

1
2 IN THE SUPREME COURT OF THE STATE OF NEVADA

3
4 Supreme Court No. Electronically Filed
District Court Case No. A-18-77276-1C Mar 17 2020 02:20 p.m.
5 Elizabeth A. Brown
Clerk of Supreme Court

6 VENETIAN CASINO RESORT, LLC, a Nevada limited liability company;
7 LAS VEGAS SANDS, LLC, a Nevada limited liability company,
8 Petitioners,

9 v.

10 EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND
11 FOR THE COUNTY OF CLARK, AND THE HONORABLE KATHLEEN
12 DELANEY in her capacity as District Judge,
Respondent,
13 JOYCE SEKERA, an individual,
14 Real Party in Interest

15
16 **APPENDIX TO PETITIONERS' EMERGENCY PETITION FOR WRIT OF**
17 **MANDAMUS AND/OR WRIT OF PROHIBITION UNDER NRAP RULES**
18 **21(a)(6) AND 27(e) AND ALTERNATIVE EMERGENCY MOTION TO STAY**
19 **UNDER NRAP RULES 8 AND 27(e)**
20 **Volume 11 (Exhibits 48-49)**

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Petitioners, VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC, by and through their counsel of record, Royal & Miles LLP, hereby submit is Appendix in compliance with Nevada Rule of Appellate Procedure 30.

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55	Hearing Transcript re: Objection to Discovery Commissioner's Report, January 21, 2020	VEN 2617 - 2660	13
56	Order on Objection to Discovery Commissioner's Report, filed March 13, 2020	VEN 2661 - 2664	13

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1 The Appendix shall be contained in 13 separate volumes in accordance with
2 NRAP 30(c)(3) (2013), each volume containing no more than 250 pages.

3
4 DATED this 13 day of March, 2020.

5 ROYAL & MILES LLP

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7
8 By: 

9 Michael A. Royal, Esq. (SBN 4370)
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CERTIFICATE OF SERVICE

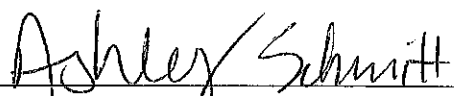
I hereby certify that I am an employee of the law firm of Royal & Miles LLP, attorney's for Petitioners, VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC, and that on the 17 day of March, 2020, I served true and correct copy of the foregoing APPENDIX TO PETITIONERS' EMERGENCY PETITION FOR WRIT OF MANDAMUS AND/OR WRIT OF PROHIBITION UNDER NRAP RULES 21(a)(6) AND 27(e) AND ALTERNATIVE EMERGENCY MOTION TO STAY UNDER NRAP RULES 8 AND 27(e) Volume 11 (Exhibits 48-49), by electronically filed with the Clerk of the Court by using ECF service which will provide copies to all counsel of record registered to the receive CM/ECF notification and by delivering the same via U.S. Mail addressed to the following:

Keith E. Galliher, Jr., Esq.
THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014
and

Honorable Kathleen Delaney
Eighth Jud. District Court, Dept. 25
200 Lewis Avenue
Las Vegas, NV 89155
Respondent

Sean K. Claggett, Esq.
William T. Sykes, Esq.
Geordan G. Logan, Esq.
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Attorneys for Real Party in Interest


An employee of Royal & Miles LLP

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5 ROYAL & MILES LLP

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8 By: 

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CERTIFICATE OF SERVICE

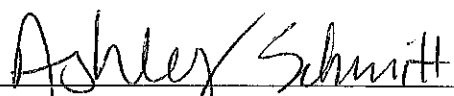
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1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014
and

Honorable Kathleen Delaney
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Attorneys for Defendants

VENETIAN CASINO RESORT, LLC and

LAS VEGAS SANDS, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual;

Plaintiff,

v.

VENETIAN CASINO RESORT, LLC, d/b/a
THE VENETIAN LAS VEGAS, a Nevada
Limited Liability Company; LAS VEGAS
SANDS, LLC d/b/a THE VENETIAN LAS
VEGAS, a Nevada Limited Liability Company;
YET UNKNOWN EMPLOYEE; DOES I
through X, inclusive,

Defendants.

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

**DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATION**

Date of Hearing: September 18, 2019

Time of Hearing: 9:00 a.m.

Appearance: Keith E. Galliher, Jr., Esq., for Plaintiff, JOYCE SEKERA

Michael A. Royal, Esq., Royal & Miles LLP, for Defendants
VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC
(collectively "*Venetian*")

I.

PROCEDURAL HISTORY

1. Venetian filed DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S SUBPOENA DUCES TECUM IMPROPERLY SERVED PURSUANT TO NRCP 45(A)(4)(A) AND MOTION FOR PROTECTIVE ORDER UNDER NRCP 26(c) RELATED TO PLAINTIFF'S DEMAND DEPOSITION AND DOCUMENTS FROM DEFENDANTS UNDER NRCP NRCP 30(B)(6) AND NRCP 34 AND MOTION TO COMPEL PLAINTIFF TO PRODUCE ALL EVIDENCE OF PRIOR INCIDENTS AT VENETIAN NOT RECEIVED FROM DEFENDANTS IN THIS LITIGATION on August 5, 2019.

2. Plaintiff filed PLAINTIFF'S MOTION TO COMPEL TESTIMONY AND DOCUMENTS on August 5, 2019.

3. Venetian and Plaintiff filed oppositions which included countermotions for sanctions; the Discovery Commissioner refused to consider the countermotions pursuant to EDCR 2.20(f) as being insufficiently related to the subject matter of the pending motions.

II.

FINDINGS

1. Plaintiff claims to have fallen on Venetian premises on November 4, 2016 due to a temporary transitory condition which caused her to slip.

2. On January 4, 2019, Venetian produced to Plaintiff copies of sixty-four (64) prior incident reports from November 4, 2013 to November 4, 2016, redacted by Venetian to protect the identification of non-employees, responsive to Plaintiff's Production Request No. 7 requesting other incident reports on the Venetian property from November 4, 2011 to the present. (Venetian objected to producing incident reports occurring subsequent to the November 4, 2016 incident.)

1 3. On February 1, 2019, Venetian filed a motion for protective order as to the redacted
2 prior incident reports produced on January 4, 2019, which was granted by the Discovery
3 Commissioner in a Report and Recommendation filed April 4, 2019, with reports to remain
4 redacted and to be protected under NRCP 26(c).

5 4. The District Court entered an order reversing the Discovery Commissioner's Report
6 and Recommendation of April 4, 2019 in an order filed July 31, 2019, directing Venetian to
7 provide Plaintiff with unredacted copies of all prior incident reports, with no protections requested
8 by Venetian under NRCP 26(c). Venetian filed a motion for reconsideration, heard on September
9 17, 2019, which Judge Delaney denied.

11 5. The District Court's ruling related to Venetian's request for protection under NRCP
12 26(c) is the law of the case; therefore, no relief requested related to the protection of Venetian prior
13 incident reports can be further considered by the Discovery Commissioner in this matter.

14 6. Plaintiff was granted leave by the District Court to file a First Amended Complaint
15 to add a claim of punitive damages, which was filed on June 28, 2019.

16 7. Venetian filed a motion for protective order and Plaintiff filed a motion to compel
17 on August 5, 2019 regarding Plaintiff's request for the production of certain information and
18 documents from May 1999 to the present.

19 8. On May 31, 2019, Plaintiff served her sixth request for production with the
20 following requests:

21 REQUEST NO. 23: True and correct copies of any and all reports, documents,
22 memoranda, or other information describing or referring to slip testing performed
23 on the marble floors at the Venetian Hotel and Casino by any Plaintiff, or the
24 Venetian, from January 1, 2000 to date.

25 REQUEST NO. 24: Any and all communications, including correspondence,
26 emails, internal communication, or other memoranda which refers to the safety of
27 marble floors located within the Venetian Hotel and Casino from January 1, 2000 to
28 date.

1 REQUEST NO. 25: Any and all transcripts, minutes, notes, emails, or
2 correspondence which has as a subject matter, any meetings held by and between
3 Venetian personnel, including management personnel, where the subject of the
4 safety of the marble floors at the Venetian was discussed and evaluated from
5 January 1, 2000 to date.

6 REQUEST NO. 26: Any and all correspondence, emails, memoranda, internal
7 office correspondence, or other documents directed to the Venetian from a
8 Contractor, Subcontractor, Flooring Expert, or similar entity which discusses or
9 refers to the safety of marble floors located within the Venetian Hotel and Casino
10 from January 1, 2000 to date.

11 REQUEST NO. 29: Any and all complaints submitted by guests or other individuals
12 regarding safety of the marble floors.

13 REQUEST NO. 30: Any and all quotes and estimates and correspondence regarding
14 quotes and estimates relating to the modification of the marble floors to increase
15 their slip resistance.

16 9. On June 20, 2019, Plaintiff served Plaintiff's First Set of Interrogatories to
17 Defendants with the following request:

18 INTERROGATORY NO. 1: Please identify by Plaintiff's name, case number and
19 date of filing all complaints filed against the Venetian Casino Resort, LLC d/b/a
20 The Venetian Las Vegas and/or Las Vegas Sands, LLC d/b/a The Venetian Las
21 Vegas in the Clark County District Court for any and all slip and fall and/or trip and
22 fall incidents occurring on marble flooring anywhere within The Venetian Casino
23 Resort, LCC d/b/a The Venetian Las Vegas and/or Las Vegas Sands, LLC d/b/a The
24 Venetian Las Vegas from January 1, 2000 to the present.

25 10. On July 17, 2019, Plaintiff served Plaintiff's Ninth Request for Production of
26 Documents and Materials to Venetian. Request No. 35 sought the following production from
27 Venetian:

28 REQUEST NO. 35: True and correct copies of any and all claim forms, legal
actions, civil complaints, statements, security reports, computer generated lists,
investigative documents or other memoranda which have, as its subject matter, slip
and fall cases occurring on marble floors within the subject VENETIAN CASINO
RESORT from the May 3, 1999 to the present.

11. On July 19, 2019, Plaintiff served Plaintiff's Tenth Request for Production of
Documents and Materials to Defendant with the following request:

1 REQUEST NO. 36: True and correct copies of any and all entries and information
2 contained in the Venetian's Alliance System regarding injury falls on marble
flooring within the Venetian Las Vegas from January 1, 2000 to present.

3 12. On July 22, 2019, Plaintiff served Plaintiff's Second Set of Interrogatories to
4 Defendants which reads as follows:

5 INTERROGATORY NO. 2: Please identify names, addresses and phone numbers of any
6 and all individuals designated as safety engineers who perform(ed) accident checks at the
7 Venetian from the year 2000 to the present.

8 13. On July 29, 2019, Plaintiff served Plaintiff's Eleventh Request for Production of
9 Documents and Materials to Defendant with the following request.

10 REQUEST NO. 37: Any and all quotes, estimates, correspondence, emails,
11 memorandums, minutes, file notes and/or other documentation related to Venetian's
12 decision to remove and replace the carpet with marble flooring and Venetian's
removal and replacement of carpet with marble flooring as referenced by Christina
Tonemah in her deposition. (25: 9-26: 26; 1-6)

13 14. On July 30, 2019, Plaintiff served notice of an NRCP 30(b)(6) deposition under
14 NRCP 45 issuance of a subpoena with eighteen (18) topics, as follows.

15 1) Total number of injury falls on marble floors located within The
16 Venetian Las Vegas from November 4, 2013 to present.

17 2) Actions taken by The Venetian Las Vegas to change the coefficient
18 of friction with respect to the marble floors within The Venetian Las Vegas from
19 November 4, 2013 to present.

20 3) Measures taken to locate and produce security/incident injury fall
21 reports by The Venetian Las Vegas as requested by Plaintiff in this Litigation.

22 4) Slip testing performed by The Venetian Las Vegas or it's
23 representatives with respect to the marble floors within The Venetian Las Vegas
24 from November 4, 2013 to present.
25
26
27
28

1 5) Any invoices or work orders with respect to the removal of carpet in
2 pedestrian walkways and replaced with marble and/or granite flooring from
3 November 4, 2006 to present.

4 6) The identity of all employees who were responsible for managing
5 and maintaining Venetian's technology infrastructure.

6 7) The name, address and phone number of the specific
7 employee(s) tasked with retrieving incident reports from Venetian's system for this
8 litigation, the litigation in Smith v. Venetian (A-17-753362-C), Cohen v. Venetian
9 (A-17-761036-C) and Boucher v. Venetian (A-18-773651-C) and the name address
10 and phone number of the individual who assigned them this task.

11 8) The identity of all non-employee consultants, consulting firms,
12 contractors or similar entities that were responsible for managing and maintaining
13 Venetian's technology infrastructure.

14 9) Software used, including dates they were in use and any software
15 modifications.

16 10) Identity of, description of and policies and procedures for the use of
17 all internal systems for data management, complaint and report making, note
18 keeping, minute/transcript taking and employee e-mail, messaging and other
19 communication systems and description of all employee accounts for said systems.

20 11) Description of all cell phones, PDAs, digital convergence devices or
21 other portable electronic devices and who they were/are issued to.

22 12) Physical location of electronic information and hard files and
23 description of what information is kept in electronic form and what is kept in hard
24 files.

1 13) Description of policies and procedures for performing back-ups.
2 14) Inventory of back-ups and when they were created.
3 15) User permissions for accessing, modifying, and deleting data.
4 16) Utilization of data deletion programs.
5 17) A listing of current and former personnel who have or had access to
6 network resources, technology assets, back-up, and other systems operations.
7
8 18) Electronic records management policies and procedures.
9 15. Venetian sought relief from the scope of discovery requested by Plaintiff,
10 contending that it was overbroad and unwarranted in a slip and fall case arising from a temporary
11 transitory condition. Venetian further asserted that Plaintiff is not entitled to any incident reports
12 occurring after November 4, 2016 based on the facts plead by Plaintiff in the Complaint and
13 further as evidenced by Plaintiff's testimony, and the testimony of her experts and eyewitness at
14 the scene, all of whom opined that Plaintiff slipped and fell due to a foreign substance on the
15 marble floor. Therefore, Venetian moved for protection.
16
17 16. Venetian also moved to compel the production of all incident reports and
18 information related to incident reports obtained by Plaintiff from any source, including but not
19 limited to those produced to expert Thomas Jennings supporting his May 30, 2019 report, which
20 documents were not produced to Venetian by Plaintiff prior to the time of Mr. Jennings' deposition
21 taken July 2, 2019. Venetian further moved for an order compelling Mr. Jennings to appear again
22 for deposition at Plaintiff's cost.
23
24 17. Plaintiff argued in her motion to compel that she is entitled to the broad scope of
25 discovery requested because it is necessary to prove up her punitive damages claim allowed by the
26 District Court and therefore moved to compel Venetian to produce the information at issue.
27
28

1 18. The parties also filed counter motions for sanctions which the Discovery
2 Commissioner refused to hear pursuant to EDCR 2.20(f).

3 After reviewing the papers and pleadings on file, and consideration of arguments presented
4 by counsel for the parties, the following recommendations are made.

5
6 **III.**

7 **RECOMMENDATIONS**

8 IT IS RECOMMENDED that the pending motions and counter motions filed by Plaintiff
9 and Venetian (other than those not adjudicated pursuant to EDCR 2.20(f)), are GRANTED IN
10 PART and DENIED IN PART as set forth specifically herein below.

11 IT IS FURTHER RECOMMENDED that, regarding Plaintiff's Production Request Nos. 7,
12 24, 29, 35, and 36, Interrogatory Nos. 1, 2, and NRCP 30(b)(6) Topic 1, based on Plaintiff's
13 pending claim for punitive damages claim arising from the operative facts of a slip and fall on a
14 liquid substance, in accordance with Judge Delaney's July 31, 2019 order, Venetian be ordered to
15 produce to Plaintiff unredacted records related to other incidents involving guests slipping and
16 falling on the Venetian common area marble floor on the casino level of the Venetian property due
17 to the existence of a foreign substance from November 4, 2013 to the present (only as of the date
18 of production).

19
20 IT IS FURTHER RECOMMENDED that, as to Plaintiff's request for documents and
21 information from Venetian regarding actions to change the coefficient of friction of the marble
22 flooring, Venetian's motion for protection be GRANTED as this request is vague and overly broad
23 as written in the NRCP 30(b)(6) Topic 2 and Production Request No. 30.

24
25 IT IS FURTHER RECOMMENDED that, as to Plaintiff's request for information and
26 documents related to the testing of Venetian marble flooring, as set forth in to NRCP 30(b)(6)
27 Topic 4 and Production Request Nos. 23, 25, 26, Plaintiff's motion to compel be GRANTED to the
28 extent that any testing for coefficient of friction was accomplished in the Grand Lux area of the

1 Venetian property from November 4, 2011 to November 4, 2016, where such information was
2 disclosed by Venetian pursuant to NRCP 16.1 or which is not otherwise protected in accordance
3 with NRCP 26.

