Defendants raised—in a respectful manner that Plaintiff appreciates—a potential concern regarding the reading of Mr. Dutcher's deposition excerpts on Monday, December 16. Plaintiff reviewed the CD and can confirm that between **1:38:05 pm and 1:44:53 pm**, the Court ruled on and allowed for reading the following excerpts (except for a portion removed for speculation and a separate correction of "2005" to "2012"):

◇ pp. 136:3 – 138:25 ◇ p. 139:7-22 ◇ pp. 141:7 – 142:4

Here, Mr. Dutcher testified under oath to, *inter alia*, differences in 2012 proposals for the "down" escalator amounting to approximately \$27,700. Proposed work (that was never actually completed) is not a "repair" and the testimony/reading did not otherwise violate any *motion in limine* orders. These portions came in over Defendants' objection(s) based on, largely, the timeliness thereof.

Respectfully Submitted by:

IQBAL LAW PLLC

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

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

Attorney for Plaintiff

PLAINTIFF'S EDCR 7.27 CIVIL TRIAL MEMORANDUM #4 RE DUTCHER EXCERPTS

1 of 1

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ORIGINAL
DISTRICT COURT
CLARK COUNTY, NEVADA

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT
DEC 18 2019
BY, SUSAN BOTZENHART, DEPUTY

JOE N. BROWN, an individual,

Plaintiff,

vs.

GNL, CORP., a Nevada corporation;
THYSSENKRUPP ELEVATOR CORP. a
foreign corporation,

Defendants.

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

JURY INSTRUCTIONS

A-16-739887-C
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Jury Instructions
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INSTRUCTION NO. 1

Members of the Jury:

It is now my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in these instructions.

JNB03398

INSTRUCTION NO. 2

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

JNB03399

INSTRUCTION NO. 3

You must decide all questions of fact in this case from the evidence received in this trial and not from any other source. You must not make any independent investigation of the facts or the law or consider or discuss facts as to which there is no evidence. This means, for example, that you must not on your own visit the scene, conduct experiments or consult reference works for additional information.

JNB03400

INSTRUCTION NO. 4

In determining whether any proposition has been proved, you should consider all evidence bearing on the question without regard to which party produced it.

JNB03401

INSTRUCTION NO. 5

Two of the parties in this case are corporations. A corporation is entitled to the same fair and unprejudiced treatment as an individual would be under like circumstances, and you should decide the case with the same impartiality you would use in deciding a case between individuals.

JNB03402

INSTRUCTION NO. 6

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two types of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what the witness personally saw or heard or did. Circumstantial evidence is the proof of one or more facts from which you could find another fact. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate (meaning to agree) to the existence of a fact, you must accept the stipulation of evidence and regard that fact as proved.

Questions are not evidence. Only the answer is evidence. You should consider a question only if it helps you understand the witness's answer. Do not assume that something is true just because a question suggests that it is.

You must also disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court. Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

JNB03403

INSTRUCTION NO. 7

Before trial, each party has the right to ask the other parties to answer written questions. These questions are called Interrogatories. The answers to the Interrogatories are also in writing and are sworn to under oath. You must consider the questions and answers that were read to you the same as if the questions and answers had been given in court.

JNB03404

INSTRUCTION NO. 8

Before trial, each party has the right to ask another party to admit in writing that certain matters are true. If the other party admits those matters, you must accept them as true.

No further evidence is required to prove them.

You will regard those matters as being conclusively proved all such matters of fact which were expressly admitted by the parties or which the parties failed to deny.

If there are multiple parties to the litigation, these matters must be considered true only as they apply to the party who admitted they were true.

INSTRUCTION NO. 9

During the trial, you received deposition testimony that was read from the deposition transcript. A deposition is the testimony of a person taken before trial. At a deposition, the person took the same oath to tell the truth that would be taken in court and is questioned by the attorneys. You must consider the deposition testimony that was presented to you in the same way as you consider testimony given in court.

JNB03406

INSTRUCTION NO. 10

Plaintiff is seeking damages based upon a claim of negligence. Plaintiff has the burden of proving by a preponderance of the evidence all of the facts necessary to establish negligence.

The defendants have the burden of proving by a preponderance of the evidence all of the facts necessary to establish comparative negligence.

A "preponderance of the evidence" means such evidence as, when considered and weighed against that opposed to it, has more convincing force and produces in your mind a belief that what is sought to be proved is more probably true than not true.

In determining whether a party has met this burden, you will consider all the evidence, whether introduced by the plaintiff or defendants.

JNB03407

INSTRUCTION NO. 11

To prevail on a negligence claim, a plaintiff must establish that (1) the defendant owed the plaintiff a duty of care, (2) the defendant breached that duty, (3) the breach was the legal cause of the plaintiff's injuries, and (4) the plaintiff suffered damages.

JNB03408

INSTRUCTION NO. 12

A legal cause of injury, damage, loss, or harm is a cause that is a substantial factor in bringing about the injury, damage, loss, or harm. A substantial factor in causing harm is a factor that a reasonable person would consider to have contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only cause of the harm.

JNB03409

INSTRUCTION NO. 13

There may be more than one legal cause of any injury. When negligent conduct of two or more persons contributes concurrently as a legal cause of an injury, the conduct of each of said persons is a legal cause of the injury regardless of the extent to which each contributes to the injury.

A cause is concurrent if it was operative at the moment of injury and acted with another cause to produce the injury

JNB03410

Generally, everyone has a duty to exercise reasonable care when their conduct creates a risk of physical harm to others.

Negligence is the failure to exercise that degree of care which an ordinarily careful and prudent person would exercise under the same or similar circumstances.

Ordinary care is that care which persons of ordinary prudence exercise in the management of their own affairs in order to avoid injury to themselves or to others.

You will note that the person whose conduct we set up as a standard is not the extraordinarily cautious individual, not the exceptionally skillful one, but a person of reasonable and ordinary prudence. While exceptional skill is to be admired and encouraged, the law does not demand it as a general standard of conduct.

INSTRUCTION NO. 15

Plaintiff Joe Brown claims he was harmed because of the way defendant GNL managed its property. To establish this claim, plaintiff must prove all of the following:

1. That defendant GNL owned, leased, occupied or controlled the property;
2. That defendant GNL was negligent in the inspection, use or maintenance of the property;
3. That plaintiff was harmed; and
4. That defendant ~~GNL's~~ negligence was a substantial factor in causing plaintiff's harm.

GNL's

JNB03412

INSTRUCTION NO. 16

Evidence as to whether a corporation conformed or did not conform to a custom that has grown up in a given locality or business is relevant and ought to be considered, but is not necessarily controlling on the question of whether that corporation was negligent. That issue must be determined by the standard of care stated to you.

JNB03413

An agency relationship is formed when a principal hires an agent. An agent is a person who, at a given time, under an express or implied agreement, is authorized to act for or in place of another person, called a principal.

The law holds that a principal is liable for the acts of its agent.

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INSTRUCTION NO. 18

The owner or occupant of property is not an insurer of the safety of anyone thereon, and
in the absence of negligence, there is no liability.

INSTRUCTION NO. 19

The mere fact that there was an accident or other event and someone was injured is not of itself sufficient to predicate liability. Negligence is never presumed but must be established by the evidence.

JNB03416

INSTRUCTION NO. 20

The defendants claim that plaintiff Joe Brown's own negligence contributed to his harm.

To succeed on this claim, defendants must prove both of the following:

That plaintiff was negligent; and

That plaintiff's negligence was a substantial factor in causing his harm.

A plaintiff may not recover damages if his comparative negligence has contributed more to his injury than the negligence of the defendants. However, if the plaintiff is negligent, the plaintiff may still recover a reduced sum, so long as his comparative negligence was not greater than the negligence of the defendant.

If you determine that the plaintiff is entitled to recover upon the theory of negligence, you shall return by special verdict the total amount of damages sustained by the plaintiff and you shall return a special verdict indicating the percentage of negligence attributable to each party.

The percentage of negligence attributable to the plaintiff shall reduce the amount of such recovery by the proportionate amount of such negligence and the reduction will be made by the court.

JNB03417

INSTRUCTION NO. 21

The fact that a witness had been convicted of a felony, if such be a fact, may be considered by you only for the purpose of determining the credibility of that witness.

The fact of such a conviction does not necessarily destroy or impair the witness's credibility. It is simply one of the circumstances that you are to take into consideration in weighing the credibility of a witness's testimony.

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

INSTRUCTION NO. 23

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

JNB03420

INSTRUCTION NO. 24

If, during this trial, I have said or done anything which has suggested to you that I am inclined to favor the claims or position of any party, you will not be influenced by any such suggestion. I have not expressed, nor intended to express, nor have I intended to intimate, any opinion as to which witnesses are or are not worthy of belief, what facts are or are not established, or what inference should be drawn from the evidence. If any expression of mine has seemed to indicate an opinion relating to any of these matters, I instruct you to disregard it.

JNB03421

INSTRUCTION NO. 25

The credibility or believability of a witness should be determined by his or her manner upon the stand, his or her relationship to the parties, his or her fears, motives, interests or feelings, his or her opportunity to have observed the matter to which he or she testified, the reasonableness of his or her statements, and the strength or weakness of his or her recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness, or any portion of his testimony which is not proved by other evidence.

JNB03422

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3 You are not to discuss or even consider whether or not the Plaintiff was carrying
4 insurance to cover medical bills, loss of earnings, or any other damages he claims to have
5 sustained.
6

7 You are not to discuss or even consider whether or not the Defendants were carrying
8 insurance that would reimburse them for whatever sum of money they may be called
9 upon to pay the Plaintiff.
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11 Whether or not any party was insured is immaterial, and should make no difference in
12 any verdict you may render in this case.
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INSTRUCTION NO. 27

You are admonished that no juror may declare to a fellow juror any fact relating to this case as of his or her own knowledge, and if any juror discovers during the trial or after the jury has retired that he, she or any other juror has personal knowledge of any fact in controversy in this case, he or she shall disclose such situation to me in the absence of the other jurors. This means that if you learn, during the course of the trial, that you were acquainted with the facts of this case or the witnesses and you have not previously told me of this relationship, you must then declare that fact to me.

You communicate to the court through the bailiff/marshal.

During the course of this trial, the attorneys for both sides and court personnel, other than the bailiff/marshal, are not permitted to converse with members of the jury. These individuals are not being anti-social; they are bound by ethics and the law not to talk to you. To do so might contaminate your verdict. You are admonished, additionally, that you are not to visit the scene of any of the acts or occurrences made mention of during this trial, unless specifically directed to do so by the court. Do not undertake any investigation of the case on your own, or endeavor to research legal or factual issues on your own.

JNB03424

INSTRUCTION NO. 28

You may not communicate with anyone about the case on your cell phone, through e-mail, Blackberry, iPhone, text messaging, or on Twitter, through any blog or website, through any internet chat room, or by way of any social networking websites including, but not limited to, Facebook, Myspace, LinkedIn, YouTube, Instagram, Snapchat.

JNB03425

INSTRUCTION NO. 29

In determining the amount of losses, if any, suffered by the plaintiff as a legal result of the accident in question, you will take into consideration the nature, extent and duration of the injuries you believe from the evidence plaintiff has sustained, and you will decide upon a sum of money sufficient to reasonably and fairly compensate plaintiff for the following items:

1. The physical and mental pain, suffering, anguish, disability, and loss of enjoyment of life endured by the plaintiff from the date of the accident to the present; and
2. The physical and mental pain, suffering, anguish, disability, and loss of enjoyment of life which you believe plaintiff will be reasonably certain to experience in the future as a result of the accident.

JNB03426

INSTRUCTION NO. 30

No fixed standard exists for deciding the amount of pain and suffering damages. Nor is the opinion of any witness required as to the amount of such reasonable compensation. You must use your judgment to decide upon a reasonable amount based on the evidence and your common sense.

JNB03427

INSTRUCTION NO. 31

A person who has a condition or disability at the time of an injury is not entitled to recover damages therefor. However, he is entitled to recover damages for any aggravation of such pre-existing condition or disability proximately resulting from the injury.

This is true even if the person's condition or disability made him more susceptible to the possibility of ill effects than a normally healthy person would have been, and even if a normally healthy person probably would not have suffered any substantial injury.

Where a pre-existing condition or disability is so aggravated, the damages as to such condition or disability are limited to the additional injury caused by the aggravation.

JNB03428

INSTRUCTION NO. 32

Where the plaintiff's injury or disability is clear and readily observable, no expert testimony is required for an award of future pain, suffering, anguish and disability.

However, where an injury or disability is subjective and not demonstrable to others, expert testimony is necessary before a jury may award future damages.

JNB03429

INSTRUCTION NO. 33

Whether any of these elements of damage have been proven by the evidence is for you to determine.

Neither sympathy nor speculation is a proper basis for determining damages. However, absolute certainty as to the damages is not required. It is only required that plaintiff prove each item of damage by a preponderance of the evidence.

JNB03430

INSTRUCTION NO. 34

If the jury determines the Plaintiff is entitled to recovery, it shall return by special verdict the total amount of damages the Plaintiff would be entitled to recover from this accident. Thus, you are not to consider the negligence and/or fault of any person who has not been made a party to this case.