4 IT IS FURTHER RECOMMENDED that, as to Plaintiff's request for information related
5 to the removal of carpeting on the Venetian casino floor set forth in Production Request No. 37,
6 and NRCP 30(b)(6) Topic 5, Venetian's motion for protection be GRANTED to the extent that the
7 inquiry related the removal of carpeting be limited to the Grand Lux area of the Venetian property
8 from November 4, 2011 to November 4, 2016.

9 IT IS FURTHER RECOMMENDED that, as to Production Request Nos. 35 and 36,
10 together with NRCP 30(b)(6) Topics and 3, 6-18 regarding information related to computer data at
11 the Venetian, the motion for protection be GRANTED, as this request is vague and overly broad;
12 however, that Plaintiff be allowed to inquire of Venetian generally about the reporting of slip and
13 fall claims on the casino level marble floor from November 4, 2011 to the present, how the
14 information is collected and stored, and how it can be retrieved.

15 IT IS FURTHER RECOMMENDED that Venetian's motion to compel Plaintiff expert
16 Thomas Jennings to produce all documents and information of prior incidents he has reviewed (as
17 represented by Mr. Jennings in his May 30, 2019 report and in his July 2, 2019 deposition) be
18 GRANTED.

19 IT IS FURTHER RECOMMENDED that Venetian's motion to retake the deposition of Mr.
20 Jennings upon receipt of the prior incident information be GRANTED to the extent that Venetian
21 is allowed to redepose Mr. Jennings; however, it is DENIED as to Venetian's request that Plaintiff
22 pay the costs associated with the second Jennings deposition.

23 IT IS FURTHER RECOMMENDED that Venetian's motion to compel Plaintiff's
24 production of all Venetian incident reports in her possession beyond those which have been
25 produced by Venetian to Plaintiff in this litigation be GRANTED.

1 IT IS FURTHER RECOMMENDED that Venetian be granted relief from production of
2 unredacted documents until fourteen days after Notice of Entry of Order related to the District
3 Court's denial of Venetian's motion for reconsideration of the July 31, 2019 order.

4 IT IS FURTHER RECOMMENDED that Venetian be granted relief from production of
5 documents related to the issues herein until it becomes a final order of the District Court.

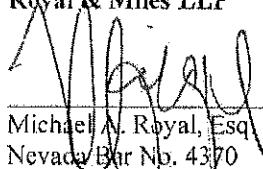
6 IT IS FURTHER RECOMMENDED that all remaining issues in the pending motions are
7 otherwise DENIED.

8
9 DATED this 27th day of November, 2019.

10 
11 DISCOVERY COMMISSIONER


12 Submitted by:

13
14 Royal & Miles LLP

15 
16 Michael A. Royal, Esq.
17 Nevada Bar No. 4370
18 1522 W. Warm Springs Road
19 Henderson, NV 89014
20 Attorneys for Defendants
21 VENETIAN CASINO RESORT, LLC and
22 LAS VEGAS SANDS, LLC

Reviewed by:

23 THE GALLIHER LAW FIRM

24 
25 Keith E. Galliher, Jr., Esq.
26 Nevada Bar No. 220
27 1850 E. Sahara Avenue, Suite 107
28 Las Vegas, NV 89014
Attorney for Plaintiff

Case Name: Sekera v. Venetian Casino Resort, LLC

Case No.: A-18-772761-C

NOTICE

Pursuant to NRCP 16.3(c)(2), you are hereby notified that within fourteen (14) days after being served with a report any party may file and serve written objections to the recommendations. Written authorities may be filed with objections, but are not mandatory. If written authorities are filed, any other party may file and serve responding authorities within seven (7) days after being served with objections.

Objection time will expire on Dec. 16 2019.

A copy of the foregoing Discovery Commissioner's Report was:

Mailed to Plaintiff/Defendant at the following address on the ____ day of _____ 2019:

Electronically filed and served counsel on Dec. 2, 2019, Pursuant to N.E.F.C.R. Rule 9.

Nathaniel Lee
Commissioner Designee

Steven D. Grierson

1 **OBJ**

2 Michael A. Royal, Esq.

3 Nevada Bar No. 4370

4 Gregory A. Miles, Esq.

5 Nevada Bar No. 4336

6 **ROYAL & MILES LLP**

7 1522 West Warm Springs Road

8 Henderson Nevada 89014

9 Tel: 702-471-6777

10 Fax: 702-531-6777

11 Email: mroyal@royalmilesllp.com

12 *Attorneys for Defendants*

13 *VENETIAN CASINO RESORT, LLC and*

14 *LAS VEGAS SANDS, LLC*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 JOYCE SEKERA, an Individual;

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

18 Plaintiff,

19 v.

20 VENETIAN CASINO RESORT, LLC, d/b/a
21 THE VENETIAN LAS VEGAS, a Nevada
22 Limited Liability Company; LAS VEGAS
23 SANDS, LLC d/b/a THE VENETIAN LAS
24 VEGAS, a Nevada Limited Liability Company;
25 YET UNKNOWN EMPLOYEE; DOES I
26 through X, inclusive,

27 Defendants.

Hearing Requested

28 **DEFENDANTS' LIMITED OBJECTION TO DISCOVERY COMMISSIONER'S REPORT
AND RECOMMENDATIONS DATED DECEMBER 2, 2019**

29 Defendants, VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC
30 (hereinafter collectively "*Venetian*"), by and through their counsel of record, Michael A. Royal, Esq.,
31 of ROYAL & MILES LLP, hereby files DEFENDANTS' OBJECTION TO DISCOVERY
32 COMMISSIONER'S REPORT AND RECOMMENDATION DATED DECEMBER 2, 2019.

ROYAL & MILES LLP
1522 W Warm Springs Road
Henderson NV 89014
Tel: (702) 471-6777 ♦ Fax: (702) 531-6777

1 This Objection is based upon the Points and Authorities below, the papers and pleadings filed
2 herein, and any oral argument allowed at the hearing on this matter.

3 DATED this 16 day of December, 2019.

4 ROYAL & MILES LLP

5
6 By 

7 Michael A. Royal, Esq.

8 Nevada Bar No. 4370

9 1522 W. Warm Springs Rd.

10 Henderson, NV 89014

11 Attorney for Defendants

12 VENETIAN CASINO RESORT, LLC and

13 LAS VEGAS SANDS, LLC

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 I.

16 **NATURE OF OBJECTION**

17 Defendants' limited objection relates to the scope of the Discovery Commissioner's ruling on
18 the production of incident reports. First, Defendants object to the Discovery Commissioner's ruling
19 that Defendants must produce reports of all incidents occurring on the casino floor level of the
20 Venetian property, when the subject incident occurred in the Grand Lux rotunda area which Plaintiff
21 claims to be especially dangerous because there is a food court and other establishments nearby.
22 Defendants contend that other areas of the property outside the Grand Lux rotunda area where the
23 subject incident occurred are not reasonably relevant to any issues in the case. This is especially
24 significant where Plaintiff's own expert has demonstrated that the subject flooring tests differently in
25 different areas of the property. Second, Defendants object to the Discovery Commissioner's ruling that
26 Defendants must not only produce five (5) years of prior incident reports, but also subsequent incident
27 reports from the date of the subject incident to the date of production (more than three years).
28 Moreover, all of these documents, per the Discovery Commissioner, are to be produced in unredacted

1 form without any NRCP 26(c) protection whatsoever. The sole basis for ordering the production of
2 subsequent incident reports as related by the Discovery Commissioner is the fact that Plaintiff has a
3 claim for punitive damages.

4 Defendants previously provided Plaintiff with sixty-eight (68) prior incident reports from
5 November 4, 2013 to November 4, 2016. Defendants do not object to providing an additional two (2)
6 years of prior incident reports (from November 4, 2011 to November 4, 2013) in the Grand Lux
7 rotunda area where the subject incident occurred; however, Defendants respectfully submit that the
8 proper scope of discovery related to other incident reports in this matter would be to limit further
9 production to the Grand Lux area for the five (5) years preceding the subject incident. Moreover, there
10 is no good, legal basis for the Court to order the production of subsequent incident reports in a
11 negligence case based on a slip/fall from a foreign substance. As to the Discovery Commissioner's
12 order that any further reports be provided in unredacted form, there is a pending stay as to that
13 particular issue granted by the Nevada Court of Appeals.
14
15

16 II.

17 DECLARATION OF MICHAEL A. ROYAL

18 STATE OF NEVADA)
19) ss.
20 COUNTY OF CLARK)

21 MICHAEL A. ROYAL, ESQ., being first duly sworn, under oath deposes and states:

22 1. I am an attorney duly licensed to practice law in the State of Nevada and I am counsel
23 for Venetian Casino Resort, LLC, and Las Vegas Sands, LLC, in connection with the above-captioned
24 matter. I have personal knowledge of the following facts and if called upon could competently testify
25 to such facts.

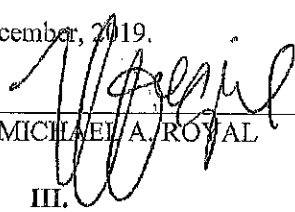
26 ///

27 ///

2. I declare that the exhibits identified herein below are true and correct copies of documents produced in or otherwise related to this matter, and move the Court to take judicial notice of the following cases attached hereto.

EXHIBIT	TITLE
A	Discovery Commissioner's Report and Recommendation, filed December 2, 2019
B	Transcript of Proceedings Before Discovery Commissioner (September 18, 2019)
C	Transcript of Joyce Sekera Deposition (taken March 14, 2019), selected pages
D	Thomas Jennings Report (dated May 30, 2019)
E	Transcript of Thomas Jennings Deposition (taken July 2, 2019), selected pages
F	Thomas Jennings Report (dated December 28, 2018)
G	Findings of Fact, Conclusions of Law and Order Granting Defendants' Motion for Partial Summary Judgment on Mode of Operation Theory of Liability (filed July 23, 2019)
H	First Amended Complaint (filed June 28, 2019)
I	<i>Boucher v. Venetian Casino Resort, LLC</i> , Case No. A-18-773651-C, Order Regarding Plaintiff's Limited Objection to the Discovery Commissioner's Report and Recommendation on Plaintiff's Motion to Compel Production of Documents (filed October 29, 2019)
J	Petitioners' Emergency Petition for Writ of Mandamus and/or Writ of Prohibition Under NRAP Rules 21(a)(6) and 27(e) (filed 09.27.19)
K	Petitioners' Reply Brief, Appellate Court No. 79689-COA (filed 10.28.19)

DATED this 16 day of December, 2019.


MICHAEL A. ROYAL

III.

PERTINENT FACTS AND EVIDENCE

Plaintiff has generally requested that Defendants produce information from 1999 to the present related to an assortment of materials. (See Exhibit A, *Discovery Commissioner's Report and Recommendation* (filed December 2, 2019) at 3:17-27; 4-6.) Defendants filed a motion for protective

1 order and Plaintiff filed a motion to compel. (*See id.* at 7:9-26.) The Discovery Commissioner ruled
2 as follows in pertinent part:

3 1. Defendants be ordered to produce “unredacted records
4 related to other incidents involving guests slipping and falling on the
5 **Venetian common area marble floor on the casino level of the**
6 **Venetian property** due to the existence of a foreign substance from
November 4, 2013 to the present (only as of the date of production).”
(*See id.* at 8:16-19. Emphasis added.)

7 2. Defendants produce records related to any coefficient of
8 friction testing accomplished in the **Grand Lux area** of the Venetian
9 property from November 4, 2011 to November 4, 2016, where such
10 information was disclosed by Venetian pursuant to NRCP 16.1 or which
is not otherwise protected in accordance with nRCP 26. (*See id.* at
8:25-28; 9:1-3. Emphasis added.)

11 3. Defendants produce records related to the removal of
12 carpeting “limited to the **Grand Lux area of the Venetian property**”
13 from November 4, 2011 to November 4, 2016. (*See id.* at 9:4-9.
Emphasis added.)

14 The subject incident occurred in the Grand Lux rotunda area of the Venetian. (*See* Exhibit B,
15 *Transcript of Proceedings Before Discovery Commissioner* (September 18, 2019) at 8:1-3.) The
16 Discovery Commissioner limited Plaintiff’s request for any coefficient of friction testing the Grand
17 Lux area for the five (5) years preceding the subject incident. (*See id.* at 20:19-25; 21:1; *see also*
18 *id.* 21:2-9, “Anything that was done in that [the Grand Lux rotunda] area”.) The Commissioner further
19 limited Plaintiff’s inquiry about changes to the Venetian flooring (*i.e.* carpet to marble) to the Grand
20 Lux rotunda area. (*See id.* at 21:2-25; 22:1-2.) The Commissioner initially ruled that the production
21 of other incident reports would likewise be limited to the Grand Lux rotunda area. (*See id.* at 22:24-25;
22 23:1-13.) Then, after further discussion, the Commissioner expanded the scope of other incident
23 reports to the entire casino level of the Venetian property “five years prior to the present, and pursuant
24 to Judge Delaney’s ruling, unredacted.” (*See id.* at 27:1-8. Emphasis added.)

25 The Commissioner acknowledged that Plaintiff’s claims arise from a temporary transient
26 condition. (*See id.* at 30:17-25; 31:1-8.) However, the Commissioner ruled that Defendants must
27
28

1 produce subsequent incident reports based on the fact that Plaintiff has an existing punitive damages
2 claim. (*See id.* at 27:14-25; 28:1; 32:19-25; 41:3-19.) The Commissioner did not otherwise set forth
3 any legal basis for ruling that Defendants must now provide Plaintiff with unredacted subsequent
4 incident reports in a case involving a slip and fall from an alleged foreign substance, simply because
5 Plaintiff has a claim for punitive damages. There was no analysis of NRCP 26(b)(1) or review of
6 Nevada case law on the subject. Indeed, Plaintiff did not present any Nevada law and no legal known
7 legal precedent was relied upon by the Court on the issue of producing subsequent incident reports.
8

9 As discussed further herein below, Defendants contend that the following rulings by the
10 Discovery Commissioner are in error:

11 1. That Defendants be ordered to provide copies of other incident reports
12 in any areas outside the Grand Lux rotunda area of the property where Plaintiff's fall
13 occurred; and
14

15 2, That Defendants be ordered to provide subsequent incident reports from
16 November 4, 2015 to the present in a case based upon a slip and fall from a foreign
17 substance based solely on an existing claim for punitive damages.
18

19 III.

20 DISCUSSION

21 A. Standard of Review

22 Rule 26(b)(1), Nevada Rules of Civil Procedure, reads as follows:

23 *Unless otherwise limited by order of the court in accordance with these rules, the scope*
24 *of discovery is as follows: Parties may obtain discovery regarding any nonprivileged*
25 *matter that is relevant to any party's claims or defenses and proportional to the needs*
26 *of the case, considering the importance of the issues at stake in the action, the*
27 *amount in controversy, the parties' relative access to relevant information, the*
28 *parties' resources, the importance of the discovery in resolving the issues, and*
whether the burden or expense of the proposed discovery outweighs its likely benefit.
Information within this scope of discovery need not be admissible in evidence to be
discoverable. (Emphasis added.)

1 Plaintiff must therefore demonstrate that the desired discovery is **relevant** to her claims here
2 and that it is **proportional** to the needs of the case with five factors: 1) importance of issues at stake;
3 2) amount in controversy; 3) parties' relative access to relevant information; 4) parties' resources; the
4 importance of the discovery in resolving contested issues; and 5) the burden of proposed discovery vs.
5 the likely benefit.

6
7 1. **Relevancy**

8 Under the first prong of this test, for information to be discoverable, it must be "relevant to any
9 party's claim or defense." (*Id.*) The phrase "reasonably calculated to lead to the discovery of
10 admissible evidence" has been omitted from the previous rule. The word "relevant" has been provided
11 as one of the driving factors in weighing discovery issues.

12 Recall that Plaintiff was not a normal guest/patron of the Venetian property at the time of the
13 incident, but was instead a pseudo employee, someone assigned a Venetian employee parking pass and
14 ID badge to gain special access to the property. She worked on property for nearly a year prior to the
15 incident and, as discussed further herein, Plaintiff walked the Grand Lux rotunda area many hundreds
16 of times without incident until November 4, 2016 - the only difference being the alleged existence of
17 a foreign substance reportedly causing her to fall.