JNB03431

INSTRUCTION NO. 35

It is your duty as jurors to consult with one another and to deliberate with a view toward reaching an agreement, if you can do so without the violence to your judgment. Each of you must decide the case for yourself, but should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous.

However, you should not be influenced to vote in any way or any question submitted to you by the single fact that a majority of jurors or any of them, favor such a decision. In other words, you should not surrender your honest convictions concerning the effect or weight of evidence for the mere purpose of returning a verdict or solely because of the opinions of the other jurors. Whatever your verdict is, it must be the product of a careful and impartial consideration of all the evidence in the case under the rules of law as given you by the court.

JNB03432

INSTRUCTION NO. 36

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2
3 If, during your deliberations, you should desire to be further informed on any point of
4 law or hear again portions of the testimony, you must reduce your request to writing
5 signed by the foreperson. The officer will then return you to court where the information
6 sought will be given you in the presence of the parties or their attorneys. Remember, the
7 court is not at liberty to supplement the evidence.
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JNB03433

INSTRUCTION NO. 37

When you retire to consider your verdict, you must select one of your number to act as foreperson, who will preside over your deliberations and will be your spokesman here in court.

During your deliberations, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict, which have been prepared for your convenience.

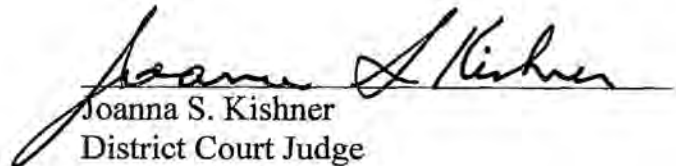
In civil actions, three-fourths of the total number of jurors may find and return a verdict.

This is a civil action. As soon as six or more of you have agreed upon a verdict, you shall have it signed and dated by your foreperson, and then return with it to this room.

JNB03434

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberations by the evidence as you understand it and remember it to be and by the law as given you in these instructions, and return a verdict which, according to your reason and candid judgment, is just and proper.

Dated this 18th day of December, 2019.


Joanna S. Kushner
District Court Judge

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

DEC 18 2019

BY, 
SUSAN BOTZENHART, DEPUTY

JOE N. BROWN, an individual,

Plaintiff,

vs.

CASE NO.: A-16-739887-C

DEPT. NO.: XXXI

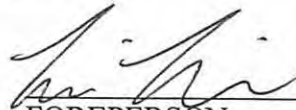
GNL, CORP., a Nevada corporation;
THYSSENKRUPP ELEVATOR CORP. a foreign
corporation,

Defendants.

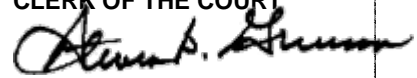
JURY VERDICT

We, the jury in the above entitled action, find in favor of Defendants, GNL CORP. and
THYSSENKRUPP ELEVATOR CORPORATION, and against the Plaintiff.

DATED this 18th day of December, 2019.

 (Louise Lincione)
FOREPERSON

JNB03436



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10 Facsimile: (702) 938-3864

11 *Attorneys for Defendant/Third-Party Plaintiff,*
12 *GNL, CORP.*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 JOE N. BROWN, an individual,

16 Plaintiff,

17 v.

18 LANDRY'S, INC., a foreign corporation;
19 GOLDEN NUGGET, INC. a Nevada
20 coporation, d/b/a GOLDEN NUGGET
LAUGHLIN; GNL, CORP., a Nevada
21 coporation; THYSENKRUPP ELEVATOR
CORP., a foreign corporation,

22 Defendants.

Case No.: A-16-739887-C

Dept. No.: XXXI

NOTICE OF ENTRY OF JUDGMENT

23 ///

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1 PLEASE TAKE NOTICE that Judgement On Jury Verdict was entered on January 8,
2 2020, in this matter. A copy is attached hereto.

3 Dated this 9 day of January, 2020.

6 WEINBERG, WHEELER, HUDGINS,
7 GUNN & DIAL, LLC

8 D. Lee Roberts, Jr., Esq.
9 Howard J. Russell, Esq.
10 Kristian T. Kaskla, Esq.
11 Phillip N. Smith, Jr., Esq.
12 6385 South Rainbow Blvd., Suite 400
13 Las Vegas, Nevada 89118

14 *Attorneys for Defendant/Third-Party Plaintiff,*
15 *GNL, CORP.*



CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of January, 2020, a true and correct copy of the foregoing **NOTICE OF ENTRY OF JUDGMENT** was electronically filed and served on counsel through the Eighth Judicial District Court's electronic service system pursuant to Administrative Order 14-2 and NEFCR 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

Mohamed A. Iqbal, Jr., Esq.
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ThyssenKrupp Elevator Corporation*

Kelly L. Ruce

An employee of WEINBERG, WHEELER,
HUDGINS GUNN & DIAL, LLC

ORIGINAL

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1/8/2020 5:05 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

DISTRICT COURT

CLARK COUNTY, NEVADA

JOE N. BROWN, an individual,
Plaintiff,

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

v.

GNL, CORP., a Nevada corporation, and
THYSSENKRUPP ELEVATOR CORP., a
foreign corporation,
Defendants.

JUDGMENT ON JURY VERDICT

This action came on regularly for trial with the calling of the first witness on December 6, 2019, in Dept. XXXI of the Eighth Judicial District Court, Honorable Joanna S. Kishner, District Judge, presiding. The issues having been duly tried, and the jury having duly rendered a General Verdict in favor of Defendants on December 18, 2019, which General Verdict was filed by the Clerk on December 18, 2019, it is hereby ORDERED, ADJUDGED and DECREED, in accordance with the jury's General Verdict, that Plaintiff shall take nothing and that Judgment is hereby entered in favor of all Defendants, with Defendants to recover their costs.

The Court reserves amendment of this Judgment based on any proper requests or motions for costs or fees which may be timely submitted by Defendants.

SO ORDERED this 2nd day of Jan 2020.

Joanna S. Kishner
JOANNA S. KISHNER
Hon. Joanna S. Kishner
District Court Judge

///

///



Submitted by:

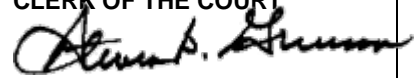
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D. Lee Roberts, Jr., Esq.
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Attorneys for Defendant GNL, CORP.

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info@ilawlv.com; mai@ilawlv.com;
Attorneys for Plaintiff Joe N. Brown

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JOE N. BROWN, an individual, Plaintiff, vs. GNL, CORP., a Nevada corporation and THYSSENKRUPP ELEVATOR CORP., a foreign corporation, Defendants.	Case No.: A-16-739887-C Dept. No.: XXXI PLAINTIFF'S NOTICE OF APPEAL
--	---

NOTICE IS HEREBY GIVEN that Plaintiff JOE N. BROWN, by and through his attorney of record Mohamed A. Iqbal, Jr., Esq., of the law firm of IQBAL LAW PLLC, hereby appeals to the Supreme Court of Nevada from the Judgment entered on January 9, 2020, a copy of which is attached hereto as **Exhibit 1**.

Dated February 8, 2020.

Respectfully Submitted,

IQBAL LAW PLLC

By: /s/ Mohamed A. Iqbal, Jr.
Mohamed A. Iqbal, Jr. (NSB #10623)
Attorneys for Plaintiff Joe N. Brown

CERTIFICATE OF SERVICE

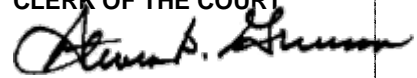
I certify that I served the foregoing **PLAINTIFF'S NOTICE OF APPEAL** on all counsel of record in this matter using the Court's e-file/e-service system on February 8, 2020.

By: /s/ Marie-Claire Alsanjakli
An employee of IQBAL LAW PLLC

EXHIBIT 1

EXHIBIT 1

JNB03443



1 **NEOJ**

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10 Facsimile: (702) 938-3864

11 *Attorneys for Defendant/Third-Party Plaintiff,*
12 *GNL, CORP.*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 JOE N. BROWN, an individual,

16 Plaintiff,

17 v.

18 LANDRY'S, INC., a foreign corporation;
19 GOLDEN NUGGET, INC. a Nevada
20 corporation, d/b/a GOLDEN NUGGET
LAUGHLIN; GNL, CORP., a Nevada
corporation; THYSENKRUPP ELEVATOR
CORP., a foreign corporation,

21 Defendants.

Case No.: A-16-739887-C

Dept. No.: XXXI

NOTICE OF ENTRY OF JUDGMENT

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1 PLEASE TAKE NOTICE that Judgement On Jury Verdict was entered on January 8,
2 2020, in this matter. A copy is attached hereto.

3 Dated this 9 day of January, 2020.

6 WEINBERG, WHEELER, HUDGINS,
7 GUNN & DIAL, LLC

8 D. Lee Roberts, Jr., Esq.
9 Howard J. Russell, Esq.
10 Kristian T. Kaskla, Esq.
11 Phillip N. Smith, Jr., Esq.
12 6385 South Rainbow Blvd., Suite 400
13 Las Vegas, Nevada 89118

14 *Attorneys for Defendant/Third-Party Plaintiff,*
15 *GNL, CORP.*



CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of January, 2020, a true and correct copy of the foregoing **NOTICE OF ENTRY OF JUDGMENT** was electronically filed and served on counsel through the Eighth Judicial District Court's electronic service system pursuant to Administrative Order 14-2 and NEFCR 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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

Kelly L. Ruce

An employee of WEINBERG, WHEELER,
HUDGINS GUNN & DIAL, LLC

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DISTRICT COURT

CLARK COUNTY, NEVADA

JOE N. BROWN, an individual,
Plaintiff,

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

v.

GNL, CORP., a Nevada corporation, and
THYSSENKRUPP ELEVATOR CORP., a
foreign corporation,
Defendants.

JUDGMENT ON JURY VERDICT

This action came on regularly for trial with the calling of the first witness on December 6, 2019, in Dept. XXXI of the Eighth Judicial District Court, Honorable Joanna S. Kishner, District Judge, presiding. The issues having been duly tried, and the jury having duly rendered a General Verdict in favor of Defendants on December 18, 2019, which General Verdict was filed by the Clerk on December 18, 2019, it is hereby ORDERED, ADJUDGED and DECREED, in accordance with the jury's General Verdict, that Plaintiff shall take nothing and that Judgment is hereby entered in favor of all Defendants, with Defendants to recover their costs.

The Court reserves amendment of this Judgment based on any proper requests or motions for costs or fees which may be timely submitted by Defendants.

SO ORDERED this 2nd day of Jan 2020.

Joanna S. Kishner
JOANNA S. KISHNER
Hon. Joanna S. Kishner
District Court Judge

///

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Submitted by:

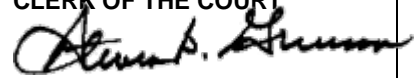
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Attorneys for Defendant GNL, CORP.

WEINBERG WHEELER
HUDGINS GUNN & DIAL





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info@ilawlv.com; mai@ilawlv.com
Attorneys for Plaintiff Joe N. Brown

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JOE N. BROWN, an individual, Plaintiff, vs. GNL, CORP., a Nevada corporation and THYSSENKRUPP ELEVATOR CORP., a foreign corporation, Defendants.	Case No.: A-16-739887-C Dept. No.: XXXI PLAINTIFF'S CASE APPEAL STATEMENT
--	--

1. Name of appellant filing this case appeal statement:

Plaintiff Joe N. Brown

2. Identify the judge issuing the decision, judgment, or order appealed from:

The Honorable Joanna S. Kishner

3. Identify each appellant and the name and address of counsel for each appellant:

Appellant: Plaintiff Joe N. Brown
Counsel: Mohamed A. Iqbal, Jr., Esq.
IQBAL LAW PLLC
101 Convention Center Dr., Suite 1175
Las Vegas, Nevada 89109
Tel: 702-750-2950

4. Identify each respondent and the name and address of appellate counsel:

Respondent: Defendant GNL, Corp.
Counsel: D. Lee Roberts, Esq.
Howard J. Russell, Esq.
Kristian T. Kaskla, Esq.
Philip N. Smith, Jr., Esq.
WEINBERG WHEELER HUDGINS GUNN & DIAL
6384 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Tel: 702-938-3809

PLAINTIFF'S CASE APPEAL STATEMENT

1 of 4

JNB03449

Respondent: Defendant, Thyssenkrupp Elevator Corp.
Counsel: Rebecca L. Mastrangelo, Esq.
Charles A. Milchalek, Esq.
ROGERS, MASTRANGELO, CARVALHO & MITCHELL
700 South Third St.
Las Vegas, Nevada 89101
Tel: 702-383-3400

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42:

All counsel listed above are licensed to practice in Nevada.

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Appellant was represented by retained counsel in the District Court (listed above).

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Appellant is represented by retained counsel on this appeal (listed above).

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

Not yet; Appellant intends to respectfully and imminently move for such relief.

9. Indicate the date the proceedings commenced in the district court (e.g., date of complaint, indictment, information, or petition was filed):

The original complaint was filed on July 12, 2016 and assigned to the Honorable Joanna S. Kishner, Department XXXI.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

Appellant, a retired bricklayer and Vietnam War veteran, resides in Clark County with his wife (and initial co-plaintiff) Nettie J. Brown.¹ On May 12, 2015, Appellant and his family visited the Golden Nugget Casino in Laughlin, Nevada (the “Nugget”) to eat dinner at the Bubba Gump restaurant on the lower floor of the Nugget. Appellant, who was using a cane, took the

¹ During trial, on December 5, 2019, upon the parties’ stipulation on the record, Mrs. Brown was dismissed as a plaintiff in the instant case.

1 “down” escalator (the “Escalator”) upon being instructed to do so by the Nugget’s valet.
2 Unbeknownst to Appellant, the Escalator had a history of mechanical issues and was in a faulty
3 and dangerous condition. The Escalator’s wobbly step(s)/dangerous condition caused Appellant
4 to lose his balance and fall forward—and to fracture his neck. The Escalator is owned and/or
5 operated by Respondent GNL, Corp. (“GNL”) and serviced/maintained by Respondent
6 ThyssenKrupp Elevator Corporation (“TKE”).² Appellant ultimately filed a complaint sounding
7 in negligence. Appellant moved during discovery to amend his then-current complaint to add
8 TKE as a defendant and to seek punitive damages against GNL and TKE, both of which the
9 District Court granted.

10 Following the filing of contested pretrial motions, including summary judgment and motions
11 *in limine*,³ the case proceeded to a multi-week jury trial at the conclusion of which the jury
12 rendered a verdict in favor of Respondents and against Appellant on his sole claim for
13 negligence. On January 9, 2020, the notice of entry of judgment was filed. Appellant
14 respectfully moves to appeal the final judgment and certain pre-trial and trial rulings of the
15 District Court.

16 **11. Indicate whether the case has previously been the subject of an appeal to or original**
17 **writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket**
18 **number of the prior proceeding:**

19 A) TKE’s October 18, 2018 Petition for Writ of Mandamus

20 i. Supreme Court Docket Number: 77211

21 ii. Caption:

22 THYSSENKRUPP ELEVATOR CORPORATION, Petitioner, vs. THE EIGHTH
23 JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE

24 ² TKE was originally a third-party defendant, having been brought into this action by
25 GNL in approximately February of 2017.

26 ³ On August 27, 2019, Her Honor Judge Kishner heard and granted GNL’s motion for
27 summary judgment with respect to punitive damages. Her Honor also granted certain of
28 Respondents’ several motions *in limine*, including but not limited to TKE’s motion *in limine* #8,
which sought to exclude the testimony of Appellant’s escalator expert Sheila Swett, following a
voir dire on October 7, 2019.

COUNTY OF CLARK; AND THE HONORABLE JOANNA KISHNER, DISTRICT JUDGE, Respondents, and JOE N. BROWN, an individual, and his wife, NETTIE J. BROWN, an individual, Real Parties in Interest.

B) Appellant's October 29, 2019 appeal to the Supreme Court

i. Supreme Court Docket Number: 79944

ii. Caption:

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.

12. Indicate whether this appeal involves child custody or visitation:

This appeal does not involve child custody or visitation.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

This appeal does involve the possibility of settlement, and Appellant is willing to engage in good faith settlement discussions.

Dated February 9, 2020.

Respectfully Submitted,

IQBAL LAW PLLC

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

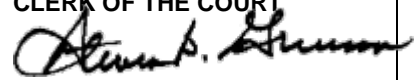
Mohamed A. Iqbal, Jr. (NSB #10623)
101 Convention Center Dr., Suite 1175
Las Vegas, Nevada 89109
1-(702) 750-2950 (Tel)

CERTIFICATE OF SERVICE

I certify that I served the foregoing **PLAINTIFF'S CASE APPEAL STATEMENT** on all counsel of record in this matter using the Court's e-file/e-service system on February 9, 2020.

By: /s/ Marie-Claire Alsanjakli

An employee of IQBAL LAW PLLC



MPFP
IQBAL LAW PLLC
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info@ilawlv.com; mai@ilawlv.com
Attorneys for Plaintiff Joe N. Brown

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JOE N. BROWN, an individual, Plaintiff, vs. GNL, CORP., a Nevada corporation and THYSSENKRUPP ELEVATOR CORP., a foreign corporation, Defendants.	Case No.: A-16-739887-C Dept. No.: XXXI MOTION FOR LEAVE TO PROCEED ON APPEAL IN FORMA PAUPERIS
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Pursuant to and consistent with NRS 12.015 and NRAP 24(a), Plaintiff Joe N. Brown (“Plaintiff”) hereby respectfully moves the Court for leave to proceed on appeal in the above-captioned case *in forma pauperis* (this “Motion”), without paying court costs or other costs and fees as provided in NRS 12.015, including the cost of reporting, recording and transcription of the proceedings, because of a lack of sufficient financial ability. Plaintiff submits in support of this Motion the Declaration of Joe N. Brown attached hereto as **Exhibit 1** (the “Declaration”); and, pursuant to NRS 53.045, which allows for the use of an unsworn declaration in lieu of an affidavit, Plaintiff respectfully requests that the Court consider the Declaration a satisfactory substitution for the affidavit referenced in, *e.g.*, NRS 12.015(1)(a) and NRAP 24(a)(1). A proposed order is attached hereto as **Exhibit 2**.

Dated February 24, 2020.

Respectfully Submitted,

IQBAL LAW PLLC

By: 
Mohamed A. Iqbal, Jr. (NSB #10623)
Attorneys for Plaintiff Joe N. Brown

CERTIFICATE OF SERVICE

I certify that I served the foregoing **MOTION FOR LEAVE TO PROCEED ON APPEAL IN FORMA PAUPERIS** on all counsel of record in this matter using the Court's e-file/e-service system on February 24, 2020.

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

EXHIBIT 1

EXHIBIT 1

JNB03455

DECLARATION OF JOE N. BROWN

I, JOE N. BROWN, hereby declare as follows:

1. I am over the age of 18 and competent to testify. I am the Plaintiff/Appellant in *case no. A-16-739887-C, Brown v. GNL Corp. ("GNL") and Thyssenkrupp Elevator Corp. ("TKE")*, and make this declaration subject to penalty of perjury under the laws of the United States and the State of Nevada, in support of Plaintiff's Motion for Leave to Proceed on Appeal *In Forma Pauperis* (the "Motion"), to which this Declaration is attached as Exhibit 1 (with GNL and TKE, collectively, "Defendants/Appellees").

2. In support of the Motion, I state that, because of my poverty, which is detailed below, I am unable to pay the costs of said proceeding or to give security therefor, and that I believe I am entitled to redress.

3. The issues which I desire to present on appeal are as follows:¹

A. The Court excluding, pre-trial: (i) evidence of Defendants/Appellees' willful and negligent spoliation and other discovery abuses; (ii) two of Plaintiff/Appellant's three experts; (iii) certain deposition transcript excerpts from Defendant/Appellee TKE's Christopher Dutcher and officers of Defendants/Appellees, including, e.g., Defendant/Appellee GNL's Don Hartmann; (iv) evidence of the subject escalator (the "Escalator")'s mechanical and operational problems; and (v) evidence of several prior accidents and at least two subsequent accidents;

B. The denial of Plaintiff/Appellant's motion to extend discovery, and motion *in limine* exclude Defendants/Appellees' escalator expert;

C. The grant of Defendant/Appellee GNL's motion for partial summary judgment with respect to punitive damages;

D. The Court excluding, during trial: (i) evidence of the Escalator's repairs, actual and proposed; (ii) evidence of the Escalator's mechanical problems as of May 7, 2015, and

¹ Plaintiff/Appellant respectfully reserves the right to supplement the issues contained herein upon review of the trial transcripts.

DECLARATION OF JOE N. BROWN

1 of 3

JNB03456

following Plaintiff/Appellant's May 12, 2015 accident; (iii) Defendant/Appellee TKE's account history and its long-term pattern of mechanical and operational problems and reflections of an aging, dangerous machine jeopardizing the safety of the riding public; (iv) the empty maintenance logs reflecting gross negligence and negligence *per se*; (v) evidence of Plaintiff/Appellant's medical records and substantial special damages; (v) questions outside a narrow band of time, roughly January 1, 2015 to May 24, 2015; and (vi) evidence of Defendants/Appellees' communications with each other confirming prior awareness of the Escalator's dangerous condition;

E. The allowance of evidence of the Escalator's condition in 2013 and 2014 during certain inspections with the concurrent exclusion of evidence of its condition days before Plaintiff/Appellant's accident; and

F. Certain rulings on the parties' proposed jury instructions, including, without limitation, the denial of Plaintiff/Appellant's requests for the 2018 Nevada Jury Instructions: (i) on Premises Liability; (ii) regarding Defendants/Appellees' willful and negligent spoliation and other discovery abuses; and (iii) on negligence *per se*.

4. I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true:

1. Are you presently employed? **No.**

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer. **N/A**

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received. **September 2, 1998. \$2880.00 per month.**

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? **Yes.**

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months. **\$1,402.00 per month in social security income.**

3. Do you own any cash or checking or savings account? **Yes. A savings account.**

a. If the answer is yes, state the total value of the items owned. **\$25.00**

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? **No**

1 a. If the answer is yes, describe the property and state its
approximate value. **N/A.**

2 5. List the persons who are dependent upon you for support and state your
relationship to those persons. **No one is currently dependent on me.**

3 My monthly retirement income is insufficient to cover my monthly expenses which
4 are as follows: **\$1,000.00 (rent and utilities), \$227 storage fee, and \$100 IRS**
payment. I have at most **\$24.00** left over at the end of each month.

5 5. I am married and reside with my wife, Nettie J. Brown, who retired in December 2019.
6 She currently has no income, but she is entitled to \$1,100.00 in monthly social security income
7 effective March 2020. I do not own any joint assets with my wife. Her assets consist of
8 approximately \$5.00 in her savings account and a 2014 vehicle worth approximately \$6,000.00,
9 for which she makes monthly payments of \$462.00. My wife also contributes, on a monthly basis,
10 \$300.00 towards groceries, \$100.00 medical costs to the Veterans Administration (combined with
11 myself), \$189.00 for car insurance, \$165.00 for the phone bill, and \$272.11 for cable. My wife's
12 net monthly liabilities amount to \$1323.11.

13 6. In the event this Honorable Court is inclined to deny the Motion, I respectfully request that
14 the Court hold a hearing on the same so that I may testify as to my indigent status.

15 7. I understand that a false statement or answer to any question in this declaration will subject
16 me to penalties for perjury, and I declare under penalty of perjury that the following is true and
17 correct.

18 Dated February 24, 2020.

19 By: /s/ Joe N. Brown

20 Joe N. Brown
21 Las Vegas, Nevada

EXHIBIT 2

EXHIBIT 2

JNB03459

ORDR

IQBAL LAW PLLC
Mohamed A. Iqbal, Jr. (NSB #10623)
101 Convention Center Dr., Suite 1175
Las Vegas, Nevada 89109
1-(702) 750-2950 (Tel); 1-(702) 825-2841 (V-Fax)
info@ilawlv.com; mai@ilawlv.com
Attorneys for Plaintiff Joe N. Brown

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JOE N. BROWN, an individual, Plaintiff, vs. GNL, CORP., a Nevada corporation and THYSSENKRUPP ELEVATOR CORP., a foreign corporation, Defendants.	Case No.: A-16-739887-C Dept. No.: XXXI [PROPOSED] ORDER GRANTING MOTION FOR LEAVE TO PROCEED ON APPEAL IN FORMA PAUPERIS
--	--

Plaintiff Joe N. Brown's Motion for Leave to Proceed on Appeal *in forma pauperis* (the "Motion")¹ having come before this Honorable Court, and this Court having considered the Motion and the evidence attached thereto, and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

The Motion is **GRANTED**; and

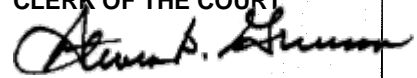
Plaintiff may proceed without prepayment of costs or fees or the necessity of giving security therefor.

DATED this ____ day of _____, 2020.

**JOANNA S. KISHNER
DISTRICT COURT JUDGE**

¹ Plaintiff submits this proposed order as Exhibit 2 to the Motion, and pursuant to NRS 12.015 and NRAP 24(a)(1)(A), which references Form 4 in the Appendix of Forms. There is no requirement for pre-submission review by defendants' counsel.

**ORDER GRANTING MOTION FOR LEAVE TO PROCEED ON APPEAL
IN FORMA PAUPERIS**



OPPM

D. Lee Roberts, Jr., Esq.

Nevada Bar No. 8877

lroberts@wwhgd.com

Phillip N. Smith, Jr., Esq.

Nevada Bar No. 10233

psmithjr@wwhgd.com

WEINBERG, WHEELER, HUDGINS,

GUNN & DIAL, LLC

6385 S. Rainbow Blvd., Suite 400

Las Vegas, Nevada 89118

Telephone: (702) 938-3838

Facsimile: (702) 938-3864

Attorneys for Defendant

GNL, CORP.

DISTRICT COURT

CLARK COUNTY, NEVADA

JOE N. BROWN, an individual,

Plaintiff,

v.

GNL, CORP., a Nevada corporation and
THYSSENKRUPP ELEVATOR CORP., a
foreign corporation,

Defendants.

Case No.: A-16-739887-C

Dept. No.: XXXI

**GNL'S OPPOSITION TO PLAINTIFF'S
MOTION FOR LEAVE TO PROCEED
ON APPEAL IN FORMA PAUPERIS**

Hearing Date: March 31, 2020

Hearing Time: 9:00 a.m.