18 What is "relevant" about incidents occurring anywhere other than the Grand Lux rotunda area
19 where Plaintiff fell? It is an area of which Plaintiff was extremely familiar in the course of her
20 employment. There is no evidence that Plaintiff routinely ventured into any other areas of the Venetian
21 property - to the contrary, it was her daily routine to traverse the Grand Lux rotunda area. What may
22 have occurred in areas outside the Grand Lux rotunda area or on occasions following the subject
23 incident is simply not "relevant".

24 As also discussed further herein below, Plaintiff has claimed to have reports of 196 prior
25 incidents occurring in the Grand Lux rotunda area; therefore, Defendants respectfully submit that
26
27
28

1 Plaintiff is in possession of more than sufficient "relevant" information she needs to make her case for
2 constructive notice and/or dangerous condition, with that information reportedly confined to the Grand
3 Lux rotunda area.

4 2. **Proportionality**

5 Even if the Court deems the information "relevant", that alone is insufficient. Under the second
6 part of the NRCP 26(b)(1) test, to be discoverable, information must be "proportional to the needs of
7 the case." The rule provides six factors to consider: 1) "the importance of the issues at stake in action";
8 2) "the amount in controversy"; 3) "the parties' relative access to relevant information"; 4) "the parties'
9 resources; 5) the importance of the discovery in resolving the issues" and 6) "whether the burden or
10 expense of the proposed discovery outweighs its likely benefit." Defendants have previously produced
11 a total of sixty-eight (68) prior incident reports and Plaintiff claims to have a total of 196.¹ Requiring
12 Defendants to produce additional prior incident reports beyond the Grand Lux rotunda area and beyond
13 the date of the subject incident serves no good purpose other than to burden and harass Defendants.
14

15 Defendants note that NRCP 26(b)(2)(C) further limits discovery. It requires the Court to limit
16 the frequency or extent of discovery if the Court determines that the discovery sought is (1)
17 "unreasonably cumulative or duplicative, or can be obtained from some other source that is more
18 convenient, less burdensome, or less expensive"; (2) "the party seeking discovery has had ample
19 opportunity to obtain the information by discovery in the action;" or (3) "the proposed discovery is
20 outside the scope permitted by Rule 26(b)(1)." Courts, thus, have a "duty to pare down overbroad
21 discovery requests under Rule 26(b)(2)." (*See Rowlin v. Alabama Dep't. of Pub. Safety*, 200 F.R.D.
22 459, 461 (M.D. Ala. 2001) (referencing application of FRCP 26(b)(2)).) Rule 26 provides the Court
23
24
25
26

27
28 ¹Pursuant to the DCRR, Plaintiff is to produce all of the other incident information she has collected to Defendants. (*See Exhibit A at 9:26-28.*)

1 with broad discretion to "tailor discovery narrowly" (*See Crawford-El v. Britton*, 523 U.S. 574, 599,
2 118 S. Ct. 1584, 140 L. Ed. 2d 759 (1998).)

3 B. **Defendants Object to Producing Records of Other Incidents in Areas Outside the Grand**
4 **Lux Rotunda Where the Subject Incident Occurred**

5 Defendants do not object to the Commissioner's ruling to produce prior incident reports from
6 November 4, 2011 to November 4, 2016; however, Defendants take issue with the ruling that
7 production is not limited to the Grand Lux rotunda area, but expands to all areas of the Venetian
8 property on the casino level.

9
10 As Defendants previously noted, the Commissioner expressly limited Plaintiff's request for any
11 coefficient of friction testing to the Grand Lux rotunda area. The Commissioner further limited
12 Plaintiff's request for floor remodeling (*i.e.* changing carpeting to stone flooring) to the Grand Lux
13 rotunda area. The ruling should likewise be limited to the Grand Lux area when it comes to the
14 production of prior incident reports.

15 Plaintiff testified in deposition that she walked across the Grand Lux rotunda area daily to use
16 the restroom where she was headed at the time of the subject area. (*See Exhibit C, Transcript of Joyce*
17 *Sekera Deposition* (taken March 14, 2019) at 84:21-25; 85:1-9, 15-25; 86:1-25; 87:1-5; 88:7-14; 109:5-
18 13.) Plaintiff testified that she was working five (5) to seven (7) days per week at her kiosk job from
19 9:00 am to 7:00 pm, sometimes as much as eighty (80) hours. (*See id.* at 57:5-20; 59:17-24; 75:5-25;
20 76:1-17.) Plaintiff would therefore have worked more than 200 days on property between December
21 28, 2015 and November 4, 2016, walking through the Grand Lux rotunda area several hundred times
22 prior to the subject incident. There is no evidence that Plaintiff routinely walked through other areas
23 of the Venetian property.

24
25
26 Plaintiff expert Thomas Jennings related in a report dated May 30, 2019 that he was aware of
27 196 slip and fall events between January 1, 2012 to August 5, 2016 occurring on Venetian property,
28 "the majority of those occurring on the marble flooring within the same approximate area as Plaintiff's

1 slip and fall.” (See Exhibit D, *Report of Thomas Jennings*, dated May 30, 2019) at 3.) When asked
2 about this in his deposition of July 2, 2019, Mr. Jennings testified of his understanding that the alleged
3 196 prior incidents occurred in the “Grand Lux area.” (See Exhibit E, *Transcript of Thomas Jennings*
4 *Deposition* (taken July 2, 2019) at 84:7-25; 85:1-3; 86:12-19; 87:6-25; 88:1-3.)

5 Accordingly, Plaintiff provided her expert, Thomas Jennings, with a report purporting to
6 document 196 prior incidents in the Grand Lux rotunda area, where Plaintiff’s fall occurred, and Mr.
7 Jennings presented opinions based on that information. Mr. Jennings also acknowledged that
8 coefficient of friction testing on marble flooring throughout the property may vary depending on a
9 variety of factors, explaining why his findings in the matter of *Smith v. Venetian* were so different.
10 (See *id.* at 70:10-19; 71:11-25; 72:1-22; 73:1-9.)² Mr. Jennings further commented on the Grand Lux
11 rotunda area as being unique in that there are food and beverage establishments available to patrons.
12 (*Id.* at 63:22-25; 64:1-10; see also Exhibit F, *Report of Thomas Jennings*, dated December 28, 2018
13 at 3, “Within the general area of plaintiff’s slip and fall incident are food courts, cafes, coffee bars and
14 other operations that dispense beverages.”)

15 The Court will recall that Plaintiff has asserted that the area of her fall is unique within the
16 Venetian property due to the fact that it is located near a variety of food and beverage establishments,
17 thereby triggering the self-serve mode of operation doctrine. (See Exhibit G, *Findings of Fact,*
18 *Conclusions of Law and Order Granting Defendants’ Motion for Partial Summary Judgment on Mode*
19 *of Operation Theory of Liability* (July 23, 2019).) Those same dynamics are not found in other areas
20 of the property.

21 Plaintiff claims to have evidence of more than 100 prior incidents in the Grand Lux rotunda
22 area where she fell. It is an area of which Plaintiff, by virtue of her employment, is very familiar,
23

24
25
26
27
28 ²Mr. Jennings tested the marble flooring in the *Smith* litigation as .90 COF dry; .40 COF wet.
He tested the flooring in the *Sekera* litigation as .70 COF dry and .33 COF wet.

1 having walked through it many hundreds of times prior to the incident. There is no reasonable basis
2 for Plaintiff to have incident reports for any areas outside the Grand Lux area. The Discovery
3 Commissioner limited Plaintiff's other requests to the Grand Lux rotunda area, but then expanded it
4 throughout the property as to other incidents, which is overly broad and unnecessary. This is especially
5 true in light of Eldorado Club, Inc. v. Graff, 78 Nev. 507, 511, 377 P.2d 174, 176 (1962) ("it is error
6 to receive 'notice evidence' of the type here [prior incident reports] for the purpose of establishing
7 the defendant's duty"). Accordingly, Defendants respectfully submit that the Discovery
8 Commissioner's Report and Recommendation that Venetian be ordered to produce other incident
9 reports for events occurring beyond the Grand Lux rotunda area should be reversed, with the Court
10 limiting disclosure to the area where Plaintiff fell, which is surrounded by the food and beverage areas
11 Plaintiff has so often highlighted.

12
13
14 **C. Defendants Object to Producing Records of Subsequent Incident Reports**

15 Defendants further respectfully disagree with the Commissioner's recommendation that they
16 be ordered by the Court to produce unredacted subsequent incident reports for the entire casino level
17 of the Venetian property, effectively order that Defendants produce more than eight (8) years of
18 records. Defendants' objection is based on the fact that this is a negligence case arising from a slip and
19 fall where Plaintiff claims to have encountered a temporary transitory condition - which Plaintiff
20 claimed to have transferred to her pants and shirt after landing on the floor. (See Exhibit C at 90:13-
21 23; 93:10-24. See also Exhibit H, *First Amended Complaint* at 3:4-22.)

22
23 The Discovery Commissioner agreed that she would not order the production of subsequent
24 incident reports in a negligence case based on a temporary transitory condition such as liquid on a
25 walkway. (See Exhibit A, at 41:3-19; see also Exhibit I, *Boucher v. Venetian Casino Resort, LLC*,
26 Case No. A-18-773651-C, *Order Regarding Plaintiff's Limited Objection to the Discovery*
27 *Commissioner's Report and Recommendation on Plaintiff's Motion to Compel Production of*
28

1 Documents (filed October 29, 2019) at 2:9-10 "Subsequent incident reports do not need to be provided,
2 because liquid on a walkway is a transient condition.")

3 Plaintiff's argument on this issue before the Discovery Commissioner below was that Plaintiff
4 fell due to a permanent condition, referring to cases such as *Ginnis v. Mapes Hotel Corp.*, 470 P.2d
5 135 (Nev. 1970) (strict product liability action based on a defective door). However, by Plaintiff's own
6 admission, she walked successfully through the Grand Lux rotunda area hundreds of times without
7 incident until allegedly encountering a liquid substance on November 4, 2016. Plaintiff's own expert,
8 Mr. Jennings, testified that the floor in the Grand Lux rotunda area where Plaintiff fell is safe when
9 dry. (See Exhibit E at 94:25; 95:1-3.) Plaintiff knew that from her own personal experience. The
10 Discovery Commissioner did not agree with Plaintiff's argument that the subject flooring where
11 Plaintiff fell constituted a permanent condition and, accordingly, not order the production of
12 subsequent incidents on that basis. However, Defendants' insist that the Commissioner erred in
13 ordering the production of subsequent incidents based on the fact that Plaintiff has an existing punitive
14 damages claim.

17 As previously noted, *Eldorado Club, Inc.*, stands for the proposition that prior incident reports
18 in a case like this one are not admissible to establish a defendant's duty. In *Reingold v. Wet 'n Wild*
19 *Nev., Inc.*, 113 Nev. 967, 969-70, 944 P.2d 800, 802 (Nev. 1997), the court held that while evidence
20 of subsequent incidents may be admissible to show a dangerous defective condition (citing *Ginnis*,
21 *supra*), "evidence of subsequent accidents may not be admitted to demonstrate a defendant's
22 knowledge of the condition prior to the instant accident." However, that is exactly why Plaintiff is
23 seeking this subsequent incident information.

25 Plaintiff cited in her briefing with the Discovery Commissioner cases outside the jurisdiction
26 of Nevada allowing for evidence of subsequent incidents; however, these all related to strict products
27 liability (*Hilliard v. A. H. Robins Co.*, 148 Cal. App. 3d 374, 196 Cal. Rptr. 117 (Ct. App. 1983); *GM*
28

1 | *Corp. v. Mosely*, 213 Ga. App. 875 (Ga. Ct. App. 1994); *Coale v. Dow Chem. Co.*, 701 P.2d 885 (Colo.
2 | App. 1985); *Palmer v. A.H. Robins Co.*, 684 P.2d 187 (Colo. 1984); *Hoppe v. G.D. Searle & Co.*, 779
3 | F. Supp. 1413 (SD NY 1991)); fraud (*Schaffer v. Edward D. Jones & Co.*, 552 N.W.2d 801 (S.D.
4 | 1996)), invasion of privacy (*Roth v. Farner-Bocken Co.*, 667 N.W.2d 651 (S.D. 2003)), workers
5 | compensation (*Boshears v. Saint-Gobain Calmar, Inc.*, 272 S.W.3d 215 (Mo. App. 2008)); post
6 | incident writings of an event containing admissions of the event (*Bergeson v. Dilworth*, 959 F.2d 245
7 | (10th Cir. 1992)); concealment of evidence regarding an incident (*Wolfe v. McNeil-PPC, Inc.*, 773 F.
8 | Supp. 2d 561 (ED Pa. 2011). Plaintiff also referred to a case where admission of prior incident reports
9 | was properly excluded under FRE 403 (*Hill v. United States Truck, Inc.*, 2007 U.S. Dist. LEXIS 39197,
10 | 2007 WL 1574545). Yet, there are numerous cases in California and Nevada which hold otherwise.³

11 |
12 | Missing from Plaintiff's legal discussion before the Discovery Commissioner below is any
13 | Nevada law supporting her contention that a punitive damages claim allowed to go forward in a
14 | negligence slip and fall case arising from an alleged foreign substance on the floor entitles her to
15 | evidence of subsequent incident reports. Using NRCP 26(b)(1) as a measuring stick, what possible
16 | relevance is there of prior incident reports in a negligence case? Further, how does production of this
17 | information meet the proportionality requirement of NRCP 26(b)(1)? Plaintiff did not say, and the
18 |
19 |

20 |
21 | ³In *Rackliffe v. Rocha*, U.S. Dist. LEXIS 57394, *5 (E.D. CA April 24, 2012), the United States
22 | District Court for the Eastern District of California denied the plaintiff's motion to compel the
23 | production of subsequent incident reports, the plaintiff failing "to demonstrate how evidence regarding
24 | incidents that happened after the alleged incident against Plaintiff would demonstrate any motive or
25 | intent by Defendant." Also, there are numerous cases in the United States District Court, District of
26 | Nevada, where discovery regarding other incident reports has been denied in slip and fall accidents
27 | caused by a foreign substance or other temporary condition. (*See, e.g., Caballero v. Bodega Latina*
28 | *Corp.*, 2017 U.S. Dist. LEXIS 116869, 2017 WL 3174931 (D.Nev. July 25, 2017) (plaintiff slipped
on a wet substance in produce department of supermarket); *Smith v. Wal-Mart Stores, Inc.*, 2014 U.S.
Dist. LEXIS 83005, 2014 WL 2770691 (D.Nev. June 17, 2014) (plaintiff slipped on a piece of wet
produce near the checkout registers); *Winfield v. Wal-Mart Stores*, 2017 U.S. Dist. LEXIS 127639,
2017 WL 3476243, *4 (D. Nev. Aug. 10, 2017) (plaintiff was not permitted to introduce evidence of
prior accidents allegedly caused by wet substances on the floor; the court earlier having denied
discovery regarding other prior incidents); and *Smith v. Wal-Mart Stores, Inc.*, Case. No.
2:11-cv-1520-MMD-RJJ, Order (ECF No. 39) (plaintiff slipped on a liquid substance on floor).

1 Discovery Commissioner did not ask. She simply ordered the production of unredacted subsequent
2 incident reports throughout the casino level of the Venetian property based solely on the fact that there
3 is an existing punitive damages claim.

4 Plaintiff is creating a template for all future litigants in this litigation in slip and fall claims -
5 file for leave to add a claim of punitive damages, then if/when granted, demand production of
6 unredacted subsequent incident reports to be shared with the entire legal community (both local and
7 abroad).

8
9 Plaintiff, according to her expert, Mr. Jennings, purportedly has evidence of 196 prior incident
10 reports in the Grand Lux rotunda. While Defendants dispute that wild assertion, Plaintiff presently has
11 sufficient evidence to support her claim for punitive damages. If, however, the Court is inclined to
12 uphold the Discovery Commissioner's ruling as to the production of subsequent incidents, Defendants
13 would then move to limit the scope to the Grand Lux rotunda area where the subject incident occurred.
14 Again, Plaintiff walked through this same area safely hundreds of times prior to the subject incident.
15 The only difference on November 4, 2016 was that she allegedly encountered a foreign substance.
16 There is no evidence that Plaintiff typically went to other areas of the Venetian property on a daily
17 basis. Further, Mr. Jennings himself testified that the coefficient of friction in other areas of the
18 property will vary depending on a variety of factors.

19
20 As there is no Nevada law supporting the Discovery Commissioner's order that Defendants
21 produce subsequent incident reports under the circumstances, Defendants respectfully object to that
22 portion of the Report and Recommendation, and hereby move this Honorable Court to strike that
23 portion of the December 2, 2019 DCRR.