Defendant GNL, CORP. (hereinafter, "GNL"), by and through its counsel of record, the law firm of WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC, hereby submits this limited opposition to Plaintiff's Motion for Leave to Proceed on Appeal in Forma Pauperis.

This opposition is made and based upon the papers and pleading on file herein, the Points and Authorities attached hereto, and such oral argument as may be permitted by the Court.

I. MEMORANDUM OF POINTS AND AUTHORITIES

NRS 12.015(1)(a) requires a person seeking leave to proceed in Forma Pauperis to file an "affidavit with the court setting forth with particularity facts concerning the person's income, property and other resources which establish that the person is unable to prosecute or defend the action because the person is unable to pay the costs of so doing." While GNL agrees that a declaration signed in accordance with Nevada law can substitute for the affidavit, a proper





1 declaration was not attached. Rather, the declaration provided to the Court contains a typed “e-
2 signature” of Plaintiff. There is no Nevada statute or rule which would allow a typed e-signature
3 of a lay person to substitute for the affidavit required by NRS 12.015(1)(a).

4 III. CONCLUSION

5 Based on the current record before this Court, the requirements of NRS 12.015(1)(a) have
6 not been satisfied, and the Motion for Leave to Proceed on Appeal in Forma Pauperis must be
7 denied.

8 Dated this 9th day of March, 2020

9
10 WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC

11
12 /s/ D. Lee Roberts, Jr.

13 D. Lee Roberts, Jr., Esq.
14 Phillip N. Smith, Jr., Esq.
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118

15 *Attorneys for Defendant*
16 *GNL, CORP.*



CERTIFICATE OF SERVICE


I hereby certify that on the 9th day of March, 2020, a true and correct copy of the foregoing **GNL'S OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE TO PROCEED ON APPEAL IN FORMA PAUPERIS** was electronically filed and served on counsel through the Eighth Judicial District Court's electronic service system pursuant to Administrative Order 14-2 and NEFCR 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

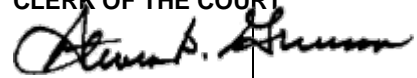
Mohamed A. Iqbal, Jr., Esq.
mai@ilawlv.com
Christopher Mathews, Esq.
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IQBAL LAW PLLC
101 Convention Center Dr., STE. 1175
Las Vegas, NV 89109

Attorneys for Plaintiff

Rebecca L. Mastrangelo, Esq.
RMastrangelo@rmcmmlaw.com
Charles A. Michalek, Esq.
ROGERS, MASTRANGELO, CARVALHO &
MITCHELL
700 S. Third Street
Las Vegas, NV 89101

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


An employee of WEINBERG, WHEELER,
HUDGINS GUNN & DIAL, LLC



NOH

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JOE BROWN; ET AL;

PLAINTIFF(S),

VS.

GNL CORP; ET AL.,

DEFENDANT(S).

Case No.: A-16-739887-C

Dept. No.: XXXI

NOTICE OF ORDER SETTING HEARING

NOTICE is hereby given that the Motion to Proceed *In Forma Pauperis*, which was filed on February 24, 2020, which did not comply with the rules then in effect as it did not set forth a hearing was requested and which the Court received a written communication that stated it was withdrawn, is now being set for an Evidentiary Hearing as the Court has received communication that Plaintiff does wish the matter addressed. The hearing is set for **APRIL 23, 2020 at 9:30 am.** The matter will be held by alternative means in accordance with the Governor's directive and the Administrative Orders.

Counsel for movant who seeks *In Forma Pauperis* must arrange appearances for himself and Mr. Brown in accordance with the Administrative Orders. Remote appearances may be scheduled via CourtCall, 888-882-6878, or by audio/visually through Bluejeans, www.clarkcountycourts.us/virtual, by following the directions for Remote Appearances. Counsel must file a Notice of Appearance no later than noon on **APRIL 20, 2020**, and include in that Notice the manner in which counsel and/or parties intend to appear. If any other counsel, party, or individual wishes to appear for the hearing, they must arrange for their own remote appearances via the alternatives set forth herein. If counsel for the movant still desires to have his Motion withdrawn and

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1 does not wish the hearing to take place, then counsel needs to file and serve a Notice of
2 Withdrawal of Motion by noon on **APRIL 20, 2020.**

3
4
5
6 DATED this 10th day of April, 2020

7
8
9 
10 JOANNA S. KISHNER
11 DISTRICT COURT JUDGE
12

13
14 **CERTIFICATE OF SERVICE**

15
16 I hereby certify that on or about the date filed, a copy of this Order was served
17 via Electronic Service to all counsel/registered parties, pursuant to the Nevada
18 Electronic Filing Rules, and/or served via in one or more of the following manners: fax,
19 U.S. mail, or a copy of this Order was placed in the attorney's file located at the
20 Regional Justice Center:

21 **COUNSEL SERVED VIA E-SERVICE**

22
23
24 TRACY L. CORDOBA-WHEELER
25 JUDICIAL EXECUTIVE ASSISTANT
26
27
28

JNB03465

A-16-739887-C Joe Brown, Plaintiff(s)
vs.
GNL Corp, Defendant(s)

April 23, 2020 09:30 AM Evidentiary Hearing

HEARD BY: Kishner, Joanna S. COURTROOM: RJC Courtroom 12B

COURT CLERK: Garcia, Louisa

RECORDER: Harrell, Sandra

REPORTER:

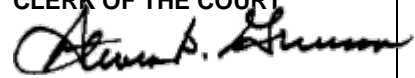
PARTIES PRESENT:

D Lee Roberts, Jr.	Attorney for Defendant, Third Party Plaintiff
Joe N. Brown	Plaintiff
Mohamed A. Iqbal	Attorney for Plaintiff
Rebecca L. Mastrangelo	Attorney for Defendant, Third Party Defendant

JOURNAL ENTRIES

Upon Court's inquiry, Mr. Iqbal stated he does not believe there is a time limit with respect to moving for IFP. Additionally, in looking at case law and given Plaintiff's financial condition, he falls within the provisions. Court advised that Plaintiff did not cite any case law. Mr. Iqbal stated he did not attach any points and authorities and requested leave to do so. There being no opposition, COURT ORDERED, Supplemental Briefing DUE 4/28/20; matter CONTINUED to Chambers for decision.

5/1/20 (CHAMBERS) DECISION



SUPP
IQBAL LAW PLLC
Mohamed A. Iqbal, Jr. (NSB #10623)
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Las Vegas, Nevada 89109
1-(702) 750-2950 (Tel); 1-(702) 825-2841 (V-Fax)
info@ilawlv.com; mai@ilawlv.com
Attorneys for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JOE N. BROWN, an individual, Plaintiff, vs. GNL, CORP., a Nevada corporation and THYSSENKRUPP ELEVATOR CORP., a foreign corporation, Defendants.	Case No.: A-16-739887-C Dept. No.: XXXI PLAINTIFF'S SUPPLEMENTAL MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS <u>[IN CHAMBERS]</u> ¹
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Plaintiff Joe N. Brown (“Plaintiff”), by and through his attorneys of record, IQBAL LAW PLLC, hereby respectfully submits and files this Supplemental Motion for Leave to Proceed In Forma Pauperis (this “Supplemental Motion”).

This Supplemental Motion is made and based on the following memorandum of points and authorities, the papers and pleadings on file with this Court and the Nevada Supreme Court, and the attached exhibits.

Dated April 28, 2020.

Respectfully Submitted,

IQBAL LAW PLLC

By: /s/ Mohamed A. Iqbal, Jr.
Mohamed A. Iqbal, Jr. (NSB #10623)
Attorneys for Plaintiff

¹ Plaintiff’s counsel and counsel for GNL, Corp. (“GNL”) and Thyssenkrupp Elevator Corporation (“TKE”) agreed at the April 23, 2020 hearing that this Supplemental Motion could be submitted for consideration in Chambers, without a separate/additional hearing, and the Court graciously agreed to the request.


PLAINTIFF’S SUPPLEMENTAL MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. PROCEDURAL HISTORY & FACTS.**

3 On February 8, 2020, Plaintiff filed a Notice of Appeal in this matter, following the January
4 9, 2020 Notice of Entry of Judgment in the Eighth Judicial District Court, and the underlying
5 Judgment on Jury Verdict issued by this Honorable Court.² The appeal has been docketed in the
6 Supreme Court at case no. 80581, *Brown v. GNL Corp. and Thyssenkrupp Elevator Corp.*

7 Pursuant to NRAP 24(a) and NRS 12.015, Plaintiff filed a motion for leave to proceed on
8 appeal in forma pauperis (“IFP”) in the District Court (“IFP Motion”) on February 24, 2020, along
9 with two exhibits, Plaintiff’s Declaration³ in compliance with NRAP 24(a)(1) and Form 4 in the
10 Appendix of Forms attached to the NRAP, and a proposed order granting the IFP Motion. On
11 February 28, 2020, the Court issued a Memo (“Memo”) indicating that the proposed order was
12 being returned unsigned, as, among other reasons, “the District Court is void of jurisdiction”. A
13 true and correct copy of the Memo is attached hereto as **Exhibit A**.

14 On March 9, 2020, GNL filed an opposition to the IFP Motion essentially limited to the
15 argument that Plaintiff’s declaration could not be e-signed, and not on the basis of jurisdiction. On
16 March 23, 2020, out of an abundance of caution, Plaintiff executed an affidavit (the “Affidavit”) 
17 compliant with NRAP 24(a) and Form 4 in the Appendix of Forms; a copy of the Affidavit is
18 attached hereto as **Exhibit B** and incorporated by reference herein. Given the Memo, Plaintiff and
19 Defendants conferred, and, consequently, Plaintiff requested of the Court that the March 31
20 hearing on the IFP Motion be taken off-calendar. The Court vacated the March 31 hearing.

21 On March 31, 2020, Plaintiff filed in the Supreme Court a motion for leave to proceed on
22 appeal in forma pauperis. On April 8, 2020, the Supreme Court issued an “Order Denying Motion
23 and Directing Entry and Transmission of Written Order by the District Court,” ordering that
24 Plaintiff’s “motion to proceed in forma pauperis is denied as premature” and “without prejudice

25
26 ² Plaintiff respectfully requests that the Court take judicial notice of the docket in this matter, and
with respect to Case no. 80851 before the Nevada Supreme Court.

27 ³ Plaintiff proceeded with the declaration given NRS 53.045, which allows for the use of an
unsworn declaration in lieu of an affidavit.

1 to his right to seek relief” in the future. The Supreme Court also ordered the District Court to
2 enter, within 30 days of the date of the Order, a written order disposing of Plaintiff’s February 24,
3 2020 IFP Motion.

4 By notice dated April 13, 2020, the Court scheduled a hearing on the February 24 IFP
5 Motion for April 23, 2020. At the April 23 hearing, the Court informed Plaintiff that he needed to
6 file a supplemental motion, setting forth points of authorities. In accordance with the Court’s
7 guidance, Plaintiff respectfully submits this instant Supplemental Motion. In support, Plaintiff
8 incorporates by reference the assertions set forth in the IFP Motion and supported by the Affidavit.

9 In connection with the February 8, 2020 appeal presently pending in the Nevada Supreme
10 Court, Plaintiff desires to present certain issues on appeal, as footnoted below.⁴

11
12
13 ⁴ Those issues include (with the specific reservation that Plaintiff respectfully reserves the right to
14 supplement the following issues upon review of the original trial transcripts):

- 15 A. The District Court abused its discretion in excluding, pre-trial: (i) evidence of Respondents’
16 willful and negligent spoliation and other discovery abuses; (ii) two of Appellant’s three
17 experts; (iii) certain deposition transcript excerpts from Respondent TKE’s Christopher
18 Dutcher and officers of Respondents, including, e.g. Respondent GNL’s Don Hartmann; (iv)
19 evidence of the subject escalator’s (the “Escalator”) mechanical and operational problems;
20 and (v) evidence of several prior accidents and at least two subsequent accidents;
21 B. The District Court abused its discretion in denying Appellant’s motion to extend discovery,
22 and motion *in limine* to exclude Respondents’ escalator expert;
23 C. The District Court abused its discretion in granting Respondent GNL’s motion for partial
24 summary judgment with respect to punitive damages;
25 D. The District Court abused its discretion in excluding, during trial: (i) evidence of the
26 Escalator’s repairs, actual and proposed; (ii) evidence of the Escalator’s mechanical problems
27 as of May 7, 2015, and following Appellant’s May 12, 2015 accident; (iii) Respondent TKE’s
28 account history and its long-term pattern of mechanical and operational problems and
reflections of an aging, dangerous machine jeopardizing the safety of the riding public; (iv)
the empty maintenance logs reflecting gross negligence and negligence *per se*; (v) evidence
of Appellant’s medical records and substantial special damages; (vi) questions outside a
narrow band of time, roughly from January 1, 2015 to May 24, 2015; and (vii) evidence of
Respondents’ communications with each other confirming prior awareness of the Escalator’s
dangerous condition;
E. The District Court abused its discretion in allowing evidence of the Escalator’s condition in
2013 and 2014 during certain inspections with the concurrent exclusion of evidence of its
condition days before Appellant’s accident; and
F. The District Court abused its discretion on certain rulings on the parties’ proposed jury
instructions, including, without limitation, the denial of Appellant’s requests for the 2018
Nevada Jury Instructions: (i) on Premises Liability; (ii) regarding Respondents’ willful and
negligent spoliation and other discovery abuses; and (iii) on negligence *per se*.

**PLAINTIFF’S SUPPLEMENTAL MOTION FOR LEAVE TO PROCEED IN FORMA
PAUPERIS**

1 Plaintiff's financial situation, however, substantially and meaningfully interferes with his
2 ability to defend his rights and interests on appeal. Because of his poverty, which is detailed in
3 **Exhibit B** and noted below, Plaintiff is unable to pay the fees, costs and security associated with
4 the February 8 appeal.

5 Plaintiff currently is retired. Exhibit B, at 3-4. He was last employed on September 2,
6 1998, when his monthly income was \$2,880.00. *Id.* Plaintiff's sole source of income is his monthly
7 social security income of \$1,402.00. *Id.* Plaintiff does not own any checking accounts. *Id.* He
8 does, however, have a savings account with a balance of \$25.00. *Id.* Plaintiff does not own any
9 real estate, stocks, bonds, notes, automobiles, or other valuable property. *Id.* No one currently is
10 dependent on him for support. *Id.* Plaintiff pays \$1,000.00 monthly for rent and utilities. *Id.*
11 Plaintiff additionally pays \$227.00 per month for storage, and also pays the Internal Revenue
12 Service \$100.00 per month. As such, Plaintiff's financial condition at the end of each month leaves
13 him with limited funds.⁵

14 **II. LAW AND ARGUMENT.**

15 In Nevada, an indigent civil litigant's right of access to courts and right to appeal *in forma*
16 *pauperis* are rooted in the Due Process protections enshrined in the Fourteenth Amendment to the
17 United States Constitution as well as Article 1, Section 8 of the Nevada Constitution. *See* U.S.
18 CONST. amend. XIV, § 1; Nev. CONST. art. 1, § 8. As a result of, and consistent with, the foregoing
19 constitutional mandates, Rule 24(a) of the Nevada Rules of Appellate Procedure sets forth the
20 relevant process, including the filing of a motion in the district court (subsection 1), the district
21 court's action on that motion (subsection 2), and what happens when there is a denial at the district
22 court (subsections (4) and (5)). *See* NRAP 24(a); *see also* NRS 12.015(1)(a) ("Any person who
23 desires to prosecute . . . a civil action may . . . [f]ile an affidavit with the court setting forth with
24 particularity facts concerning the person's income, property and other resources," establishing that
25 "the person is unable to prosecute . . . the action because the person is unable to pay the costs of

26
27 ⁵ Plaintiff is married and resides with his wife, Nettie J. Brown, who is recently retired
and also receives social security.

1 so doing[.]”). Rule 24(a)(1) is applicable to both *pro se* and represented litigants. *See* NRAP 9(6)
2 (providing that “[i]n a civil case, if appellant is represented by counsel but has been permitted to
3 proceed in forma pauperis or has filed a statement of legal aid eligibility under NRAP 24, counsel
4 may request a waiver of the costs associated with the preparation and delivery of the
5 transcripts[.]”).

6 Given his financial standing, Plaintiff is entitled to proceed IFP, and respectfully requests
7 that determination from this Honorable Court. With respect to undersigned counsel’s status as
8 Plaintiff’s attorney pursuant to a contingency fee arrangement, as noted in *Isrin v. Superior Court*
9 *of Los Angeles County*, 403 P.2d 728, 736 (1965), the right to proceed in forma pauperis in
10 appropriate cases “may not be denied on the ground that counsel for the indigent litigant is
11 representing him pursuant to a contingent fee contract.”⁶

12 **III. CONCLUSION.**

13 For all the foregoing reasons, Plaintiff’s original motion and/or this Supplemental Motion
14 for Leave to Proceed *In Forma Pauperis* should be GRANTED.

15 Dated April 28, 2020.

Respectfully Submitted,

IQBAL LAW PLLC

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

Mohamed A. Iqbal, Jr. (NSB #10623)
101 Convention Center Dr., Suite 1175
Las Vegas, Nevada 89109
1-(702) 750-2950 (Tel)

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26 ⁶ Nevada courts often look to California caselaw in appropriate/applicable circumstances. Indeed,
27 a Nevada case, *Caballero v. Seventh Judicial Dist. Court*, 123 Nev. 316, 322 (2007) cites to *Isrin* through
28 citing to another California opinion, but on a separate point of law.

CERTIFICATE OF SERVICE

I certify that I served the foregoing **PLAINTIFF'S SUPPLEMENTAL MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS** on all counsel of record in this matter using the Court's e-file/e-service system on April 28, 2020.

By: /s/ Maire-Claire Alsanjakli
An employee of IQBAL LAW PLLC

I LAW LV

**PLAINTIFF'S SUPPLEMENTAL MOTION FOR LEAVE TO PROCEED IN FORMA
PAUPERIS**

6 of 6

JNB03472

EXHIBIT A

EXHIBIT A

JNB03473

DISTRICT COURT DEPARTMENT XXXI

MEMO

Chambers: 702-671-3634
Law Clerk: 702-671-0899
Fax: 702-366-1412

To:	Mohamed A. Iqbal, Jr.
From:	Department 31
Subject:	A739887 – JOE BROWN vs. GNL CORP
Date:	February 28, 2020

Mr. Iqbal,

The Order Granting In Forma Pauperis is being returned to you, unsigned, for the following reason(s):

Presently, the District Court is void of jurisdiction as this matter is closed. Additionally, the request is being made to file documents that are not in the District Court.

JNB03474

EXHIBIT B

EXHIBIT B

JNB03475

**AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL IN
FORMA PAUPERIS**

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I. I, JOE N. BROWN, being first duly sworn, depose and say that I am the Appellant/plaintiff in the appeal docketed in the Nevada Supreme Court at case no. 80581, *Brown v. GNL Corp.* (“GNL”) and *Thyssenkrupp Elevator Corp.* (“TKE”).

II. In support of my Motion for Leave to Proceed on Appeal In Forma Pauperis (the “Motion”), i.e., without being required to prepay fees, costs or give security therefor, I state that because of my poverty, which is detailed below, I am unable to pay the costs of said proceeding or to give security therefor, and that I believe I am entitled to redress.

III. The issues which I desire to present on appeal are as follows:¹

A. The District Court abused its discretion in excluding, pre-trial: (i) evidence of Respondents’ willful and negligent spoliation and other discovery abuses; (ii) two of Appellant’s three experts; (iii) certain deposition transcript excerpts from Respondent TKE’s Christopher Dutcher and officers of Respondents, including, e.g. Respondent GNL’s Don

¹ Appellant respectfully reserves the right to supplement the issues contained herein upon his review of original transcripts.

Hartmann; (iv) evidence of the subject escalator's (the "Escalator") mechanical and operational problems; and (v) evidence of several prior accidents and at least two subsequent accidents;

B. The District Court abused its discretion in denying Appellant's motion to extend discovery, and motion *in limine* to exclude Respondents' escalator expert;

C. The District Court abused its discretion in granting Respondent GNL's motion for partial summary judgment with respect to punitive damages;

D. The District Court abused its discretion in excluding, during trial: (i) evidence of the Escalator's repairs, actual and proposed; (ii) evidence of the Escalator's mechanical problems as of May 7, 2015, and following Appellant's May 12, 2015 accident; (iii) Respondent TKE's account history and its long-term pattern of mechanical and operational problems and reflections of an aging, dangerous machine jeopardizing the safety of the riding public; (iv) the empty maintenance logs reflecting gross negligence and negligence *per se*; (v) evidence of Appellant's medical records and substantial special damages; (vi) questions outside a narrow band of time, roughly from January 1, 2015 to May 24, 2015; and (vii) evidence of Respondents' communications with each other confirming prior awareness of the Escalator's dangerous condition;

E. The District Court abused its discretion in allowing evidence of the Escalator's condition in 2013 and 2014 during certain inspections with the concurrent exclusion of evidence of its condition days before Appellant's accident; and

F. The District Court abused its discretion on certain rulings on the parties' proposed jury instructions, including, without limitation, the denial of Appellant's requests for the 2018 Nevada Jury Instructions: (i) on Premises Liability; (ii) regarding Respondents' willful and negligent spoliation and other discovery abuses; and (iii) on negligence *per se*.

IV. I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true:

1) Are you presently employed? **No.**

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer. **N/A**

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received. **September 2, 1998. \$2880.00 per month.**

2) Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? **Yes.**

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months. **\$1,402.00 per month in social security income.**

3) Do you own any cash or checking or savings account? **Yes. A savings account.**

a. If the answer is yes, state the total value of the items owned. **\$25.00**

4) Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? **No.**

a. If the answer is yes, describe the property and state its approximate value. **N/A.**

5) List the persons who are dependent upon you for support and state your relationship to those persons. **No one is currently dependent on me.**

My monthly retirement income is insufficient to cover my monthly expenses which are as follows: **\$1,000.00 (rent and utilities), \$227 storage fee, and \$100 IRS payment.** I have at most **\$24.00** left over at the end of each month.

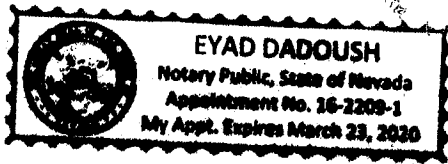
V. I am married and reside with my wife, Nettie J. Brown, who retired in December 2019. She currently has no income, but she is entitled to \$1,100.00 in monthly social security income effective March 2020. I do not own any joint assets with my wife. Her assets consist of approximately \$5.00 in her savings account and a 2014 vehicle worth approximately \$6,000.00. My wife also contributes, on a monthly basis, \$300.00 towards groceries, \$100.00 for medical costs to the Veterans Administration (combined with myself), \$189.00 for car insurance, \$165.00 for the phone bill, and \$272.11 for cable. My wife's net monthly liabilities amount to \$976.11.

VI. In the event this Honorable Court is inclined to deny the Motion, I respectfully request that this Court remand this matter to the District Court for the limited purpose of conducting an evidentiary hearing on the Motion so that I may testify as to my indigent status.

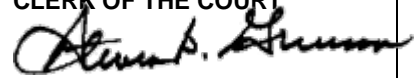
VII. I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

X *Joe Ben*

SUBSCRIBED AND SWORN to before me this 23 day of March 2020.



[Signature]
Notary Public



NOAS
IQBAL LAW PLLC
Mohamed A. Iqbal, Jr. (NSB #10623)
101 Convention Center Dr., Suite 1175
Las Vegas, Nevada 89109
1-(702) 750-2950 (Tel); 1-(702) 825-2841 (V-Fax)
info@ilawlv.com; mai@ilawlv.com
Attorneys for Plaintiff Joe N. Brown

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JOE N. BROWN, an individual, Plaintiff, vs. GNL, CORP., a Nevada corporation and THYSSENKRUPP ELEVATOR CORP., a foreign corporation, Defendants.	Case No.: A-16-739887-C Dept. No.: XXXI PLAINTIFF'S NOTICE OF APPEAL RE ATTORNEYS' FEES AWARD
--	--

NOTICE IS HEREBY GIVEN that Plaintiff JOE N. BROWN, by and through his attorneys of record, the law firm of IQBAL LAW PLLC, hereby appeals to the Supreme Court of Nevada from the Notice of Entry of Order entered on April 6, 2020, a copy of which is attached hereto as **Exhibit 1**.

Dated May 5, 2020.

Respectfully Submitted,

IQBAL LAW PLLC

By: /s/ Mohamed A. Iqbal, Jr.
Mohamed A. Iqbal, Jr. (NSB #10623)
101 Convention Center Dr., Suite 1175
Las Vegas, Nevada 89109
1-(702) 750-2950 (Tel)

CERTIFICATE OF SERVICE

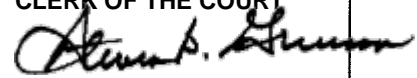
I certify that I served the foregoing **PLAINTIFF'S NOTICE OF APPEAL RE ATTORNEYS' FEES AWARD** on all counsel of record in this matter using the Court's e-file/e-service system on May 5, 2020.

By: /s/ Marie-Claire Alsanjakli
An employee of IQBAL LAW PLLC

EXHIBIT 1

EXHIBIT 1

JNB03482



1 **NEO**
2 REBECCA L. MASTRANGELO, ESQ.
3 Nevada Bar No. 5417
4 ROGERS, MASTRANGELO, CARVALHO & MITCHELL
5 700 S. Third Street
6 Las Vegas, Nevada 89101
7 Phone (702) 383-3400
8 Fax (702) 384-1460
9 rmastrangelo@rmcmlaw.com
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,)

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

13 vs.)

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

20 Defendants.)

21 **NOTICE OF ENTRY OF ORDER**

22 PLEASE TAKE NOTICE that an Order in the above-entitled action was entered and
23 filed on the 31st day of March, 2020, a copy of which is attached hereto.