24
25 **D. Defendants Renew Objection on Privacy Grounds**

26 As the Court is aware, Defendants have petitioned the Appellate Court to review the issue of
27 privacy related to the disclosure of private guest information found in prior incident reports, which is
28

1 presently pending. Defendants hereby reference the Court to the pleadings on file therein, and attach
2 a copy of their initial petition and reply brief to address this issue. (See Exhibit J, *Petitioners'*
3 *Emergency Petition for Writ of Mandamus and/or Writ of Prohibition Under NRAP Rules 21(a)(6) and*
4 *27(e)* (filed 09.27.19); Exhibit K, *Petitioners' Reply Brief*, Appellate Court No. 79689-COA (filed
5 10.28.19). The present recommendation by the Discovery Commissioner would provide Plaintiff with
6 unredacted subsequent incident reports to ostensibly search for witnesses which, because they could
7 be freely shared beyond this litigation, could be used by others to search for clients. While Defendants
8 contend there is no legal, reasonable or rational basis to produce subsequent incident reports based on
9 Plaintiff's punitive damages claim, if the Court adopts that portion of the DCRR, at a minimum, they
10 should be produced in redacted form.
11

12 V.

13 **CONCLUSION**

14
15 Based on the foregoing, Defendants respectfully submit that the Discovery Commissioner was
16 in error by not limiting the scope of prior incidents from November 4, 2011 to November 16, 2011 to
17 the Grand Lux rotunda area where the subject incident occurred (as she did with respect to other
18 discovery requests regarding coefficient of friction testing and floor remodeling), and further as to the
19 production of subsequent incident reports in this negligence action. Defendants therefore move this
20 Honorable Court to revise the pending discovery order accordingly.
21

22 DATED this 16 day of December, 2019.

23 **ROYAL & MILES LLP**

24 By _____

25 Michael A. Royal, Esq.

26 Nevada Bar No. 4370

Gregory A. Miles, Esq.

Nevada Bar No. 4336

1522 W. Warm Springs Rd.

Henderson, NV 89014

Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16 day of December, 2019, and pursuant to NRCP 5(b), I caused a true and correct copy of the foregoing **DEFENDANTS' LIMITED OBJECTION TO DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS DATED DECEMBER 2, 2019** to be served as follows:

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

_____ to be served via facsimile; and/or

☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or

_____ to be hand delivered;

to the attorneys and/or parties listed below at the address and/or facsimile number indicated below:

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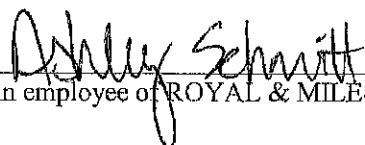

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EXHIBIT “A”

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LAS VEGAS SANDS, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

JOYCE SEKERA, an Individual;

CASE NO.: A-18-772761-C

DEPT. NO.: XXV

Plaintiff,

v.

VENETIAN CASINO RESORT, LLC, d/b/a
THE VENETIAN LAS VEGAS, a Nevada
Limited Liability Company; LAS VEGAS
SANDS, LLC d/b/a THE VENETIAN LAS
VEGAS, a Nevada Limited Liability Company;
YET UNKNOWN EMPLOYEE; DOES I
through X, inclusive,

Defendants.

**DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATION**

Date of Hearing: September 18, 2019

Time of Hearing: 9:00 a.m.

Appearance: Keith E. Galliher, Jr., Esq., for Plaintiff, JOYCE SEKERA

Michael A. Royal, Esq., Royal & Miles LLP, for Defendants
VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC
(collectively "Venetian")

I.

PROCEDURAL HISTORY

1. Venetian filed DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S SUBPOENA DUCES TECUM IMPROPERLY SERVED PURSUANT TO NRCP 45(A)(4)(A) AND MOTION FOR PROTECTIVE ORDER UNDER NRCP 26(c) RELATED TO PLAINTIFF'S DEMAND DEPOSITION AND DOCUMENTS FROM DEFENDANTS UNDER NRCP NRCP 30(B)(6) AND NRCP 34 AND MOTION TO COMPEL PLAINTIFF TO PRODUCE ALL EVIDENCE OF PRIOR INCIDENTS AT VENETIAN NOT RECEIVED FROM DEFENDANTS IN THIS LITIGATION on August 5, 2019.

2. Plaintiff filed PLAINTIFF'S MOTION TO COMPEL TESTIMONY AND DOCUMENTS on August 5, 2019.

3. Venetian and Plaintiff filed oppositions which included countermotions for sanctions; the Discovery Commissioner refused to consider the countermotions pursuant to EDCR 2.20(f) as being insufficiently related to the subject matter of the pending motions.

II.

FINDINGS

1. Plaintiff claims to have fallen on Venetian premises on November 4, 2016 due to a temporary transitory condition which caused her to slip.

2. On January 4, 2019, Venetian produced to Plaintiff copies of sixty-four (64) prior incident reports from November 4, 2013 to November 4, 2016, redacted by Venetian to protect the identification of non-employees, responsive to Plaintiff's Production Request No. 7 requesting other incident reports on the Venetian property from November 4, 2011 to the present. (Venetian objected to producing incident reports occurring subsequent to the November 4, 2016 incident.)

1 3. On February 1, 2019, Venetian filed a motion for protective order as to the redacted
2 prior incident reports produced on January 4, 2019, which was granted by the Discovery
3 Commissioner in a Report and Recommendation filed April 4, 2019, with reports to remain
4 redacted and to be protected under NRCP 26(c).

5 4. The District Court entered an order reversing the Discovery Commissioner's Report
6 and Recommendation of April 4, 2019 in an order filed July 31, 2019, directing Venetian to
7 provide Plaintiff with unredacted copies of all prior incident reports, with no protections requested
8 by Venetian under NRCP 26(c). Venetian filed a motion for reconsideration, heard on September
9 17, 2019, which Judge Delaney denied.

11 5. The District Court's ruling related to Venetian's request for protection under NRCP
12 26(c) is the law of the case; therefore, no relief requested related to the protection of Venetian prior
13 incident reports can be further considered by the Discovery Commissioner in this matter.

14 6. Plaintiff was granted leave by the District Court to file a First Amended Complaint
15 to add a claim of punitive damages, which was filed on June 28, 2019.

16 7. Venetian filed a motion for protective order and Plaintiff filed a motion to compel
17 on August 5, 2019 regarding Plaintiff's request for the production of certain information and
18 documents from May 1999 to the present.

19 8. On May 31, 2019, Plaintiff served her sixth request for production with the
20 following requests:

21 REQUEST NO. 23: True and correct copies of any and all reports, documents,
22 memoranda, or other information describing or referring to slip testing performed
23 on the marble floors at the Venetian Hotel and Casino by any Plaintiff, or the
24 Venetian, from January 1, 2000 to date.

25 REQUEST NO. 24: Any and all communications, including correspondence,
26 emails, internal communication, or other memoranda which refers to the safety of
27 marble floors located within the Venetian Hotel and Casino from January 1, 2000 to
28 date.

1 REQUEST NO. 25: Any and all transcripts, minutes, notes, emails, or
2 correspondence which has as a subject matter, any meetings held by and between
3 Venetian personnel, including management personnel, where the subject of the
4 safety of the marble floors at the Venetian was discussed and evaluated from
5 January 1, 2000 to date.

6 REQUEST NO. 26: Any and all correspondence, emails, memoranda, internal
7 office correspondence, or other documents directed to the Venetian from a
8 Contractor, Subcontractor, Flooring Expert, or similar entity which discusses or
9 refers to the safety of marble floors located within the Venetian Hotel and Casino
10 from January 1, 2000 to date.

11 REQUEST NO. 29: Any and all complaints submitted by guests or other individuals
12 regarding safety of the marble floors.

13 REQUEST NO. 30: Any and all quotes and estimates and correspondence regarding
14 quotes and estimates relating to the modification of the marble floors to increase
15 their slip resistance.

16 9. On June 20, 2019, Plaintiff served Plaintiff's First Set of Interrogatories to
17 Defendants with the following request:

18 INTERROGATORY NO. 1: Please identify by Plaintiff's name, case number and
19 date of filing all complaints filed against the Venetian Casino Resort, LLC d/b/a
20 The Venetian Las Vegas and/or Las Vegas Sands, LLC d/b/a The Venetian Las
21 Vegas in the Clark County District Court for any and all slip and fall and/or trip and
22 fall incidents occurring on marble flooring anywhere within The Venetian Casino
23 Resort, LCC d/b/a The Venetian Las Vegas and/or Las Vegas Sands, LLC d/b/a The
24 Venetian Las Vegas from January 1, 2000 to the present.

25 10. On July 17, 2019, Plaintiff served Plaintiff's Ninth Request for Production of
26 Documents and Materials to Venetian. Request No. 35 sought the following production from
27 Venetian:

28 REQUEST NO. 35: True and correct copies of any and all claim forms, legal
actions, civil complaints, statements, security reports, computer generated lists,
investigative documents or other memoranda which have, as its subject matter, slip
and fall cases occurring on marble floors within the subject VENETIAN CASINO
RESORT from the May 3, 1999 to the present.

11. On July 19, 2019, Plaintiff served Plaintiff's Tenth Request for Production of
Documents and Materials to Defendant with the following request:

1 REQUEST NO. 36: True and correct copies of any and all entries and information
2 contained in the Venetian's Alliance System regarding injury falls on marble
3 flooring within the Venetian Las Vegas from January 1, 2000 to present.

4 12. On July 22, 2019, Plaintiff served Plaintiff's Second Set of Interrogatories to
5 Defendants which reads as follows:

6 INTERROGATORY NO. 2: Please identify names, addresses and phone numbers of any
7 and all individuals designated as safety engineers who perform(ed) accident checks at the
8 Venetian from the year 2000 to the present.

9 13. On July 29, 2019, Plaintiff served Plaintiff's Eleventh Request for Production of
10 Documents and Materials to Defendant with the following request.

11 REQUEST NO. 37: Any and all quotes, estimates, correspondence, emails,
12 memorandums, minutes, file notes and/or other documentation related to Venetian's
13 decision to remove and replace the carpet with marble flooring and Venetian's
14 removal and replacement of carpet with marble flooring as referenced by Christina
15 Tonemah in her deposition. (25: 9-26; 26: 1-6)

16 14. On July 30, 2019, Plaintiff served notice of an NRCP 30(b)(6) deposition under
17 NRCP 45 issuance of a subpoena with eighteen (18) topics, as follows.

18 1) Total number of injury falls on marble floors located within The
19 Venetian Las Vegas from November 4, 2013 to present.

20 2) Actions taken by The Venetian Las Vegas to change the coefficient
21 of friction with respect to the marble floors within The Venetian Las Vegas from
22 November 4, 2013 to present.

23 3) Measures taken to locate and produce security/incident injury fall
24 reports by The Venetian Las Vegas as requested by Plaintiff in this Litigation.

25 4) Slip testing performed by The Venetian Las Vegas or it's
26 representatives with respect to the marble floors within The Venetian Las Vegas
27 from November 4, 2013 to present.
28

1 5) Any invoices or work orders with respect to the removal of carpet in
2 pedestrian walkways and replaced with marble and/or granite flooring from
3 November 4, 2006 to present.

4 6) The identity of all employees who were responsible for managing
5 and maintaining Venetian's technology infrastructure.

6 7) The name, address and phone number of the specific
7 employee(s) tasked with retrieving incident reports from Venetian's system for this
8 litigation, the litigation in Smith v. Venetian (A-17-753362-C), Cohen v. Venetian
9 (A-17-761036-C) and Boucher v. Venetian (A-18-773651-C) and the name address
10 and phone number of the individual who assigned them this task.

11 8) The identity of all non-employee consultants, consulting firms,
12 contractors or similar entities that were responsible for managing and maintaining
13 Venetian's technology infrastructure.

14 9) Software used, including dates they were in use and any software
15 modifications.

16 10) Identity of, description of and policies and procedures for the use of
17 all internal systems for data management, complaint and report making, note
18 keeping, minute/transcript taking and employee e-mail, messaging and other
19 communication systems and description of all employee accounts for said systems.

20 11) Description of all cell phones, PDAs, digital convergence devices or
21 other portable electronic devices and who they were/are issued to.

22 12) Physical location of electronic information and hard files and
23 description of what information is kept in electronic form and what is kept in hard
24 files.

- 1 13) Description of policies and procedures for performing back-ups.
- 2 14) Inventory of back-ups and when they were created.
- 3 15) User permissions for accessing, modifying, and deleting data.
- 4 16) Utilization of data deletion programs.
- 5 17) A listing of current and former personnel who have or had access to
- 6 network resources, technology assets, back-up, and other systems operations.
- 7
- 8 18) Electronic records management policies and procedures.

9 15. Venetian sought relief from the scope of discovery requested by Plaintiff,
10 contending that it was overbroad and unwarranted in a slip and fall case arising from a temporary
11 transitory condition. Venetian further asserted that Plaintiff is not entitled to any incident reports
12 occurring after November 4, 2016 based on the facts plead by Plaintiff in the Complaint and
13 further as evidenced by Plaintiff's testimony, and the testimony of her experts and eyewitness at
14 the scene, all of whom opined that Plaintiff slipped and fell due to a foreign substance on the
15 marble floor. Therefore, Venetian moved for protection.
16

17 16. Venetian also moved to compel the production of all incident reports and
18 information related to incident reports obtained by Plaintiff from any source, including but not
19 limited to those produced to expert Thomas Jennings supporting his May 30, 2019 report, which
20 documents were not produced to Venetian by Plaintiff prior to the time of Mr. Jennings' deposition
21 taken July 2, 2019. Venetian further moved for an order compelling Mr. Jennings to appear again
22 for deposition at Plaintiff's cost.
23

24 17. Plaintiff argued in her motion to compel that she is entitled to the broad scope of
25 discovery requested because it is necessary to prove up her punitive damages claim allowed by the
26 District Court and therefore moved to compel Venetian to produce the information at issue.
27
28

1 18. The parties also filed counter motions for sanctions which the Discovery
2 Commissioner refused to hear pursuant to EDCR 2.20(f).

3 After reviewing the papers and pleadings on file, and consideration of arguments presented
4 by counsel for the parties, the following recommendations are made.

5
6 **III.**

7 **RECOMMENDATIONS**

8 IT IS RECOMMENDED that the pending motions and counter motions filed by Plaintiff
9 and Venetian (other than those not adjudicated pursuant to EDCR 2.20(f)), are GRANTED IN
10 PART and DENIED IN PART as set forth specifically herein below.

11 IT IS FURTHER RECOMMENDED that, regarding Plaintiff's Production Request Nos. 7,
12 24, 29, 35, and 36, Interrogatory Nos. 1, 2, and NRCP 30(b)(6) Topic 1, based on Plaintiff's
13 pending claim for punitive damages claim arising from the operative facts of a slip and fall on a
14 liquid substance, in accordance with Judge Delaney's July 31, 2019 order, Venetian be ordered to
15 produce to Plaintiff unredacted records related to other incidents involving guests slipping and
16 falling on the Venetian common area marble floor on the casino level of the Venetian property due
17 to the existence of a foreign substance from November 4, 2013 to the present (only as of the date
18 of production).

19
20 IT IS FURTHER RECOMMENDED that, as to Plaintiff's request for documents and
21 information from Venetian regarding actions to change the coefficient of friction of the marble
22 flooring, Venetian's motion for protection be GRANTED as this request is vague and overly broad
23 as written in the NRCP 30(b)(6) Topic 2 and Production Request No. 30.

24
25 IT IS FURTHER RECOMMENDED that, as to Plaintiff's request for information and
26 documents related to the testing of Venetian marble flooring, as set forth in to NRCP 30(b)(6)
27 Topic 4 and Production Request Nos. 23, 25, 26, Plaintiff's motion to compel be GRANTED to the
28 extent that any testing for coefficient of friction was accomplished in the Grand Lux area of the

1 Venetian property from November 4, 2011 to November 4, 2016, where such information was
2 disclosed by Venetian pursuant to NRCP 16.1 or which is not otherwise protected in accordance
3 with NRCP 26.

4 IT IS FURTHER RECOMMENDED that, as to Plaintiff's request for information related
5 to the removal of carpeting on the Venetian casino floor set forth in Production Request No. 37,
6 and NRCP 30(b)(6) Topic 5, Venetian's motion for protection be GRANTED to the extent that the
7 inquiry related the removal of carpeting be limited to the Grand Lux area of the Venetian property
8 from November 4, 2011 to November 4, 2016.