24 DATED this 6th day of April, 2020.

25 ROGERS, MASTRANGELO, CARVALHO &
26 MITCHELL

27 /s/ Rebecca L. Mastrangelo

28 REBECCA L. MASTRANGELO, ESQ.
Nevada Bar No. 5417
700 S. Third Street
Las Vegas, Nevada 89101
Attorney for Defendant
THYSSENKRUPP ELEVATOR CORPORATION

JNB03483

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
3 certify that I am an employee of Rogers, Mastrangelo, Carvalho & Mitchell, and on the 6th day
4 of April, 2020, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER**
5 was served via electronic means with the Eighth Judicial District Court, addressed as follows,
6 upon the following counsel of record:

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

12 D. Lee Roberts, Jr. Esq.
13 Weinberg, Wheeler, Hudgins, Gunn & Dial
14 6385 S. Rainbow Blvd. #400
15 Las Vegas, Nevada 89118
16 Attorneys for Defendant
17 GNL Corp.

18 /s/ Laura Fitzgerald

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



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

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 JOE N. BROWN, an individual,
15 Plaintiff,

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

16 vs.

17 GNL, CORP., a Nevada corporation
18 corporation; THYSENKRUPP ELEVATOR
19 CORP., a foreign corporation; DOE
20 INDIVIDUALS 1-100, ROE BUSINESS
21 ENTITIES 1-100,

22 Defendants.

ORDER

23 Defendants' THYSENKRUPP ELEVATOR CORPORATION and GNL CORP.
24 Motions for Attorneys Fees and Costs having come on for hearing on March 3, 2020, and
25 REBECCA L. MASTRANGELO, ESQ., of the law firm of ROGERS, MASTRANGELO,
26 CARVALHO & MITCHELL, having appeared on behalf of Defendant THYSENKRUPP
27 ELEVATOR CORPORATION, and MARJAN HAJIMIZAE, ESQ., of the law firm of
28 WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC, appearing on behalf of Defendant
GNL, CORP., and MOHAMED IQBAL, ESQ., appearing on behalf of Plaintiff JOE BROWN,

RECEIVED MAR 20 2020

1 and the Court having reviewed the pleadings and papers on file herein, and entertained oral
2 argument, and good cause appearing, the Court finds as follows:

3 Relative to the Defendants' Motions as pertain to costs, the Court finds that, there being
4 no opposition, THYSSENKRUPP ELEVATOR CORPORATION ("TKE") is awarded its costs,
5 totaling \$37,485.50, and GNL, CORP. ("GNL") is awarded its costs, totaling \$ 58,480.32. NRS
6 18.010(3), EDCR 2.20(e).

7 As to the Defendants' request for attorney's fees, the court finds, as set forth more fully
8 below, that both Defendants have met the factors set forth in both *Beattie* and *Brunzell* and,
9 therefore, awards of attorney's fees from the dates of the Offers of Judgment forward is
10 warranted.

11 More than two months prior to trial, on September 27, 2019, Defendant TKE served
12 Plaintiffs Joe Brown and Nettie Brown¹ with an Offer of Judgment pursuant to NRCP 68 in the
13 amount of \$50,001. On the same date, September 27, 2019, Defendant GNL served Plaintiffs
14 with an Offer of Judgment pursuant to NRCP 68 in the amount of \$20,001. Plaintiff(s) did not
15 accept either of the Offers and, by operation of Rule 68, the Offers were deemed rejected and
16 withdrawn after the statutory time for acceptance passed. Following a two and a half week jury
17 trial beginning on December 2, 2019, the jury found in favor of both Defendants and against the
18 Plaintiff, *Joe Brown. Jkh*

19 NRCP 68(f)(1)(B) provides, in relevant part:

20 (f) *Penalties for Rejection of Offer:*

21 (1) *In General.* If the offeree rejects an offer and fails to obtain a more favorable
22 judgment:

23 ...

24 (B) the offeree must pay the offeror's post-offer costs and expenses, including a
25 reasonable sum to cover any expenses incurred by the offeror for each expert witness
26 whose services were reasonably necessary to prepare for and conduct the trial of the case,
27 applicable interest on the judgment from the time of the offer to the time of entry of the

28 ¹ Nettie Brown had a derivative claim for loss of consortium but abandoned that claim during trial.

1 judgment and reasonable attorney fees, if any be allowed, actually incurred by the offeror
2 from the time of the offer.

3 In *Beattie v. Thomas*, 99 Nev. 579, 668 P.2d 268 (1983), the Nevada Supreme Court set
4 forth the factors the trial court should consider when ruling on a motion for attorneys' fees
5 pursuant to NRCP 68:

- 6 1. Whether the action was brought in good faith;
- 7 2. Whether the Offer of Judgment was reasonable and in good faith both in
its timing and amount;
- 8 3. Whether the decision to reject the Offer was grossly unreasonable or in
bad faith; and
- 9 4. Whether the fees sought are reasonable and justified in amount.

10 *Id.* at 588-89, 668 P.2d at 274. An analysis of these factors weighs heavily in favor of the
11 Defendants.

12 While the Court finds that Plaintiff's action was initially brought in good faith, during the
13 course of discovery and prior to the time the Offers of Judgment were served, Plaintiff became
14 aware of facts which were detrimental to both the liability and damages portions of his case and
15 was aware that evidence which may have favored his position on both had been excluded by the
Court as a result of Motions in Limine filed by the Defendants well in advance of trial.

16 The Offers of Judgment served by TKE and by GNL were reasonable and in good faith in
17 both its timing and amount and, concomitantly, Plaintiff's rejection of the Offers was grossly
18 unreasonable. The reasonableness of timing and amounts lies in the fact that discovery had been
19 concluded and many Motions in Limine had already been heard and decided. Plaintiff was aware
20 that his intoxication level of .023, more than twice the legal limit, was going to be in evidence,
21 and he should have realized its negative implication on his liability case. He was also aware of
22 his instability and use of a cane at the time of his fall. Further, Plaintiff was aware that ^{some} ~~much~~
23 the evidence he sought to include as part of his case had already been excluded by the court on
24 Motions in Limine, including evidence of other falls on the escalator and a subsequent notice of
25 violation pertaining to the escalator. Plaintiff's sole liability expert, Sheila Swett, had
26
27
28

1 been excluded based upon a Motion in Limine (which also involved an evidentiary hearing).
2 Plaintiff's claim for punitive damages had also been dismissed. Plaintiff was also aware that the
3 Court had ordered an evidentiary hearing on the Motion in Limine to preclude the testimony of
4 one of Plaintiff's retained medical experts, Dr. Nalamachu. Plaintiff's treating physicians had
5 been excluded from testifying, and any claim for future special damages had been excluded.

6 Based upon the totality of the evidence to be admitted and that which had been excluded,
7 TKE's Offer of \$50,001 was reasonable in amount given the liability and damages posture of the
8 case at the time the Offer was made. Further, GNL's Offer in the amount of \$20,001 was
9 reasonable in amount as well, particularly in light of the fact that GNL's liability hinged, in large
10 part, on Plaintiff proving a case against TKE.

11 Plaintiff's decision to reject each of the Offers was grossly unreasonable based upon the
12 same facts as stated above.

13 The fees charged by each Defendant are reasonable and justified in amount. Specifically,
14 TKE's hourly rate of \$195 is reasonable, and, in fact, is below the community average.
15 Additionally, GNL's hourly rates of \$344 per hour for Lee Roberts, Esq., \$328 per hour for
16 Phillip Smith, Esq. are within the reasonable range in the Las Vegas market.

17 In *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969), the Nevada
18 Supreme Court held that, when considering whether a claim for attorney's fees is reasonable and
19 justified, a court should consider:

- 20 1. The qualities of the advocate;
- 21 2. The character of the work to be done;
- 22 3. The work actually performed; and
- 23 4. The result.

24 *Id.* at 349, 455 P.2d at 33. Again, each of these factors weighs heavily in favor of the Court
25 granting the instant motion.

26 There is no dispute as to the qualities of the advocates, the character of work to be done
27 and the results, which all favor the defense.

1 As to the work actually done, the number of hours expended by TKE's counsel is fair and
2 reasonable in light of the number of issues, number of witnesses, and the length of the trial.

3 As to GNL, the Court believes that some of Mr. Smith's billed time is not sufficiently
4 described and includes file review to enable Mr. Smith to learn the file prior to trial. These
5 entries will not be taxed against the Plaintiff.

6 Following the hearing on March 3, 2020, counsel for the parties, as directed by the Court,
7 conferred regarding the amount of fees. As a result of same, an agreement was reached on
8 TKE's fees and several alternatives were agreed to be provided to the Court as to GNL's fees.

9 Based upon the foregoing, Defendant thyssenkrupp Elevator Corporation is awarded
10 attorney's fees in the amount of \$93,249.00.

11 Based upon the foregoing, Defendant GNL, Corp. will be determined by the Court to be
12 one of the following:

13 1. Mr. Smith's billing entries are reduced by 16 hours through December 2, 2019, for
14 a reduction totaling \$5,248.00. Additionally, for the period of December 3, 2019 through
15 December 18, 2019, Mr. Smith's hours are reduced by 9.9 hours to equal the amount billed by
16 Mr. Roberts, for a reduction totaling \$3,247.20. Based upon the foregoing, GNL, Corp. is
17 awarded attorney's fees in the total amount of \$137,420.69; OR

18 2. Mr. Smith's billing entries are reduced by 16 hours through December 2, 2019, for
19 a reduction totaling \$5,248.00. Additionally, for the period of December 3, 2019 through
20 December 18, 2019, Mr. Smith's hours are reduced by 121.8 hours, to equal the total hours
21 billed by TKE's counsel, a reduction totaling \$39,950.40. Based upon the foregoing, GNL,
22 Corp. is awarded attorney's fees in the total amount of \$100,717.49; ; OR

23 ///

24 ///

25 ///

26 ///

3. The Court determines that GNL, Corp. is awarded attorney's fees in the amount
of \$ \$100,717.49 as ⁶⁰² ~~had~~ ^{had} two counsel at trial

DATED this 23 day of March, 2020.

DISTRICT JUDGE

JOANNA S. KISHNER

SUBMITTED BY:

ROGERS, MASTRANGELO, CARVALHO
& MITCHELL

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

APPROVED AS TO FORM AND CONTENT:

Mohamed Aqbal, Esq. (Reviewed and approved while reserving all appeal rights.)
Attorney for Plaintiff

Marjan Hajimirzaee, Esq.
Attorney for Defendant GNL, Corp.

1 3 The Court determines that GNL, Corp. is awarded attorney's fees in the amount
2 of \$ _____

3 DATED this ____ day of _____, 2020.

4

5

DISTRICT JUDGE

6

SUBMITTED BY:

7

ROGERS, MASTRANGELO, CARVALHO
8 & MITCHELL

9


10 Rebecca L. Mastrangelo, Esq.
Nevada Bar No. 5417
11 700 S. Third Street
Las Vegas, Nevada 89101
12 Attorney for Defendant
THYSSENKRUPP ELEVATOR CORPORATION
13

14 APPROVED AS TO FORM AND CONTENT:

15

16 Mohamed Iqbal, Esq. (Reviewed and approved while reserving all appeal rights.)
Attorney for Plaintiff
17

18


18 Marjan Hajimirzaee, Esq.
19 Attorney for Defendant GNL, Corp.

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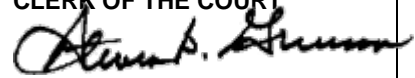
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ASTA
IQBAL LAW PLLC
Mohamed A. Iqbal, Jr. (NSB #10623)
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Las Vegas, Nevada 89109
1-(702) 750-2950 (Tel); 1-(702) 825-2841 (V-Fax)
info@ilawlv.com; mai@ilawlv.com
Attorneys for Plaintiff Joe N. Brown

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JOE N. BROWN, an individual, Plaintiff, vs. GNL, CORP., a Nevada corporation and THYSSENKRUPP ELEVATOR CORP., a foreign corporation, Defendants.	Case No.: A-16-739887-C Dept. No.: XXXI PLAINTIFF'S CASE APPEAL STATEMENT RE ATTORNEYS' FEES AWARD
--	---

1. Name of appellant filing this case appeal statement:

Plaintiff Joe N. Brown

2. Identify the judge issuing the decision, judgment, or order appealed from:

The Honorable Joanna S. Kishner

3. Identify each appellant and the name and address of counsel for each appellant:

Appellant: Plaintiff Joe N. Brown
Counsel: Mohamed A. Iqbal, Jr., Esq.
IQBAL LAW PLLC
101 Convention Center Dr., Suite 1175
Las Vegas, Nevada 89109
Tel: 702-750-2950

4. Identify each respondent and the name and address of appellate counsel:

Respondent: Defendant GNL, Corp.
Counsel: D. Lee Roberts, Esq.
Howard J. Russell, Esq.
Kristian T. Kaskla, Esq.
Philip N. Smith, Jr., Esq.
WEINBERG WHEELER HUDGINS GUNN & DIAL
6384 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Tel: 702-938-3809

PLAINTIFF'S CASE APPEAL STATEMENT
1 of 4

JNB03492

Respondent: Defendant, Thyssenkrupp Elevator Corp.
Counsel: Rebecca L. Mastrangelo, Esq.
Charles A. Milchalek, Esq.
ROGERS, MASTRANGELO, CARVALHO & MITCHELL
700 South Third St.
Las Vegas, Nevada 89101
Tel: 702-383-3400

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42:

All counsel listed above are licensed to practice in Nevada.

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Appellant was represented by retained counsel in the District Court (listed above).

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Appellant is represented by retained counsel on this appeal (listed above).

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

Not yet; the motion for leave to proceed in forma pauperis is pending before this Honorable Court.