10 IT IS FURTHER RECOMMENDED that, as to Production Request Nos. 35 and 36,
11 together with NRCP 30(b)(6) Topics and 3, 6-18 regarding information related to computer data at
12 the Venetian, the motion for protection be GRANTED, as this request is vague and overly broad;
13 however, that Plaintiff be allowed to inquire of Venetian generally about the reporting of slip and
14 fall claims on the casino level marble floor from November 4, 2011 to the present, how the
15 information is collected and stored, and how it can be retrieved.

17 IT IS FURTHER RECOMMENDED that Venetian's motion to compel Plaintiff expert
18 Thomas Jennings to produce all documents and information of prior incidents he has reviewed (as
19 represented by Mr. Jennings in his May 30, 2019 report and in his July 2, 2019 deposition) be
20 GRANTED.

22 IT IS FURTHER RECOMMENDED that Venetian's motion to retake the deposition of Mr.
23 Jennings upon receipt of the prior incident information be GRANTED to the extent that Venetian
24 is allowed to redepose Mr. Jennings; however, it is DENIED as to Venetian's request that Plaintiff
25 pay the costs associated with the second Jennings deposition.

26 IT IS FURTHER RECOMMENDED that Venetian's motion to compel Plaintiff's
27 production of all Venetian incident reports in her possession beyond those which have been
28 produced by Venetian to Plaintiff in this litigation be GRANTED.

1 IT IS FURTHER RECOMMENDED that Venetian be granted relief from production of
2 unredacted documents until fourteen days after Notice of Entry of Order related to the District
3 Court's denial of Venetian's motion for reconsideration of the July 31, 2019 order.

4 IT IS FURTHER RECOMMENDED that Venetian be granted relief from production of
5 documents related to the issues herein until it becomes a final order of the District Court.

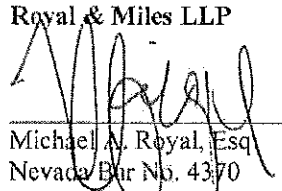
6 IT IS FURTHER RECOMMENDED that all remaining issues in the pending motions are
7 otherwise DENIED.
8

9 DATED this 27th day of November, 2019.

10 
11 DISCOVERY COMMISSIONER


12 Submitted by:

13 Royal & Miles LLP

14 
15
16 Michael A. Royal, Esq.
17 Nevada Bar No. 4370
18 1522 W. Warm Springs Road
19 Henderson, NV 89014
20 Attorneys for Defendants
21 VENETIAN CASINO RESORT, LLC and
22 LAS VEGAS SANDS, LLC
23
24
25
26
27
28

Reviewed by:

THE GALLIHER LAW FIRM


Keith E. Galliher, Jr., Esq.
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Las Vegas, NV 89014
Attorney for Plaintiff

Case Name: Sekera v. Venetian Casino Resort, LLC

Case No.: A-18-772761-C

NOTICE

Pursuant to NRCP 16.3(c)(2), you are hereby notified that within fourteen (14) days after being served with a report any party may file and serve written objections to the recommendations. Written authorities may be filed with objections, but are not mandatory. If written authorities are filed, any other party may file and serve responding authorities within seven (7) days after being served with objections.

Objection time will expire on Dec. 16 2019.

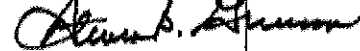
A copy of the foregoing Discovery Commissioner's Report was:

Mailed to Plaintiff/Defendant at the following address on the ____ day of _____ 2019:

Electronically filed and served counsel on Dec 2, 2019, Pursuant to N.E.F.C.R. Rule 9.

Nathaniel Lee
Commissioner Designee

EXHIBIT “B”



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

JOYCE SEKERA,

Plaintiff(s),

vs.

VENETIAN CASINO RESORT
LLC,

Defendant(s).

Case No. A-18-772761-C

DEPT. XXV

BEFORE THE HONORABLE ERIN TRUMAN,
DISCOVERY COMMISSIONER

WEDNESDAY, SEPTEMBER 18, 2019

**TRANSCRIPT OF PROCEEDINGS RE:
ALL PENDING MOTIONS**

APPEARANCES:

For the Plaintiff(s): KEITH E. GALLIHER, JR., ESQ.

For the Defendant(s): MICHAEL A. ROYAL, ESQ.

RECORDED BY: TRISHA GARCIA, COURT RECORDER

1 **LAS VEGAS, NEVADA, WEDNESDAY, SEPTEMBER 18, 2019**

2 [Proceeding commenced at 10:32 a.m.]

3
4 DISCOVERY COMMISSIONER: Sekera versus Venetian.

5 MR. GALLIHER: Good morning, Commissioner. Keith
6 Galliher on behalf of the plaintiff.

7 DISCOVERY COMMISSIONER: Good morning.

8 MR. ROYAL: Mike Royal on behalf of Defendants, Your ,
9 Honor.

10 DISCOVERY COMMISSIONER: All right. We have
11 Plaintiffs' Motion to Compel Testimony and Documents. The
12 Countermotion to Strike False Accusations levied by Plaintiff is off
13 calendar, as it does not relate to the motion under EDCR 2.20(f). So
14 I'm not going to consider the countermotion today.

15 So we've got Plaintiffs' Motion to Compel Testimony and
16 Defendants' Motion for Protective Order. Where do you guys want
17 to start?

18 MR. ROYAL: I'd like to start with the protective order,
19 since we filed it first.

20 DISCOVERY COMMISSIONER: Okay.

21 MR. ROYAL: I mean, I --

22 MR. GALLIHER: Actually, I don't care. If he wants to start,
23 it's fine with me.

24 DISCOVERY COMMISSIONER: All right.

25 MR. ROYAL: We're both going to, you know, get our --

1 DISCOVERY COMMISSIONER: We're going to get to all of
2 it, so --

3 MR. GALLIHER: We'll do what we do.

4 DISCOVERY COMMISSIONER: Yeah, so -- and maybe it
5 would be helpful for me to start by saying Judge Delaney has
6 already made specific rulings in this case that I intend to follow.
7 Obviously, they were inconsistent with the rulings that I made. But
8 is -- as she is the trial judge, her rulings are, for now, the law of the
9 case, and so we're going to comply with what she said.

10 So with regard to Defendants' Motion for Protective
11 Order, as to Plaintiffs' Request for Production, I don't -- of the
12 incident reports from May 1999 to the present, I am -- with that said,
13 that we're going to follow what she's instructed, I will
14 provide 2.34(e) relief if requested by Defendant to -- that you don't
15 have to produce anything until it becomes an order of the Court,
16 this Motion for Protective Order.

17 So with that said, why don't I give you a chance to
18 proceed.

19 MR. ROYAL: Okay. Thank you, Your Honor.

20 You've -- first of all, by -- you've indicated that we're being
21 asked to produce documents from May 1999 to the present. This is
22 a slip-and-fall. It's a very typical slip-and-fall case. It's very simple
23 negligence case. The plaintiff worked in the Venetian premises for
24 almost a year. Prior to the incident, she walked across this area
25 safely hundreds of times according to her own testimony. She

1 never had any issues until November 4, 2016, when, according to
2 her and according to her counsel, she came into contact with a
3 foreign substance on the floor, which caused her to slip and fall.

4 So this is a case that is -- that relates -- that arises from a
5 temporary transitory condition. She -- according to their own
6 experts, the floor is safe when it's dry. Their only issue is
7 something gets introduced to it, then it becomes a slip hazard, and
8 that's why they claim the plaintiff slipped and fell.

9 To this point, we've produced -- we have produced 68 -- to
10 my count, 66 to 68, I've -- of prior incident reports going back three
11 years. Which, by the way, we produced, which are outside the area
12 of the incident. This incident occurred in the Grand Lux area, and
13 according to their expert, Tom Jennings, he is in possession of 196
14 prior incidents occurring, according to his trial -- or deposition
15 testimony, occurring strictly within the Grand Lux area.

16 DISCOVERY COMMISSIONER: All that 196 are in the
17 Grand Lux area?

18 MR. ROYAL: That was his testimony. That was his
19 testimony.

20 DISCOVERY COMMISSIONER: Okay.

21 MR. ROYAL: Okay. Now, he didn't produce any of the
22 documents that he said that he looked at to come to that conclusion
23 and to put that down in his May 30, 2019, report.

24 DISCOVERY COMMISSIONER: Because I thought the 196
25 was a spreadsheet that you provided.

1 MR. ROYAL: No.
2 DISCOVERY COMMISSIONER: No? Okay.
3 MR. ROYAL: That's not correct.
4 DISCOVERY COMMISSIONER: All right.
5 MR. ROYAL: The --
6 MR. GALLIHER: We -- just let me interrupt for a minute.
7 We provided the spreadsheet to Mr. Jennings.
8 DISCOVERY COMMISSIONER: Okay.
9 MR. GALLIHER: He testified at deposition that reviewed
10 the spreadsheet.
11 MR. ROYAL: Well, he testified that he got something from
12 Mr. Galliher's office that he reviewed -- that he reviewed it, that he
13 didn't save it, and he didn't bring it with him to his deposition. I
14 didn't have an opportunity to review it with him, because he wasn't
15 clear on everything other than he said they all occurred in this area,
16 in this Grand Lux area.
17 Now, I subsequently got the spreadsheet from
18 Mr. Galliher, looked at those 196, if you take out -- there's a whole
19 bunch of duplicates and so forth from things we had already
20 produced and with some -- they're not in addition to the 68, for
21 example. But I could only come up with eight that say Grand Lux --
22 that say Grand Lux.
23 So I don't know where Mr. -- I don't know if he looked at a
24 different list. I don't know what information that they have. All I'm
25 saying is we have produced let's say 68 prior incident reports going

1 back three years preceding the incident, which are not limited to the
2 Grand Lux area. They are -- they go to the Grand Hall or to areas --
3 other areas on the casino level.

4 They -- what they want, what they're asking for,
5 essentially, is any kind of a slip-and-fall involving the marble floors
6 in common areas anywhere within the property. And we think
7 that's -- we just think that's -- it's asking too much, especially when
8 you're going back to 1999.

9 If you --

10 DISCOVERY COMMISSIONER: Well, I'm going to limit -- if
11 it'll -- I mean, I'm going to tell you this now. I'm going to limit it to
12 five years before the incident at issue.

13 MR. ROYAL: That would be --

14 DISCOVERY COMMISSIONER: Well, let me let
15 Mr. Galliher speak to that, because he looks like he's about to burst.
16 So --

17 MR. GALLIHER: I'm not -- no, I'm not ready to burst.

18 DISCOVERY COMMISSIONER: Okay.

19 MR. GALLIHER: I am far too old to burst.

20 DISCOVERY COMMISSIONER: Okay.

21 MR. GALLIHER: Yeah, well, obviously, we're going to
22 have a problem with that order.

23 DISCOVERY COMMISSIONER: Okay.

24 MR. GALLIHER: Because as we pointed out in our points
25 and authorities, there's testimony from a casino executive at

1 Venetian, that approximately one year after the Palazzo opened,
2 which would be about 2009, the Venetian actually tore up carpet on
3 the floors in their casino and replaced the carpet with marble.

4 So, quite obviously, if there are a number of falls before
5 this happened, and we believe there are a large number of falls that
6 occurred on marble floors that are wet -- and by the way, that's the
7 issue here. This is not a transient condition. This has already been
8 established in the case. And what bothers me about the argument
9 is Mr. Royal's rearguing things that have already been argued
10 before the district judge, who has -- sustained, first of all, our
11 Motion to Amend, to include the claim for punitive damages, and
12 twice now, that decision has been attacked by Venetian. Both times
13 Judge Delaney had upheld her initial decision. So we now have a
14 viable claim for punitive damages, and she said that discovery will
15 continue on the punitive damage claim. Which is what we're trying
16 to do.

17 DISCOVERY COMMISSIONER: Okay.

18 MR. GALLIHER: So if we can establish that the Venetian,
19 when it was built in 1999, when they installed these marble floors,
20 and we have a history of a large number of falls on these marble
21 floors -- and by the way, the marble floors are all uniform. There's
22 no difference between the marble in the lobby versus the marble in
23 the front of the Grand Lux Cafe, versus the marble in the casino.
24 The marble is the same color, the same consistency, it's the same
25 floor.

1 DISCOVERY COMMISSIONER: Did this incident occur in
2 the area in front of the Grand Lux Cafe?

3 MR. GALLIHER: Yes.

4 DISCOVERY COMMISSIONER: Okay.

5 MR. GALLIHER: And that is a marble floor.

6 DISCOVERY COMMISSIONER: Okay.

7 MR. GALLIHER: And, of course, our position is that
8 marble is marble, and there's no difference in the flooring. So all
9 falls that occur on these marble floors when people come into
10 contact with wet substances, are relevant to the issue of punitive
11 damages. So if we are able to establish, for example, if there
12 are 100, 200, 300 falls on these marble floors between 1999, when
13 the hotel was built, and 2009, when the Venetian made a conscious
14 decision to tear up the carpet and replace it with marble, don't you
15 think that provides a predicate for punitive damages? It shows
16 conscious disregard for the safety of its customers.

17 Therefore, it's not only relevant, it's clearly discoverable.
18 Because we are -- we have a punitive damage claim. The Venetian
19 keeps wanting to limit us in terms of our discovery, but as we
20 pointed out in our briefing punitive damage claim opens up the
21 whole group of possibilities for us to try to prove our punitive
22 damages, and that includes going back to the time the hotel was
23 built and these floors were installed in the first place.

24 But the other thing that's bothering me is that we -- the
25 unredacted incident reports for the three years prior were ordered

1 by Judge Delaney back in May. We still don't have them. And
2 we've had motion practice after motion practice, Motion to Rehear,
3 Motion for Leave for -- to Rehear. And Judge Delaney had
4 remained consistent and she has said, Venetian, you need to
5 produce the unredacted incident reports.

6 The only thing that she said that should not be in the
7 report is a date of birth and a Social Security number, and that
8 information's not in the report anyway. So we're entitled to that
9 information. It's now a filed order from Judge Delaney. There's no
10 other way for the Venetian to attack it. So that's why it's a shame
11 that we have to file a Motion to Compel after we've had a decision
12 from the district judge several times now giving us the right to the
13 unredacted reports.

14 And the other issue, of course, is -- that we've raised, is
15 that we want to do a 30(b)(6) deposition. And we want to find out
16 what the Venetian knew about the safety of its floors and when they
17 knew it. And that is relevant to the punitive damage claim.

18 Just as the subsequent incident reports are relevant to the
19 punitive damage claim. We've given the Court a lot of case
20 authority to support our position. I haven't seen anything that does
21 not support our position. We've even given you a Nevada Supreme
22 Court case that says subsequent incidents are relevant, not only to
23 the question of notice, but certainly relevant in connection with the
24 punitive damage claim.

25 So I don't know, tell you the truth, I'm not sure why we're

1 here other than the fact that we keep, you know, requesting,
2 requesting, requesting, and we keep getting No, we're not giving it
3 to you. No, we're not giving it to you. File a motion, file a motion.
4 So we're here.

5 DISCOVERY COMMISSIONER: Well, to the extent that you
6 already had an order from Judge Delaney, rather than a Motion to
7 Compel before me, I would recommend that it be refiled as -- I
8 mean, you can file an order to show cause -- a Motion for an Order
9 to Show Cause before the judge. I mean, I'm not going to reverse
10 Judge Delaney on matters she's already determined in this case.

11 MR. GALLIHER: Well, I'm not asking you to do that. What
12 I'm asking is --

13 DISCOVERY COMMISSIONER: I know you're not.

14 MR. GALLIHER: No.

15 DISCOVERY COMMISSIONER: But I'm just telling you I'm
16 not going to.

17 MR. GALLIHER: No.

18 DISCOVERY COMMISSIONER: She's the judge in the
19 case.

20 MR. GALLIHER: Right.

21 DISCOVERY COMMISSIONER: And so if she's already
22 overruled my recommendation, I'm going to follow what she's
23 done. And so if you -- rather than moving --

24 MR. GALLIHER: But you can set a deadline.

25 DISCOVERY COMMISSIONER: I'm sorry?

1 MR. GALLIHER: But you can set a deadline for the
2 production of the reports, which is what I'm asking you to do.
3 DISCOVERY COMMISSIONER: Oh, that wasn't already
4 done initially?
5 MR. GALLIHER: No.
6 DISCOVERY COMMISSIONER: Okay.
7 MR. GALLIHER: No. And so I'm asking you to set a
8 deadline. And certainly they produced the redacted report, so they
9 have them.
10 DISCOVERY COMMISSIONER: Okay.
11 MR. GALLIHER: So all we're asking for is the unredacted
12 reports, and I'm asking you to set a deadline, say two weeks from
13 now, when these reports --
14 DISCOVERY COMMISSIONER: Okay. Well, now we're
15 getting into the Motion to Compel.
16 MR. GALLIHER: Okay.
17 DISCOVERY COMMISSIONER: I haven't given counsel an
18 opportunity --
19 MR. GALLIHER: Understood.
20 DISCOVERY COMMISSIONER: -- to finish his Motion for
21 Protection. So.
22 MR. GALLIHER: I'll sit down and shut up.
23 MR. ROYAL: We were in front of Judge Delaney on
24 May 14th. She did not -- the order related to that -- his objection
25 was not filed by the Court until July 31st.

1 DISCOVERY COMMISSIONER: Well, there's still an order
2 that it hasn't been filed, isn't it? From the Motion for
3 Reconsideration.

4 MR. ROYAL: Well, there was -- well, I filed a Motion for
5 Reconsideration on OSC. Mr. Galliher, she set on a date -- or he --
6 they were in trial and he asked that we continue it. So we
7 continued it out for, it turned out, about 30 days. We just had that
8 hearing yesterday in front of the Court.

9 And during that particular discussion or hearing, she did
10 not grant leave for the consideration. But we did -- she did suggest
11 that we file a writ, which is what we are in the process of doing at
12 this point.

13 DISCOVERY COMMISSIONER: Okay.

14 MR. ROYAL: And so it's not as though we're -- it's not as
15 though we're just defiant, you know, with respect to the district
16 judge. This was in front of the district judge yesterday. And so
17 Mr. Galliher certainly could have brought this up and had this
18 discussion and asked the judge to provide a deadline yesterday.

19 I would like to say, you know, something about --
20 something about these motions that have been in front of the judge
21 with respect to punitive damages. I mean, she's just -- she has just
22 ruled that they were allowed to amend the complaint to add
23 punitive damages claim. She never said, has never said that this --
24 or established that this is anything other than a transient -- a
25 temporary transient condition.

1 And so to the extent that counsel is suggesting that to the
2 Court today, that's not correct. She's just simply said -- Tom
3 Jennings, again, their expert has said, I've got 196 incident reports
4 that occurred within a four-and-a-half-year period in the Grand Lux
5 area. I'm not sure what it is, what more they need. But there is no
6 evidence that there was ever any carpet in the area of the Grand
7 Lux Cafe rotunda.

8 DISCOVERY COMMISSIONER: So that's not the area
9 where it was ripped out.

10 MR. ROYAL: Right.

11 DISCOVERY COMMISSIONER: Okay.

12 MR. ROYAL: That's correct.

13 And so, further, Mr. Jennings testified he's an expert on
14 another slip-and-fall case that occurred within 80 to 100 feet of this
15 particular accident, also in the Grand Lux area. He testified that his
16 findings on that particular area of the marble floor were much
17 different than they were on our floor. And when I asked him about,
18 Well, why would that be different? And he gave all kinds of reasons
19 from care of the floor to amount of traffic and so forth.

20 So what Mr. Galliher's suggesting, that the floor's the
21 same everywhere and it's going to test the same everywhere, I
22 mean, that's just not -- that's not accurate.

23 What we're really looking for from the Court is some
24 direction, some relief, so that we can go -- for example, we had
25 this 30(b)(6) -- they set this 30(b)(6) deposition with 18 topics that

1 I've gone through with the Court.

2 DISCOVERY COMMISSIONER: Okay.

3 MR. ROYAL: Topics 6 to 18 all relate to management of
4 the computer system going back to 1999. What kind of -- who
5 manages the system internally, externally, consultants and so forth,
6 employees, who's involved with all this. It's extremely broad.

7 They -- and one of the things that I expect counsel will say
8 is that, Well, we can't trust them. We can't trust the Venetian,
9 because they've withheld report, they've withheld information from
10 us. And the Court will recall that previously when they brought a
11 motion, they very inaccurately represented to the Court that we did
12 not disclose 65 reports over the same period of time of those 66
13 and 68 reports that we previously produced. And then they had to
14 come and say -- and advise the Court, okay, we're sorry, that's not
15 accurate.

16 So they're not here today saying that they have any
17 evidence that we're not producing documents, that we're doing
18 something improper. We have produced 68 prior incident reports
19 that are outside -- that are within and outside the Grand Lux area.
20 What we're asking the Court is just limit the scope in the area where
21 this occurred, limit it to five years, and we're fine. And we have no
22 problem with that.

23 Now, is -- with respect to some of these other things, the
24 carpeting, I mean, they're asking for --

25 DISCOVERY COMMISSIONER: Well, let's go through the

1 issues and I'll give you my recommendation and if you want to both
2 discuss it, we can.

3 But with regard to Plaintiffs' Demand for Information
4 Related to Incidents from May 1999 to the Present, I am going to
5 protect that as written, but I think it's appropriate for -- given Judge
6 Delaney's rulings, for Defendant to provide, from
7 November 4th, 2011, to the present. Counsel in his affidavit stated
8 that there was no water at the scene. And so I think that that -- with
9 a permanent condition, which I think is, you know, if there's no
10 water, it's not a transient condition, it's a permanent condition, that
11 I think they're entitled to prior and subsequent. So I think for five
12 years --

13 MR. ROYAL: But, Your Honor, that's --

14 DISCOVERY COMMISSIONER: -- prior to the present time.

15 MR. ROYAL: -- that's not their claim. Their claim is that
16 there was water there. They have a witness who says there was
17 water there. Just -- by the mere fact that we dispute their report
18 doesn't mean -- I mean, the complaint itself says that there was a
19 liquid substance. That doesn't -- just because we dispute their facts
20 doesn't turn it into a permanent condition. They have a witness,
21 Gary Schulman, who they -- who says, I saw it there.

22 And the plaintiff, in her own deposition testimony, I
23 slipped. Not only did she slip, but her pants were wet. So it's not
24 their contention that there was nothing there. The fact that we
25 dispute it doesn't turn it into a permanent condition and certainly

1 shouldn't burden my client from having -- from now he has to
2 produce subsequent incident reports.

3 DISCOVERY COMMISSIONER: Mr. Galliher?

4 MR. GALLIHER: My goodness, the law's so clear. We
5 have a punitive damage claim. It needs to be recognized by
6 Venetian. It's a punitive damage claim that's going to survive up
7 until the time of trial. Now, whether it survives trial, I don't know,
8 because we haven't discovered it yet. But the case law makes it
9 very clear. Subsequent incident reports are discoverable and even
10 admissible when you have a punitive damage claim. So that
11 should be the end of the argument.

12 MR. ROYAL: That --

13 DISCOVERY COMMISSIONER: Okay. I'm going to -- my
14 recommendation is going to be from November 4th, 2011, to the
15 present, the reports. And because Judge Delaney had -- her ruling
16 has been that they be unredacted, so that's what it will be.

17 With regard to number 2, Electronic Computer Data
18 Information Related to Communications Pertaining to the Subject
19 Floor with Consultants Other Than Experts Disclosed, Pursuant
20 to 16.1. I think that that is too vague. I'm going to protect that as
21 written. If there's some kind of alternative -- so I'm going to grant
22 the motion as to that request.

23 If there's some alternative relief we can craft, I'm willing to
24 entertain that, Mr. Galliher. But I think -- I'm not even sure what
25 you're asking for there. Consulting experts, I'm not giving you that

1 information.

2 MR. GALLIHER: Understood. And I -- we don't want
3 consulting experts.

4 DISCOVERY COMMISSIONER: So what -- well, because
5 you said with consultants other than experts disclosed pursuant to
6 NRCP 16.1.

7 MR. GALLIHER: Here's what --

8 DISCOVERY COMMISSIONER: It sounds like you're
9 asking for consulting experts.

10 MR. GALLIHER: Yeah. Here's what we don't know. I
11 mean, we've got --

12 DISCOVERY COMMISSIONER: What do you want? And
13 let's see if we can craft it --

14 MR. GALLIHER: What I want --

15 DISCOVERY COMMISSIONER: Yes.

16 MR. GALLIHER: -- is this. The Venetian, we're talking
17 about what a great burden it is for the Venetian to produce this
18 information. They have a computerized system. My recall, it's
19 called Alliance.

20 DISCOVERY COMMISSIONER: Okay.

21 MR. GALLIHER: It's been identified by a PMK in a
22 deposition of the Venetian. And according to the PMK, every single
23 bit of information regarding what we're looking for is contained on
24 that computer system. And it can be accessed with the push of a
25 button.

1 So if that is true, we'd be --

2 DISCOVERY COMMISSIONER: That seems a little
3 oversimplified in my experience. But in any event, I'm listening.

4 MR. GALLIHER: All right. Again, I'm not a computer whiz.
5 All I know is that it was -- according to this PMK person, it can be
6 accessed very quickly.

7 DISCOVERY COMMISSIONER: Okay.

8 MR. GALLIHER: And if that's the case, I'll be more than
9 happy with that information from the computer system. And again,
10 we're going to quarrel --

11 DISCOVERY COMMISSIONER: Regarding what? What
12 information in the computer system? Because you've asked for
13 electronic computer data information related to communications
14 pertaining to the subject flooring with consultants other than
15 experts disclosed pursuant to NRCP 16.1.

16 MR. GALLIHER: Well, first of all, I don't know -- when we
17 talk about consultants, I do not know whether the Venetian has had
18 someone examine their floors and say, Look, there's a problem with
19 these floors. I have recommendations to make concerning how we
20 can make them safer. I don't know whether that's happened,
21 because that information has not been disclosed. We've requested
22 it.

23 So when we talk about -- I'm not talking about consulting
24 experts; I'm talking about the Venetian hiring somebody that knows
25 floors to come in, look at the floors, and say, Okay, what can we do

1 improve these floors and make them safer for our customers and
2 guests? And if they haven't hired somebody to do that, very simple
3 response: We haven't hired anybody.

4 If they have, that's not consulting expert stuff; that is
5 simply business situation where they hired someone to look at their
6 floors, and I'm entitled to find out whether that person that was
7 hired came to the Venetian management and said, These marble
8 floors are a problem. I recommend either, A, they be taken out and
9 replaced with something safer, or, B, there are some substances out
10 there that we can use to coat the floors to make them safer.

11 I don't know whether any of that's happened, because
12 that's why we've made that request.

13 DISCOVERY COMMISSIONER: Okay. Mr. Royal?

14 MR. ROYAL: We already went through something like this
15 with Mr. Elliott. And the Court will recall that they made these kind
16 of allegations that Mr. Elliott was going to provide this kind of
17 testimony. The very kind of testimony. Then we got his deposition
18 and found out that he didn't -- that that wasn't the case at all, that
19 he thought the Venetian -- and this was in 2009, and he thought the
20 Venetian floors were fine, were -- in fact, they were exemplary.
21 That was his testimony in that particular deposition.

22 I don't know what it is, necessarily, that he's asking for
23 and I agree that it's vague. I'm not aware -- I can't -- I don't know
24 who to bring to put on and present.

25 DISCOVERY COMMISSIONER: I'm going to protect this as

1 written. I think it's overly vague. If you want to depose someone,
2 any -- I mean, if you want to craft something that says, like, any
3 person who has knowledge that an expert told you to do X, Y, or Z
4 to your floors, put -- it needs to be tailored to -- because as it's
5 written, I think it's overly broad and vague, and I'm going to protect
6 Number 2 as written.

7 MR. GALLIHER: We'll try to fine tune it.

8 DISCOVERY COMMISSIONER: Okay. So fine tune it, try
9 to work together on it.

10 Number 3, Information Related to the Testing, Replacing
11 Flooring that is Not Within the Grand Lux Rotunda Area Where the
12 Incident Occurred, all right. If testing occurred in the Grand Lux
13 area anytime between 2011 to the present, I'm going to allow it.
14 But not if it's in an area that's not at issue in this litigation.

15 MR. GALLIHER: So that would include all the remaining
16 marble floors at the Venetian?

17 DISCOVERY COMMISSIONER: Yes.

18 MR. GALLIHER: Okay.

19 DISCOVERY COMMISSIONER: I think any testing that was
20 done in the Grand Lux area for -- be prepared to testify regarding
21 any testing that was done in the Grand Lux area from 2011 -- I'm
22 sorry, till 2016.

23 MR. ROYAL: Okay. Testing done from November 4, 2011
24 to --

25 DISCOVERY COMMISSIONER: To the date of the incident

1 at issue.

2 MR. ROYAL: And -- okay. And I want to make sure I'm
3 clear on the record, it's the Grand Lux area?

4 DISCOVERY COMMISSIONER: Well, what are -- where --
5 the incident area, is that the --

6 MR. ROYAL: That's the -- it's called the Grand Lux
7 rotunda.

8 DISCOVERY COMMISSIONER: Okay. The Grand Lux
9 rotunda. Anything that was done in that area. Okay?

10 Information About Casino Flooring Changes on or
11 About 2008 Which Did Not -- okay. And Defendant's position is that
12 this did not impact the subject area. If there were not -- if there
13 were not changes made -- were there any changes made to the area
14 where the impact -- or where the incident occurred?

15 MR. GALLIHER: We don't know that yet, because we
16 haven't been able to depose the person to find out exactly where
17 the carpet was taken up and the marble was replaced.

18 MR. ROYAL: There's no testimony whatsoever that there
19 was ever any carpeting in the Grand Lux rotunda. It's always been
20 marble. The testimony he's referring to is testimony by someone
21 who worked in the casino area. This is not the casino area. This is
22 the Grand Lux rotunda.

23 DISCOVERY COMMISSIONER: Okay. I think that that's
24 better. I'm going to protect that. I think that a better way to get at
25 that discovery would be to ask questions regarding whether the

1 area at issue had ever been remodeled or had ever previously had
2 carpet in it. So I'm going to protect 4.

3 Number 5, there is no -- I'm going to allow -- because
4 discovery has already included reports -- so this is dealing with an
5 order limiting the scope of Plaintiffs' discovery to the Grand Lux
6 rotunda area where the subject incident occurred. I am going to
7 allow any prior or subsequent reports that deal with slips and falls
8 on the marble flooring.

9 MR. ROYAL: Within the Grand Lux area?

10 DISCOVERY COMMISSIONER: Within -- I'm going to let
11 Mr. Galliher speak to that.

12 MR. GALLIHER: Well, as I --

13 DISCOVERY COMMISSIONER: They've already been
14 produced. I mean, the documents have already been produced --

15 MR. GALLIHER: Yes.

16 DISCOVERY COMMISSIONER: -- to my understanding.

17 MR. GALLIHER: Some of them have. And we -- we're not
18 sure how many more exist. But, certainly, we have requested all of
19 the others, however many there may be. And the documents that
20 have been produced already include slips and falls on marble
21 flooring.

22 DISCOVERY COMMISSIONER: Okay.

23 MR. GALLIHER: And that's exactly what we're looking for.

24 DISCOVERY COMMISSIONER: And that's what the prior
25 ruling was in this case. So I am going to allow it to be any incident

1 reports -- limited to the five years prior, going backwards, any
2 incident -- prior incident reports five years prior to the present time
3 for slips and falls on marble flooring at the Venetian.

4 MR. ROYAL: Well, Your Honor, I want to make sure I'm
5 clear. I thought your initial order was that it was limited to the
6 Grand Lux area. And this -- what you just said is all encompassing
7 of the entire property.

8 DISCOVERY COMMISSIONER: Okay. Yeah. To the
9 Grand -- I'm sorry, to the Grand Lux rotunda.

10 MR. GALLIHER: So you're not going to give us the reports
11 regarding all of the other marble flooring?

12 DISCOVERY COMMISSIONER: Just to the area, to this
13 Grand Lux marble flooring. I think that that's -- but you've
14 already -- my understanding is you've already were produced the
15 reports --

16 MR. ROYAL: We --

17 DISCOVERY COMMISSIONER: -- for all the marble
18 flooring.

19 MR. GALLIHER: They have. Well --

20 MR. ROYAL: Well --

21 MR. GALLIHER: -- we don't know what they produced, but
22 they produced floor falls --

23 DISCOVERY COMMISSIONER: Well, that was --

24 MR. GALLIHER: -- in other areas of the hotel on marble
25 flooring.

1 MR. ROYAL: Okay. Your Honor, they're asking for --
2 again, they claim to have 106 -- 90 -- 196 prior incident reports over
3 a five-year period for just the Grand Lux. Okay. So we're saying
4 okay, that's fine. We'll go through and we'll find whatever we can,
5 going back five years for the Grand Lux area.

6 The fact is that when we initially -- when we initially did
7 this, we limited it to the casino level. And -- but, Your Honor,
8 we've -- since then -- since then, Mr. Jennings has testified that his
9 testing outside the Grand Lux area was way different than what we
10 found in the Grand Lux area. And so we're just asking the Court to
11 limit it. To limit it to five years within the Grand Lux area, the
12 marble flooring there, and just --

13 DISCOVERY COMMISSIONER: So Jennings has already --
14 their expert has already said that the testing is different in the
15 Grand Lux area than the other areas of the marble flooring casinos?