9. Indicate the date the proceedings commenced in the district court (e.g., date of complaint, indictment, information, or petition was filed):

The original complaint was filed on July 12, 2016 and assigned to the Honorable Joanna S. Kishner, Department XXXI.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

This Honorable Court is very familiar with this negligence action, and Plaintiff incorporates by reference Plaintiff's prior case appeal statements as if fully set forth herein. This case proceeded to a multi-week jury trial at the conclusion of which the jury rendered a verdict in favor of Respondents and against Appellant, and a notice of entry of judgment was filed on January 9, 2020 (and it was appealed). On January 14 and 15, 2020, GNL and TKE filed their

1 respective Memorandum of Costs. On January 28, 2020, TKE filed its Motion for Attorneys'
2 Fees and Costs. On January 30, 2020, GNL filed its Motion for Attorneys' Fees and Costs. On
3 February 11, 2020, Appellant filed a Notice of Non-Opposition Regarding Defendants Seeking
4 Costs, and, on February 13, filed an Omnibus Opposition to Defendants' Respective Motions for
5 Attorneys' Fees, that was subsequently amended on February 14, 2020. On February 24, 2020,
6 TKE filed a Reply in Support of Motion for Attorneys' Fees. On February 25, 2020, GNL did
7 the same. Following a hearing, the District Court granted Respondents' respective motions,
8 awarding TKE \$93,249.00 and GNL \$100,717.49 in attorneys' fees. On April 6, 2020, a notice
9 of entry of order was filed, from which the instant appeal lies. Appellant respectfully intends to
10 consolidate this appeal with the pending jury-verdict appeal with the Nevada Supreme Court.

11 **11. Indicate whether the case has previously been the subject of an appeal to or original**
12 **writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket**
13 **number of the prior proceeding:**

14 A) TKE's October 18, 2018 Petition for Writ of Mandamus

15 i. Supreme Court Docket Number: 77211

16 ii. Caption:

17 THYSSENKRUPP ELEVATOR CORPORATION, Petitioner, vs. THE EIGHTH
18 JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE
19 COUNTY OF CLARK; AND THE HONORABLE JOANNA KISHNER, DISTRICT
20 JUDGE, Respondents, and JOE N. BROWN, an individual, and his wife, NETTIE J.
21 BROWN, an individual, Real Parties in Interest.

22 B) Appellant's October 29, 2019 appeal to the Supreme Court

23 i. Supreme Court Docket Number: 79944

24 ii. Caption:

25 JOE N. BROWN, an individual and his Wife, NETTIE J. BROWN, an individual,
26 Appellants, vs. GNL, CORP., a Nevada corporation, and THYSSENKRUPP
27 ELEVATOR CORP., a foreign corporation; DOE INDIVIDUALS 1-100, ROE
28 BUSINESS ENTITIES 1-100, Respondents.

1 C) Appellant's February 8, 2020 appeal to the Supreme Court

2 i. Supreme Court Docket Number: 80581

3 ii. Caption:

4 JOE N. BROWN, an individual, Appellant, vs. GNL, CORP., a Nevada corporation, and
5 THYSSENKRUPP ELEVATOR CORP., a foreign corporation, Respondents.

6 **12. Indicate whether this appeal involves child custody or visitation:**

7 This appeal does not involve child custody or visitation.

8 **13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:**

9 This appeal does involve the possibility of settlement, and Appellant is willing to engage in
10 good faith settlement discussions.

11 Dated May 5, 2020.

Respectfully Submitted,

12 IQBAL LAW PLLC

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

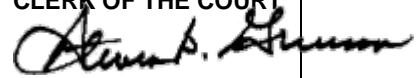
14 Mohamed A. Iqbal, Jr. (NSB #10623)
15 101 Convention Center Dr., Suite 1175
16 Las Vegas, Nevada 89109
17 1-(702) 750-2950 (Tel)

18 **CERTIFICATE OF SERVICE**

19 I certify that I served the foregoing **PLAINTIFF'S CASE APPEAL STATEMENT RE**
20 **ATTORNEYS' FEES AWARD** on all counsel of record in this matter using the Court's e-
file/e-service system on May 5, 2020.

21 By: /s/ Marie-Claire Alsanjakli

22 An employee of IQBAL LAW PLLC



1 **ORDR**

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5 JOE N. BROWN, an individual,
6 Plaintiff,

Case No.: A-16-739887-C

Dept. No.: XXXI

7 vs.

8 **ORDER GRANTING PLAINTIFF'S**
9 **MOTION FOR LEAVE TO PROCEED**
10 **ON APPEAL IN FORMA PAUPERIS**

11 GNL, CORP., a Nevada corporation and
12 THYSSENKRUPP ELEVATOR CORP., a
foreign corporation,

13 Defendants.

14 On September 18, 2018, Plaintiff Joe N. Brown ("Plaintiff") filed the
15 Second Amended Complaint against Defendants GNL Corp., and Thyssenkrupp
16 Elevator, seeking damages for negligence and loss of consortium. The jury trial
17 commenced on December 6, 2019, and concluded on December 18, 2019. The
18 jury returned a verdict in favor of all Defendants and awarded Plaintiff nothing.
19 On February 8, 2020, Plaintiff filed a Notice of Appeal to the Nevada Supreme
20 Court.

21 After filing his Appeal, Plaintiff filed a Motion for Leave to Proceed on
22 Appeal In Forma Pauperis which did not contain any points and authorities as
23 required *inter alia* by EDCR 2.20 and, otherwise, did not comply with the rules.
24 On April 23, 2020, the parties appeared before the Court for a hearing regarding
25 the Motion. After the Court inquired about the basis of the request, Plaintiff
26 sought leave to file supplemental briefing which was unopposed.

1 On April 28, 2020, Plaintiff timely filed a Supplemental Motion for Leave to
2 Proceed In Forma Pauperis requesting In Forma Pauperis status pursuant to
3 NRAP 24(a) and NRS 12.015(1)(a). Pursuant to NRAP 24 (a) (1) “a party to a
4 district court action who desires to appeal in forma pauperis shall file a motion in
5 the district court. The party shall attach an affidavit that: (A) shows in the detail
6 prescribed by Form 4 in the Appendix of Forms the party’s inability to pay or to
7 give security for fees and costs; (B) claims an entitlement to redress; and (C)
8 states the issues that the party intends to present on appeal.” If the motion is
9 granted, the party may proceed on appeal without prepaying of giving security for
10 fees and costs. See NRAP 24(a) (2).

12 Further, NRS 12.015(1) (a) provides that “[a]ny person who desires to
13 prosecute or defend a civil action may file an affidavit with the court setting forth
14 with particularity facts concerning the person’s income, property and other
15 resources which establish that the person is unable to prosecute or defend the
16 action because the person is unable to pay the costs of so doing.”

17 Plaintiff also submitted an Affidavit of Support of his Motion wherein he
18 detailed his financial condition and the issues for the Appeal. Thus, Plaintiff has
19 satisfied the requirements of NRCP 24(a)(1) and NRS 12.015(1)(a). Accordingly,
20 after considering all the pleadings, there is good cause to GRANT Plaintiff’s
21 Motion, as he has demonstrated he is unable to pay the cost of prosecuting his
22 case pursuant to NRS 12.015(2).
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ORDER

THEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED that

Plaintiff's Motion for Leave to Proceed on Appeal In Forma Pauperis is GRANTED.

IT IS SO ORDERED.

DATED this 5TH day of May, 2020.



HON. JOANNA S. KISHNER
DISTRICT COURT JUDGE

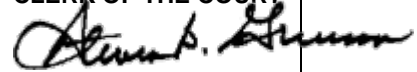
CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was served via Electronic Service to all counsel/registered parties, pursuant to the Nevada Electronic Filing Rules, and/or served via in one or more of the following manners: fax, U.S. mail, or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

ALL PARTIES SERVED VIA E-SERVICE

/s/ Tracy L. Cordoba

TRACY L. CORDOBA-WHEELER
Judicial Executive Assistant



1 **ORDR**

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5 JOE N. BROWN, an individual,
6 Plaintiff,

Case No.: A-16-739887-C

Dept. No.: XXXI

7 vs.

8
9 GNL, CORP., a Nevada corporation and
10 THYSSENKRUPP ELEVATOR CORP., a
11 foreign corporation,

**COURT'S SECOND ORDER
REGARDING REQUESTS FOR
TRANSCRIPTS PURSUANT TO
PLAINTIFF'S MOTION FOR LEAVE
TO PROCEED IN FORMA
PAUPERIS ON APPEAL**

12 Defendants.

13
14 As the parties are aware, on May 6, 2020, the Court granted Plaintiff's
15 Motion for Leave to Proceed on Appeal In Forma Pauperis pursuant to NRAP
16 24(a)(1) and NRS 12.015. Unfortunately, the Court was not provided an
17 analysis, either in the pleadings or at the hearing(s), of what transcripts would be
18 "helpful for appellate review of the case".

19 Instead, a review of the Odyssey Record shows that on February 27,
20 2020, Plaintiff filed-but did not provide-courtesy copies to the Court of the
21 documents titled "Request for Transcript of Proceeding", wherein he listed
22 approximately 18 different dates, including which appears to include the entire
23 trial as well as other hearings. The document, however, did not provide any
24 breakdown or analysis of whether only portions of the hearings and/or trial days
25 were needed, whether there was specific witness testimony needed, or other
26 information to provide the Court with a basis to determine whether there is a
27

1 portion of the day/hearing that “would be helpful to the adjudication or appellate
2 review of the case” or whether the entirety of each and every day was needed as
3 required by NRS 12.015(3). NRS 12.015 (3) provides that:
4

5 If the person is required to have proceedings reported or recorded,
6 or if the court determines that the reporting, recording or
7 transcription of proceedings would be helpful to the adjudication or
8 appellate review of the case, the court shall order that the reporting,
9 recording or transcription be performed at the expense of the
10 county in which the action is pending but at a reduced rate as set
11 by the county.

12 Thereafter on May 26, 2021, the Court issued another Order entitled
13 “Order Regarding Clarification for Requests for Transcripts Pursuant to Plaintiff’s
14 Motion for Leave to Proceed in Forma Pauperis”. In that Order, the Court set
15 forth, in relevant part, that “In order for the Court to be able to make the
16 determination as set forth in NRS 12.015, as to what should be transcribed as
17 part of its granting Plaintiff’s Forma Pauperis request, it must have some
18 information to evaluate. Therefore, in order for the Court to make its
19 determination, Plaintiff needs to provide the Court with written information as to
20 what he needs for the Appeal including clarifying which portions/time periods he
21 is requesting of the hearings and/or trial days by June 3, 2020.”

22 Thereafter on June 3, 2020, Plaintiff Joe Brown’s counsel filed a document
23 titled, “Plaintiff’s Notice of Clarification Regarding Transcripts for Appellate
24 Review.” Based on that filing, the Court Recording Department was to prepare
25 and provide Plaintiff with the requested transcripts pursuant to NRS 12.015(3)
26 and perform such work “at the expense of the county in which the action is
27 pending but at a reduced rate as set forth by the county”.
28

1 On August 27, 2021, the Supreme Court filed an Order in the appellate
2 case Shalonda Molette as Special Administrator of the Estate of Joe Brown v.
3 GNL Corp et. al., which set forth that the District Court promptly direct the
4 preparation of transcripts pursuant to NRS 12.015(3). Prior to that Order, the
5 District Court Judge was not made aware that its prior Order had not been
6 complied with and the transcripts had not been prepared. In addition, albeit
7 dated August 27th, the Order was not brought to the undersigned's attention until
8 late last week. It was at that time that the Court reviewed the record in case A-
9 16-739887 and found out that the transcripts had not been prepared
10 inadvertently due to an error as a result of the retirement of the Recorder listed.
11 As a result of learning that the transcripts were not prepared, the Court is again
12 issuing an Order that the Court Recording Department of the Eighth Judicial
13 District comply with the Court's May 6, 2020, and May 26, 2020, Order and
14 prepare the transcripts set forth in Plaintiff's June 3, 2020, Notice of Clarification
15 Regarding Transcripts for Appellate Review pursuant to NRS 12.015(3). The
16 Court further Orders that the Court Recording Department provide the
17 undersigned Judge, the Supreme Court, and all parties with Notice of when said
18 Transcripts will be completed.
19

20 **IT IS SO ORDERED.**

21
22 DATED this 4th day of October, 2021.
23

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25 
26 HON. JOANNA S. KISHNER
27 DISTRICT COURT JUDGE
28

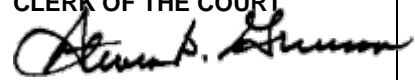
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CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was served via Electronic Service to all counsel/registered parties, pursuant to the Nevada Electronic Filing Rules, and/or served via in one or more of the following manners: fax, U.S. mail, or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

ALL COUNSEL and/or PARTIES SERVED VIA E-SERVICE

/s/ Tracy L. Cordoba
TRACY L. CORDOBA-WHEELER
Judicial Executive Assistant



NOTC
IQBAL LAW PLLC
Mohamed A. Iqbal, Jr. (NSB #10623)
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Las Vegas, Nevada 89109
1-(702) 750-2950 (Tel); 1-(702) 825-2841 (V-Fax)
info@ilawlv.com; mai@ilawlv.com
Attorneys for Plaintiff Joe N. Brown

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JOE N. BROWN, an individual, Plaintiff, vs. GNL, CORP., a Nevada corporation and THYSSENKRUPP ELEVATOR CORP., a foreign corporation, Defendants.	Case No.: A-16-739887-C Dept. No.: XXXI PLAINTIFF'S NOTICE OF CLARIFICATION REGARDING TRANSCRIPTS FOR APPELLATE REVIEW
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Plaintiff Joe N. Brown respectfully submits to this Honorable Court, pursuant to that certain Order dated May 27, 2020, the following clarification, identifying the relevant pre-trial and trial dates¹ and representative portions of such dates, additional context, and linkages to specific issues on appeal. Plaintiff respectfully incorporates by reference, as if fully set forth herein, Plaintiff's February 27, 2020 Request for Transcript of Proceeding to Court Reporter Sandra Harrell for all of the relevant dates save one, and separate February 27, 2020 Request for Transcript of Proceeding to Court Reporter Maria Garibay for the December 13, 2019 trial day.