16 MR. ROYAL: Than in other area of the marble floor, that's
17 correct.

18 MR. GALLIHER: Yeah. We're not in agreement with that.
19 And unless -- it's interesting how this continues to be discussed.
20 But Mr. Jennings made it very clear that he reviewed summaries of
21 reports. And it was his understanding that the summary reports
22 had to do with the Grand Lux area; they don't. He is now in the
23 possession of the reports that have been produced, so he actually
24 sees the actual reports, but he made it very clear. I reviewed his
25 summary.

1 DISCOVERY COMMISSIONER: All right.

2 MR. GALLIHER: And he's going to clarify that.

3 DISCOVERY COMMISSIONER: The original
4 recommendation was that -- the one that was objected to, and then
5 Judge Delaney changed it to be unredacted, didn't that include all
6 slips and falls on all marble flooring on the casino level?

7 MR. GALLIHER: It did.

8 MR. ROYAL: No, it did not, Your Honor.

9 MR. GALLIHER: Oh, it did too.

10 MR. ROYAL: Your Honor, I'd have to -- you know, I'd --

11 DISCOVERY COMMISSIONER: All right. I'm going to pull
12 it up. Just a second. Because I'm not reversing what we've already
13 decided.

14 MR. GALLIHER: Well, we wanted the reports -- we wanted
15 the unredacted reports that were produced to us redacted, and
16 those included falls on the casino floor.

17 DISCOVERY COMMISSIONER: Because I'm not changing
18 from -- we're not rehashing what's already been decided in this
19 case.

20 MR. ROYAL: Well, Your Honor, I'm not asking you to do
21 that. Because what he's asking for now is in addition to what we
22 previously produced. And we previously produced three years'
23 worth of documents to counsel. They were redacted.

24 DISCOVERY COMMISSIONER: Which now need to be
25 unredacted --

1 MR. ROYAL: That's correct.

2 DISCOVERY COMMISSIONER: -- pursuant to what Judge
3 Delaney has ordered.

4 MR. ROYAL: That's correct. But now he's asking for
5 something in addition. He's asking for another two years' of
6 documents and we're asking the Court to limit that. That's a new
7 ruling that has not been ruled on by this -- by the discovery
8 commissioner or considered by the district court. So we're asking
9 that -- and now, Your Honor, you're also ordering that we produce
10 not just two years before, but then everything up to the present.
11 And so that's new.

12 And so we're asking you to limit it to the Grand Lux area.
13 And that would not be in any way -- it shouldn't have any impact on
14 what you ordered previously as it relates to that three-year period.

15 MR. GALLIHER: And, of course, we respectfully disagree,
16 because it should be -- we should have the order include all the
17 marble flooring at the ground level at the Venetian, which is what
18 was produced in the first place by the defense.

19 MR. ROYAL: And, by the way, they've never requested
20 that. They've never had that specific request.

21 MR. GALLIHER: Actually, we have.

22 MR. ROYAL: We provided that --

23 MR. GALLIHER: Many times.

24 MR. ROYAL: -- as a courtesy. What they asked for was
25 everything within the property.

1 DISCOVERY COMMISSIONER: Okay. All right. I'm going
2 to limit it to the casino floor. That's -- the Grand Lux is on the
3 casino floor, correct?

4 MR. GALLIHER: Yes.

5 DISCOVERY COMMISSIONER: Okay. I'm going to limit it
6 to any slip-and-falls on the marble flooring on the casino level, five
7 years prior to the present, and pursuant to Judge Delaney's ruling,
8 unredacted. Okay.

9 MR. ROYAL: Just -- Your Honor, can I just ask for
10 clarification --

11 Can I?

12 MR. GALLIHER: You -- go ahead.

13 MR. ROYAL: Okay. Thank you.

14 For clarification, the subsequent incidents that are being
15 ordered that -- to be produced, is that based upon their punitive
16 damages claim or is it based upon the Court's determination that
17 it's --

18 DISCOVERY COMMISSIONER: The punitive damages
19 claim.

20 MR. ROYAL: Okay. All right.

21 DISCOVERY COMMISSIONER: Which is still pending. Is it
22 still active -- an active claim?

23 MR. GALLIHER: Yes. It survived two challenges from the
24 Venetian. The claim is still alive for sure.

25 MR. ROYAL: Okay. It's a punitive damages claim based

1 on a negligence action of a temporary transient condition. I just
2 want to make sure that's clear in front of the Court. This is not a
3 products case, this is not a permanent condition-type case, this is a
4 temporary transitory condition. So I just want to make sure that's
5 clear.

6 DISCOVERY COMMISSIONER: Well, I think it's unclear.
7 Because you're saying that the slip-and-fall was on the flooring,
8 you're saying with no water, they're saying there is water. I mean,
9 you've --

10 MR. ROYAL: But it's -- but, Your Honor, their complaint,
11 the complaint does not even make the allegation this is a
12 permanent condition. It is a slip-and-fall. It is a foreign substance
13 on the floor. The fact -- again, we dispute facts --

14 DISCOVERY COMMISSIONER: Which you dispute that
15 there was. So you're saying she slipped and fell on the perfectly
16 dry floor, is that you're saying.

17 MR. ROYAL: I'm saying she slipped and fell for some
18 reason other than, you know, I don't know why she slipped and fell.
19 But --

20 DISCOVERY COMMISSIONER: Well, your affidavit said
21 there was no foreign substance on the floor.

22 MR. ROYAL: Well, that's my opinion. But their experts
23 have both testified that there was a foreign substance on the floor,
24 Your Honor, both of them. And, in fact, their testimony has been --
25 Dr. Baker and Mr. Jennings both said there absolutely was

1 something on the floor. There had to be something on the floor.
2 That's their position.

3 And so for counsel -- I just want to make sure it's very
4 clear to the Court that this is an incident based upon their allegation
5 that it's a foreign substance that caused her to slip and fall. She
6 walked through that area hundreds of --

7 DISCOVERY COMMISSIONER: Well, I think it's your
8 affidavit that's conflated the issue. Because you're saying there
9 absolutely wasn't a foreign substance on the floor, which makes
10 that, then you're saying she slipped and fell on the way it is all the
11 time.

12 MR. ROYAL: I -- what I've said, Your Honor, it's -- there is
13 a disagreement, there's a dispute in the facts. They've got an
14 eyewitness. The first person who was there on the scene who said
15 there was a big puddle of water. That's his testimony. That's
16 Mr. Schulman's testimony. So we can't just pretend that that
17 doesn't exist because we dispute the facts.

18 And so this is a case based upon a foreign substance. I
19 just want to make it very clear that that is their claim, that's what
20 their experts say, that's what their star witness says, that's what the
21 plaintiff says. The fact that we dispute it doesn't transform it into a
22 permanent condition or nor should it entitle them to subsequent
23 incident reports.

24 I just want to make that clear, that's all.

25 DISCOVERY COMMISSIONER: Okay. Mr. Galliher?

1 MR. GALLIHER: Well, what's he's doing is misleading.
2 Because, the bottom line is that -- you saw Commissioner Bulla's
3 prior ruling against the Venetian, and she recognized, correctly, this
4 is a continuing hazard. This is not a transitory condition; that's
5 Mr. Royal's spin on it. The bottom line -- and --

6 DISCOVERY COMMISSIONER: Well, he's saying it's not a
7 transient condition --

8 MR. GALLIHER: Well, but -- well, he is in his affidavit --

9 DISCOVERY COMMISSIONER: -- because there was
10 nothing there.

11 MR. GALLIHER: -- but --

12 DISCOVERY COMMISSIONER: You're the one who's
13 saying it is a transient condition.

14 MR. GALLIHER: No, no.

15 DISCOVERY COMMISSIONER: It's a little confusing.
16 Usually, the defendant --

17 MR. GALLIHER: That's not what I'm saying. I'm saying
18 it's not a transient condition. It's a continuous hazard.

19 DISCOVERY COMMISSIONER: But you're saying there
20 was water present, which is a transient condition.

21 MR. GALLIHER: But he's -- well, it's not a transient
22 condition if it's on an inherently dangerous floor. That's entirely
23 different, as Commissioner Bulla recognized. That's not the same
24 thing. And, by the way, Judge Delaney --

25 DISCOVERY COMMISSIONER: Well, I disagree.

1 MR. GALLIHER: -- recognized it, as well.
2 DISCOVERY COMMISSIONER: I disagree.
3 MR. GALLIHER: Well --
4 DISCOVERY COMMISSIONER: In my mind, if there's
5 water present, it's a transient condition. If someone slips and falls
6 on a floor that you're saying is always dangerous, whether it's dry,
7 wet -- when it's dry, then that would be a different conversation
8 we're having.
9 MR. GALLIHER: But we're not saying that, and we haven't
10 said that. That's what Mr. Royal just said in his affidavit.
11 DISCOVERY COMMISSIONER: Mr. Royal's saying it.
12 MR. GALLIHER: I know.
13 DISCOVERY COMMISSIONER: Which is making this --
14 that's what's conflating the whole issue.
15 MR. GALLIHER: It -- well, that much I understand. Bottom
16 line is that he's also presented his share of Venetian employees
17 who have testified that the floor was dry. So, all right, so we have a
18 contested issue. It's a jury argument. That's what it is. It's
19 something we present at trial. But it should not affect our ability to
20 discover our case. And that's what we're doing at this juncture,
21 we're trying to discover the case, particularly our punitive damage
22 claim, and we've cited cases all over the place in our motion
23 practice that supports what we're doing here.
24 DISCOVERY COMMISSIONER: Okay. Mr. Royal?
25 MR. ROYAL: The plaintiff says it's -- it was due to a

1 foreign substance in the complaint. Even in the amended
2 complaint it says that she slipped and fell due to a foreign
3 substance. She testified she slipped and fell due to a foreign
4 substance.

5 Other witnesses at the scene, Mr. Schulman, testified he
6 saw -- he is the one person who did see it, and that's his testimony.
7 And so, you know, I have a right to dispute the facts, Your Honor,
8 but their own experts say there was water on the floor. And that's
9 what caused the fall.

10 They didn't say -- they haven't testified that this is a
11 dangerous floor that caused her to fall because it was dry; they say
12 she slipped and fell because it was wet.

13 Mr. Jennings actually testified it's a safe floor when it's
14 dry. He tested it that way. It doesn't become dangerous, in his
15 opinion, until it becomes wet. That is the --

16 DISCOVERY COMMISSIONER: Okay.

17 MR. ROYAL: And therefore, it is a temporary transitory
18 condition. That's the issue.

19 DISCOVERY COMMISSIONER: But the punitive damage
20 claims --

21 MR. GALLIHER: I'm not going to bounce up and down.

22 DISCOVERY COMMISSIONER: The punitive damage --
23 you guys can stay seated -- the punitive damage claim is still at
24 issue. And because of the punitive damage claim, I'm going to
25 allow the subsequent reports.

1 MR. ROYAL: Okay. Thank you.

2 DISCOVERY COMMISSIONER: All right. You're
3 requesting protection -- no, you're moving for an order, Defendants,
4 directing Plaintiff to produce all information of prior incidents
5 provided to Tom Jennings. Hasn't he already provided the
6 e-mailed spreadsheets -- the e-mailed spreadsheet that he
7 reviewed?

8 MR. ROYAL: The e-mails -- what I received was not what
9 Mr. Jennings described. That's all. That's not what he described.

10 DISCOVERY COMMISSIONER: Okay.

11 MR. GALLIHER: I don't agree with that.

12 MR. ROYAL: Well, you weren't at the deposition --

13 DISCOVERY COMMISSIONER: Okay. Then I'm -- Tom
14 Jennings is directed to produce all information of prior incidents
15 that were provided to him and he reviewed prior to issuing his
16 opinions.

17 MR. GALLIHER: And we have no problem with that.

18 DISCOVERY COMMISSIONER: Okay. Defendants are
19 moving for an order that Plaintiff provide copies of all prior
20 incidents reports in her possession not produced to Defendants.
21 Counsel?

22 MR. ROYAL: They've got this -- they've got these 196
23 reports, they produced those to the expert --

24 DISCOVERY COMMISSIONER: Do you have 196 reports,
25 Mr. --

1 MR. GALLIHER: No, actually, we don't.

2 DISCOVERY COMMISSIONER: -- Galliher?

3 MR. GALLIHER: We have quite a few reports we've
4 collected in the case from other counsel, as well. We don't have all
5 of those 196, because I understand from Mr. Bochanis's office that
6 he may not have been able to give those to us. So we don't have
7 all of them.

8 However, these are the Venetian's reports.

9 DISCOVERY COMMISSIONER: Okay.

10 MR. GALLIHER: So are they asking us to --

11 DISCOVERY COMMISSIONER: But if you're using them
12 for impeachment purposes, I mean, you have them. If you have
13 them, produce them to Defendants.

14 MR. GALLIHER: We'll be happy to do that.

15 DISCOVERY COMMISSIONER: Okay.

16 MR. GALLIHER: But again, that was not the -- from our
17 standpoint, Commissioner, that was not a problem. We can
18 produce what we have.

19 DISCOVERY COMMISSIONER: All right.

20 MR. GALLIHER: But we pointed out that Venetian,
21 basically, is asking us to produce the reports that they produced in
22 other litigation.

23 DISCOVERY COMMISSIONER: Well, any reports, any
24 prior incident reports in Defendant -- I'm sorry, in Plaintiffs'
25 possession must be produced to Defendants.

1 And Number 8, Defendants are -- that's on my list,
2 anyway. I don't know if it's Number 8 on yours. My -- I have
3 written down, For Leave to Retake Mr. Jennings' Deposition for One
4 Hour, With Plaintiff Bearing All Costs. That's quite an ask.

5 Mr. Royal?

6 MR. ROYAL: I only want that because he didn't have
7 that -- any of that information present. I wasn't able to
8 cross-examine him on these prior incidents.

9 DISCOVERY COMMISSIONER: Okay.

10 MR. ROYAL: Which is a big deal. I mean, he claims they
11 were all there in the Grand Lux area, 196. And I ask him -- I ask him,
12 you know, How did you receive them? What did they look like? I
13 would just like to be able to finish -- to complete my examination of
14 Mr. Jennings, which I could have done at the time had it been
15 produced.

16 MR. GALLIHER: And I have no problem with the
17 deposition. But I do have a problem with having to pay for the
18 deposition, because we didn't anything wrong.

19 DISCOVERY COMMISSIONER: Okay. I --

20 MR. GALLIHER: And of the 30(d)(2), they have not met the
21 standard.

22 DISCOVERY COMMISSIONER: I am going to allow the
23 deposition to continue. I am not going to require Plaintiffs to pay
24 for it, because if you had been able to continue, you would have
25 had to pay for the continued time. So there's really no prejudice to

1 the defendant for having you pay for the deposition to go forward.

2 Have we addressed everything now in your Motion for
3 Protective Order and Motion to Compel?

4 MR. ROYAL: Well, we have -- and I may have missed this.
5 The Topics 6 through 18 all relate to the computer data.

6 DISCOVERY COMMISSIONER: Okay. What day was that
7 filed? I have to pull it up on here. So which date was your motion
8 filed? This -- let's see.

9 MR. ROYAL: It was filed August 5th, 2019.

10 DISCOVERY COMMISSIONER: Let me just pull it up so I
11 can look at the topics. Okay. And what page is that on?

12 [Pause in proceedings.]

13 MR. ROYAL: Excuse me.

14 DISCOVERY COMMISSIONER: Or -- it's an exhibit?
15 Page 22 of the motion?

16 [Pause in proceedings.]

17 DISCOVERY COMMISSIONER: Okay. I see it. I'm here
18 now. 6 through 18.

19 MR. GALLIHER: Is that where we are, page 22?

20 DISCOVERY COMMISSIONER: All right. So --

21 MR. ROYAL: I'm there. I'm sorry.

22 DISCOVERY COMMISSIONER: The identity -- okay.

23 Page -- I'm sorry, page 22:

24 The identity of all employees who were responsible for
25 managing and maintaining Venetian's technology

1 infrastructure.

2 I think that's overly broad. The technology infrastructure
3 at the Venetian has far more components, I'm certain, than the
4 communications area of the -- like, employee communications.
5 What is it you're actually looking for? Because their technology
6 includes all of their security, all of their financial stuff, like, this
7 needs to be tailored.