Dates / Representative Timeframes	Clarification, Context, Witnesses, and/or Appellate Issues
3/28/19 10:18:34am to 10:31:04am 10:40:18am to 11:21:08am	Error in granting Defendants' Motion for Summary Judgment on Liability and Punitive Damages

¹ Plaintiff anticipates consolidation of the appeal of this main matter, with the appeal of the Court's order on Defendants' motions for attorneys' fees and costs, based on Plaintiff/Appellant's motion to consolidate filed in NVSC cases 80581 and 81151, and Defendants/Respondents' separate notices of non-opposition thereto. At that point, and providing full notice here, Plaintiff would respectfully request that the transcript of the associated hearing, on March 3, 2020, from 1:23:58 p.m. to 2:59:28 p.m.

**PLAINTIFF'S NOTICE OF CLARIFICATION REGARDING TRANSCRIPTS FOR
APPELLATE REVIEW**

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	<p>4/3/19 11:25:55am to 11:38:38am 11:47:52am to 11:54:40am</p> <p><i>(And also 12/16/19 8:58:52am to 9:15:10am)</i></p> <p>6/4/19 11:06:55am to 11:17:22am</p> <p>6/4/19 11:34:44am to 11:45:15am 11:47:38am to 11:55:53am</p> <p>7/10/19 1:09:27pm to 1:27:52pm 1:41:51pm to 1:49:51pm 1:52:06pm to 1:59:13pm 3:40:37pm to 3:45:30pm 3:48:17pm to 4:00:44pm 4:07:41pm to 4:15:00pm</p> <p><i>(And also 10/7/19 4:48:26pm to 4:51:46pm 5:01:30pm to 5:24:45pm and 12/4/19 3:33:16pm to 4:12:27pm 4:16:10pm to 4:48:15pm)</i></p> <p>7/10/19 2:14:18pm to 3:05:20pm</p> <p>7/10/19 3:07:29pm to 3:11:39pm 3:13:38pm to 3:19:40pm</p> <p><i>(And also 11/21/19 3:26:10pm to 4:11:28pm 4:15:52pm to 5:03:55pm)</i></p> <p>8/27/19 10:24:43am to 10:38:08am 10:44:24am to 10:46:02am 10:47:05am to 10:47:50am 10:52:42am to 10:55:16am</p> <p>10/7/19 4:48:26pm to 4:51:46pm 5:01:30pm to 5:24:45pm</p> <p>11/21/19 3:26:10pm to 4:11:28pm 4:15:52pm to 5:03:55pm</p> <p>11/22/19</p>	<p>The denial of Plaintiff's motion to extend discovery, and motion <i>in limine</i> exclude Defendants' escalator expert; Plaintiff's MiL #1; witness Davis Turner</p> <p>Error in granting of TKE MiL #1, computation of damages</p> <p>Error in granting of TKE MiL #6, which resulted in the pre-trial exclusion of several prior accidents and at least two subsequent accidents</p> <p>Errors in excluding two of Plaintiff's expert witnesses; *GN MiL #1; witness Dr. Nalamachu *TKE MiL #8; witness Sheila Swett *Sheila Swett's Voir Dire *Dr. Nalamachu Voir Dire</p> <p>Error in excluding evidence of the subject escalator's mechanical and operational problems; *GN MiL #2</p> <p>Errors in excluding evidence of Defendants' willful and negligent spoliation and other discovery abuses; *GN MiL #3; *TKE MiL #7; *Demo Exhibits (Pre-Trial Conf)</p> <p>Error in granting Defendants' Motion for Summary Judgment on Liability and Punitive Damages</p> <p>Sheila Swett's Voir Dire; Error in excluding Ms. Swett's testimony</p> <p>Errors in excluding evidence of Defendants' willful and negligent spoliation and other discovery abuses; *GN MiL #3; *TKE MiL #7; *Demo Exhibits (Pre-Trial Conf)</p> <p>Errors in excluding certain deposition transcript excerpts</p>
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**PLAINTIFF'S NOTICE OF CLARIFICATION REGARDING TRANSCRIPTS FOR
APPELLATE REVIEW**

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	<p>10:27:10am to 10:28:19am 10:36:15am to 10:48:23am 10:49:12am to 10:57:45am 10:59:00am to 11:43:33am</p> <p><i>(And also 12/5/19 2:28:25pm to 3:48:44pm 3:50:42pm to 3:58:40pm 4:04:58pm to 4:25:41pm 4:32:30pm to 5:03:18pm and 12/12/19 9:46:12am to 9:48:07am 10:15:43am to 10:44:32am 10:45:56am to 10:59:10am 11:03:06am to 11:28:48am 11:32:04am to 11:40:20am 11:44:44am to 11:53:13am 11:57:48am to 12:08:04pm and 12/13/19 9:08:22am to 9:29:06pm 9:30:13am to 9:42:13am 9:42:52am to 9:53:37am 9:57:20am to 10:05:00am 10:10:24am to 10:14:38am 10:16:45am to 10:30:25am 10:31:51am to 10:40:51am 10:44:03am to 10:46:36am 11:07:04am to 11:14:11am and 12/16/19 1:38:00pm to 1:39:58pm 1:46:49pm to 1:48:30pm)</i></p>	<p>from TKE' s Christopher Dutcher and Defendants' officers, including, e.g., GNL's Don Hartmann</p>
16 17	<p>12/4/19 3:33:16pm to 4:12:27pm 4:16:10pm to 4:48:15pm</p>	<p>Dr. Nalamachu's Voir Dire; Error in excluding Dr. Nalamachu's testimony</p>
18 19 20 21	<p>12/5/19 2:28:25pm to 3:48:44pm 3:50:42pm to 3:58:40pm 4:04:58pm to 4:25:41pm 4:32:30pm to 5:03:18pm</p>	<p>Errors in excluding certain deposition transcript excerpts from TKE' s Christopher Dutcher and Defendants' officers, including, e.g., GNL's Don Hartmann</p>
22 23 24 25 26 27	<p>12/6/19 3:57:22pm to 3:57:40pm 3:59:12pm to 4:07:32pm 4:09:17pm to 4:24:37pm</p> <p><i>(And also 12/9/19 10:55:46am to 10:56:43am 11:02:18am to 11:02:56am 11:07:53am to 11:08:54am and 12/10/19 3:41:01pm to 3:43:09pm)</i></p>	<p>Errors in excluding evidence of the empty maintenance logs reflecting gross negligence and negligence <i>per se</i>; Witness William Schaeffer and Christopher Dutcher Depo Excerpts</p>

**PLAINTIFF'S NOTICE OF CLARIFICATION REGARDING TRANSCRIPTS FOR
APPELLATE REVIEW**

1	and 12/17/19 11:41:39am to 11:42:48am)	
2	12/9/19 9:14:02am to 9:30:59am	Errors in excluding evidence of the escalator's repairs, proposed and actual; includes witness Larry Panaro
3	(And also 12/10/19 2:06:06pm to 2:06:57pm 2:20:40pm to 2:21:08pm 2:26:54pm to 2:27:42pm 2:37:43pm to 2:39:10pm and 12/17/19 11:38:30am to 11:40:10am)	
7	12/9/19 9:37:34am to 10:01:52am 11:42:09am to 12:04:56pm	Errors in expanding the scope of the MiL rullings; outside the presence of the jury discussions involving witness William Schaeffer; admonishment of counsel
9	(And also 12/10/19 4:25:18pm to 4:43:02pm)	
10	12/9/19 1:18:02pm to 1:25:26pm	Errors in excluding evidence of the escalator's condition in 2013 and 2014 during certain inspections with the concurrent exclusion of evidence of its condition days before Plaintiff's accident; involves the notices of violations
11	(And also 12/10/19 11:35:56am to 11:45:38am)	
13	12/9/19 10:55:46am to 10:56:43am 11:02:18am to 11:02:56am 11:07:53am to 11:08:54am	Errors in excluding evidence of the empty maintenance logs reflecting gross negligence and negligence <i>per se</i> ; Witness William Schaeffer and Christopher Dutcher Depo Excerpts
14	(And also 12/6/19 3:57:22pm to 3:57:40pm 3:59:12pm to 4:07:32pm 4:09:17pm to 4:24:37pm and 12/10/19 3:41:01pm to 3:43:09pm And 12/17/19 11:41:39am to 11:42:48am)	
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20	12/10/19 11:35:56am to 11:45:38am	Errors in excluding evidence of the escalator's condition in 2013 and 2014 during certain inspections with the concurrent exclusion of evidence of its condition days before Plaintiff's accident; involves the notices of violations
21	(And also 12/9/19 1:18:02pm to 1:25:26pm)	
22		
23	12/10/19 1:22:45pm to 1:53:16pm 3:50:44pm to 3:51:03pm 3:52:47pm to 3:53:13pm 3:57:23pm to 3:58:37pm	Errors in exclusion of evidence outside a narrow band of time, roughly January 1, 2015 to May 24, 2015
24		
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26		
27	12/10/19 2:06:06pm to 2:06:57pm	Errors in excluding evidence of the escalator's repairs, proposed and actual; includes witness Larry Panaro

**PLAINTIFF'S NOTICE OF CLARIFICATION REGARDING TRANSCRIPTS FOR
APPELLATE REVIEW**

1 2 3 4	2:20:40pm to 2:21:08pm 2:26:54pm to 2:27:42pm 2:37:43pm to 2:39:10pm (And also 12/9/19 9:14:02am to 9:30:59am)	
5 6 7	12/10/19 2:35:03pm to 2:35:40pm (And also 12/16/19 3:41:08pm to 4:36:00pm)	Errors in the exclusion of evidence (the Acciunt History); Witness Larry Panaro
8	12/10/19 2:54:31pm to 3:29:58pm	Errors in the exclusion of evidence associated with the escalator's problems on May 7, 2015, and following Plaintiff's accident on May 12, 2015
9 10 11 12 13 14 15 16	12/10/10 4:14:28pm to 4:19:18pm 12/13/19 4:23:23pm to 4:24:05pm 4:27:36pm to 4:37:00pm 4:42:49pm to 4:44:20pm 4:48:58pm to 5:06:46pm 12/16/19 9:43:28am to 9:44:47am 10:05:30am to 10:48:56am	Errors in excluding evidence from Shalonda Brown regarding Plaintiff's damages
17	12/10/19 4:25:18pm to 4:43:02pm	Errors in expanding the scope of the MiL rullings; outside the presence of the jury discussions involving witness William Schaeffer; admonishment of counsel
18 19 20 21 22 23	12/11/19 9:04:39am to 9:16:38am; 10:46:15am to 10:53:22am; 11:57:19am to 12:06:49pm; 4:03:30pm to 4:06:00pm 12/12/19 1:34:30pm to 1:37:07pm 12/13/19 2:55:10pm to 3:00:54pm	Errors in various rulings, including with the admonision of William LaCost; excluding evidence of prior expert work by Dr. Bassewitz
24 25 26 27	12/17/19 3:55:19pm to 4:14:24pm; 4:24:48pm to 4:29:09pm; 4:34:20pm to 4:40:35pm; 4:44:14pm to 4:46:03pm	Errors in certain rulings on the parties' proposed jury instructions, including, without limitation, the denial of Plaintiff's requests for the 2018 Nevada Jury Instructions: (i) on Premises Liability; (ii) regarding Defendants' willful and negligent spoliation and other discovery abuses; and (iii) on negligence <i>per se</i>

**PLAINTIFF'S NOTICE OF CLARIFICATION REGARDING TRANSCRIPTS FOR
APPELLATE REVIEW**

12/18/19

Errors in rulings associated with the closings

Dated June 3, 2020.

Respectfully Submitted,

IQBAL LAW PLLC

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

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

101 Convention Center Dr., Suite 1175

Las Vegas, Nevada 89109

1-(702) 750-2950 (Tel)

CERTIFICATE OF SERVICE

I certify that I served the foregoing **PLAINTIFF'S NOTICE OF CLARIFICATION REGARDING TRANSCRIPTS FOR APPELLATE REVIEW** on all counsel of record in this matter using the Court's e-file/e-service system on June 3, 2020.

By: /s/ Marie-Claire Alsanjakli

An employee of IQBAL LAW PLLC

I LAW LV

**PLAINTIFF'S NOTICE OF CLARIFICATION REGARDING TRANSCRIPTS FOR
APPELLATE REVIEW**

6 of 6

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