8 So Topic Number 6 --

9 MR. GALLIHER: Might I suggest this --

10 DISCOVERY COMMISSIONER: Yes.

11 MR. GALLIHER: -- Commissioner, maybe to shortcut
12 things with -- what we're really interested in is the information
13 contained on the computerized Alliance system that the Venetian
14 maintains. All of this -- of the other topics here pertain to us trying
15 to verify that information. But I'm more than happy with simply an
16 order that they produce the information on their Alliance system,
17 by -- which, by the way, relates strictly to fall injury events or injury
18 events.

19 DISCOVERY COMMISSIONER: So is the Alliance system
20 their claims log system, for lack of a better word? Like how they --

21 MR. GALLIHER: That's --

22 DISCOVERY COMMISSIONER: -- how they document
23 injury incident claims in the casinos?

24 MR. GALLIHER: That's my understanding. And it contains
25 relevant information concerning those falls. It may even contain

1 copies of the reports.

2 DISCOVERY COMMISSIONER: Okay. So why don't we
3 just tailor it to be able to question the 30(b)(6) witness who has
4 knowledge regarding the documenting of injuries and claims that
5 occur in the Venetian casino property.

6 MR. GALLIHER: I'm fine with that.

7 DISCOVERY COMMISSIONER: And how those are
8 electronically stored and can be searched and obtained. Is that
9 what you're looking for?

10 MR. GALLIHER: That's what I'm looking for.

11 DISCOVERY COMMISSIONER: Okay. Does that take care
12 of all of these different -- 6 through 18, if that's the topic?

13 MR. GALLIHER: It does. It's actually a better idea than we
14 had.

15 DISCOVERY COMMISSIONER: Well, I'm here to help.

16 MR. ROYAL: Yeah, as long as we're going to --

17 DISCOVERY COMMISSIONER: If we're limiting it --

18 MR. ROYAL: Are we going to limit it --

19 DISCOVERY COMMISSIONER: We're limiting it to the
20 person -- the 30(b)(6) witness who has knowledge of how the claims
21 are reported, claims and injuries in the casino, the Venetian casino
22 property are reported, documented, stored electronically, how they
23 can be retrieved and identified. Does that cover it?

24 MR. GALLIHER: Yes. And hopefully there'll be a
25 transcript, since my note-taking isn't so good.

1 MR. ROYAL: Your Honor --

2 DISCOVERY COMMISSIONER: And that will replace
3 Topics 6 through 18.

4 MR. ROYAL: Right.

5 MR. GALLIHER: We're fine with that.

6 MR. ROYAL: Okay. And that works. Do we have a
7 specified period of time?

8 DISCOVERY COMMISSIONER: The specified period of
9 time would be five years prior to the incident to the present. Okay.
10 Does that cover everything then?

11 MR. GALLIHER: I think it does.

12 DISCOVERY COMMISSIONER: All right. Now we just
13 have one more motion, right? Or are we -- is this --

14 MR. GALLIHER: I think it --

15 DISCOVERY COMMISSIONER: We covered everything in
16 your --

17 MR. GALLIHER: I think it covered our Motion to Compel,
18 as well.

19 DISCOVERY COMMISSIONER: -- Motion to Compel?

20 MR. GALLIHER: Sure. I think it covered that as well.

21 DISCOVERY COMMISSIONER: Okay. Because -- pursuant
22 to -- this was the Motion to Compel Testimony and Documents,
23 Plaintiffs' Motion to Compel. So just so we're clear on Defendants'
24 Motion for Protective Order is granted in part, denied in part as
25 stated.

1 And with regard to Plaintiffs' Motion to Compel Testimony
2 and Documents, it's granted in part, denied in part. The judge has
3 already -- the three main issues in that motion were the prior
4 unredacted incident reports, which Judge Delaney has already
5 determined, so those will be -- will be allowed.

6 The 30(b)(6) we've handled, and the subsequent incident
7 reports we've handled. So that should take care of all of the Motion
8 to Compel.

9 MR. GALLIHER: Yes. The only other thing I'd ask is can
10 we still have, like, a two-week deadline to produce the unredacted
11 reports?

12 DISCOVERY COMMISSIONER: Well, I'm going to provide
13 alternative relief pursuant to EDCR 2.34(e) to Mr. Royal, because
14 he's waiting from a final -- for a final order from Judge Delaney
15 from yesterday, I believe. And so I'm going to provide him relief
16 that those do not need to be produced until it has become a final
17 order. That may be after a writ, since he intends to -- he's already
18 articulated that he intends to take it up.

19 But pursuant to 2.34, he does not need to produce it until
20 that has become a final order.

21 MR. GALLIHER: So can we have a date, then, after the
22 order is signed?

23 DISCOVERY COMMISSIONER: Two weeks after the order
24 is signed.

25 MR. GALLIHER: Okay.

1 DISCOVERY COMMISSIONER: And the writ would stay
2 that period of time.

3 MR. ROYAL: Okay. Now, this is my last clarification, I
4 want to make sure.

5 DISCOVERY COMMISSIONER: Okay.

6 MR. ROYAL: So it's five years to the present, casino level,
7 marble floors, and not limited to the Grand Lux.

8 DISCOVERY COMMISSIONER: Yes.

9 MR. ROYAL: Okay. And --

10 MR. GALLIHER: Unredacted.

11 MR. ROYAL: Right. Unredacted.

12 DISCOVERY COMMISSIONER: Unredacted.

13 MR. ROYAL: And the -- and we're going -- the subsequent
14 incidents are because even if this is a transitory -- temporary
15 transitory condition, he's got a punitive damage claim, and
16 therefore, those are to be produced.

17 DISCOVERY COMMISSIONER: The transitory, I would not
18 allow them, but because of the punitive allegations that have not --
19 that have survived now two Motions to Dismiss, I'm going to allow.

20 MR. ROYAL: I understand. Okay.

21 And to the -- is this an ongoing duty? Do we have to -- I
22 mean, when -- it says to the present, is it as of today? Is this going
23 to go on through trial? Do I have to keep supplementing this
24 response?

25 DISCOVERY COMMISSIONER: I think -- I would say

1 through today is probably -- or through the date of the production is
2 probably sufficient.

3 MR. GALLIHER: And I'll -- I'm okay with through the date
4 of production.

5 DISCOVERY COMMISSIONER: All right.

6 MR. ROYAL: Thank you.

7 MR. GALLIHER: Thank you.

8 DISCOVERY COMMISSIONER: Thank you. Have a great
9 day, both of you.

10 MR. ROYAL: So Mr. Galliher will prepare or -- did I -- I'm
11 sorry, I totally missed that. Who's --

12 DISCOVERY COMMISSIONER: You know, I didn't say.
13 You know, since his is really all part of yours, I'm going to say -- I'm
14 going to ask you, Mr. Royal, to prepare the report and
15 recommendation.

16 MR. ROYAL: Okay. Thank you.

17 ///

18 ///

19 ///

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1 DISCOVERY COMMISSIONER: And please have that
2 submitted to Mr. Galliher for his review as to form and content and
3 have it submitted to me within 14 days.

4 MR. GALLIHER: Thank you.

5 DISCOVERY COMMISSIONER: I am -- thank you.

6 [Proceeding concluded at 11:18 a.m.]

7 ///

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


21 
22 Shawna Ortega, CET*562
23
24
25

EXHIBIT “C”

Deposition of:

Joyce P. Sekera

Case:

Joyce Sekera v. Venetian Casino Resort, LLC d/b/a The Venetian Las Vegas, et al.
A-18-772761-C

Date:

03/14/2019



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Page 5

1 HENDERSON, NEVADA, THURSDAY, MARCH 14, 2019:

2 10:00 A.M.

3 -oOo-

4

5 (Counsel agreed to waive the court

6 reporter requirements under Rule

7 30(b)(4) of the Nevada Rules of Civil

8 Procedure.)

9

10 Thereupon,

11 JOYCE P. SEKERA,

12 was called as a witness, and having been first duly

13 sworn, was examined and testified as follows:

14

15 EXAMINATION

16 BY MR. ROYAL:

17 Q. Would you please state your full name?

18 A. Joyce P. Sekera.

19 Q. What's the middle name?

20 A. Patricia.

21 Q. Okay. And have you gone by any other names?

22 A. Joy. That's it.

23 Q. Okay. But your last name's always been Sekera?

24 A. Yes.

25 Q. My name is Mike Royal. I represent the

Page 6

1 Venetian in litigation that is pending that you brought

2 related to an incident that occurred on November 4th,

3 2016.

4 This deposition is an opportunity for me, as

5 legal counsel for the Venetian, to ask questions of you

6 and receive your responses under oath.

7 Do you understand that?

8 A. Yes, I do.

9 Q. Have you ever done this before, a deposition?

10 A. Years and years and years ago. I kind of

11 forgot.

12 Q. Okay. Just once?

13 A. Just once.

14 Q. What was that in regards to?

15 A. I was a -- it was a witness deposition.

16 Q. What was the nature of the case?

17 A. My mom, she had fallen.

18 Q. She had fallen?

19 A. Uh-huh.

20 Q. Was that in Las Vegas?

21 A. Yes.

22 Q. And was that a casino or a hotel or place --

23 supermarket?

24 A. It was at a casino.

25 Q. What was the name of the casino?

Page 7

1 A. It was at Santa Fe.

2 Q. And can you give me an idea of when that fall

3 occurred?

4 A. I can't remember because it's been so many

5 years ago.

6 Q. Was it in the '90s?

7 A. No. No.

8 Q. The '80s?

9 A. No, no. I want to say 2010. I can't remember.

10 But it wasn't yesterday.

11 Q. I got it.

12 So maybe within the last ten years?

13 A. Yeah. Yes.

14 Q. Okay. And did that -- so it obviously went to

15 litigation because you provided a deposition; is that

16 right? You had an attorney, you were sworn in, and you

17 had attorneys asking questions like this?

18 A. Yeah, but it was just -- it was downtown. I

19 remember, and that was it. I didn't go to court or

20 anything.

21 Q. Okay. But was there a court reporter present?

22 A. Yes.

23 Q. Okay. And were there a couple of attorneys

24 present?

25 A. Just mine and one more.

Page 8

1 Q. Okay. And tell me what happened to your mom in

2 that fall.

3 A. She -- we were in the buffet. That was it, we

4 were in the buffet.

5 Q. Okay. And you're in the buffet and did you see

6 the accident?

7 A. Yeah. I was right there.

8 Q. And what happened?

9 A. She slipped and fell by the salad bar.

10 Q. And what kind of injuries did your mom have?

11 A. I can't remember every -- I just know that she

12 had fallen. I'm not sure what she hit, but it was -- I

13 can't remember exactly.

14 Q. Did she go to the hospital?

15 A. Yes.

16 Q. Did she get treatment after the hospital?

17 A. Yes.

18 Q. Did she have injuries to her back?

19 A. Yes.

20 Q. Did she have injuries to her neck?

21 A. Yes.

22 Q. Did she have injuries to either of her arms

23 that you recall?

24 A. Yes. And her head.

25 Q. And her head. Okay.

Page 53	Page 55
<p>1 Q. Okay. You're not claiming knee injuries in</p> <p>2 this case; is that right?</p> <p>3 A. No.</p> <p>4 MR. KUNZ: In the case of falling off the bed?</p> <p>5 I'm sorry. I didn't mean to interrupt.</p> <p>6 BY MR. ROYAL:</p> <p>7 Q. Yeah. You're not claiming in this case that</p> <p>8 you sustained injuries to either of your knees; is that</p> <p>9 correct?</p> <p>10 A. That's correct.</p> <p>11 Q. So when you say you had an incident where you</p> <p>12 fell off the bed and you got your knees checked, you're</p> <p>13 not claiming that's related to anything associated with</p> <p>14 this litigation?</p> <p>15 A. No. When you asked me another incident,</p> <p>16 that's --</p> <p>17 Q. Right. No. I'm glad you told me. I just</p> <p>18 want to make sure. That's why I'm asking the question.</p> <p>19 A. Yes.</p> <p>20 Q. It's a separate unrelated event --</p> <p>21 A. Okay.</p> <p>22 Q. -- is that right?</p> <p>23 When you fell off the bed and you hurt your</p> <p>24 knee --</p> <p>25 A. Oh, that's something different.</p>	<p>1 Q. Give me an idea of how much you smoke now.</p> <p>2 A. Sometimes three a week.</p> <p>3 Q. Three packs?</p> <p>4 A. No. Three cigarettes.</p> <p>5 Q. How much were you smoking in November 2016?</p> <p>6 A. Oh, I have no idea. Because I was never a</p> <p>7 chain smoker or smoker, smoker.</p> <p>8 Q. But was it different than three cigarettes a</p> <p>9 week?</p> <p>10 A. When I was working there?</p> <p>11 Q. Yes.</p> <p>12 A. Yes.</p> <p>13 Q. So how often?</p> <p>14 A. I don't remember that.</p> <p>15 Q. Did you typically take smoke breaks when you</p> <p>16 were working for Brand Vegas?</p> <p>17 A. When we went to the restroom or it could be one</p> <p>18 or two if it was really slow.</p> <p>19 Q. Okay. So it was something that you did once or</p> <p>20 twice a day typically?</p> <p>21 A. Yeah, but not every day.</p> <p>22 Q. Okay. I noted that you have a history of</p> <p>23 arthritis; is that correct?</p> <p>24 A. Uh-huh.</p> <p>25 Q. Yes?</p>
Page 54	Page 56
<p>1 Q. Okay. And that's not -- you're not claiming</p> <p>2 that rolling off the bed was caused by anything related</p> <p>3 to this case?</p> <p>4 A. No.</p> <p>5 Q. Is that correct?</p> <p>6 A. That's correct.</p> <p>7 Q. Okay. You mentioned diabetes.</p> <p>8 When were you diagnosed with diabetes?</p> <p>9 A. I want to say last year. And it was pre. And</p> <p>10 then when I went back, he said I didn't have it. And</p> <p>11 then when I went back for blood work, pre, so that's why</p> <p>12 I'm taking it.</p> <p>13 Q. Okay. You're not claiming that no doctor --</p> <p>14 has any doctor told you that your diabetes diagnosis has</p> <p>15 anything to do with what happened in this incident?</p> <p>16 A. It has -- no.</p> <p>17 Q. So the answer is no?</p> <p>18 A. Correct.</p> <p>19 Q. Are you a smoker?</p> <p>20 A. Yes.</p> <p>21 Q. How many years have you been a smoker?</p> <p>22 A. On and off. I mean, I'm not a big smoker as</p> <p>23 far as pack, pack, pack. Once in a while.</p> <p>24 Q. Have you been smoking for more than 25 years?</p> <p>25 A. Not consistent, no.</p>	<p>1 A. Well, I would say it's -- what do you call it?</p> <p>2 My grandmother had it, my mother --</p> <p>3 Q. Hereditary?</p> <p>4 A. Thank you.</p> <p>5 Q. When were you first diagnosed with arthritis?</p> <p>6 A. I have no idea.</p> <p>7 Q. Are you claiming, if you know -- strike that.</p> <p>8 Has any doctor indicated to you that any</p> <p>9 arthritis that you have, any arthritic condition is</p> <p>10 associated with your fall at the Venetian?</p> <p>11 A. I don't know.</p> <p>12 Q. Okay. Were you diagnosed with arthritis before</p> <p>13 your fall in November 2016?</p> <p>14 A. I don't remember.</p> <p>15 Q. Okay. Where does this arthritis affect you,</p> <p>16 what part of your body?</p> <p>17 A. I don't know.</p> <p>18 Q. Would it be your hands? your joints? your toes?</p> <p>19 A. Sometimes my hands, they tingle, but I don't</p> <p>20 know.</p> <p>21 Q. Okay. Do you have sore joints?</p> <p>22 When it says "arthritis," I have a note here</p> <p>23 that you had preexisting arthritis, so I'm just trying</p> <p>24 to get an idea of what --</p> <p>25 A. I can't remember the doctor that said, "It's</p>

Page 57	Page 59
<p>1 hereditary and you do have a" -- I don't know. I</p> <p>2 couldn't give you a date or a doctor.</p> <p>3 Q. Okay. I'm going to ask you a few more</p> <p>4 questions about your job.</p> <p>5 So you started with Brand Vegas on I think you</p> <p>6 said December 26, 2015, and you worked full time for</p> <p>7 that employer until the date of the incident,</p> <p>8 November 4, 2016; correct?</p> <p>9 A. Correct.</p> <p>10 Q. And when I say "full time," I mean 40 hours a</p> <p>11 week or more.</p> <p>12 A. Yes.</p> <p>13 Q. I saw -- and I'm going off memory, but I saw --</p> <p>14 what were your general work hours?</p> <p>15 A. 9:00 to 7:00.</p> <p>16 Q. So how many days a week?</p> <p>17 A. In the beginning, seven.</p> <p>18 Q. So you were working more than 40 hours;</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. Did you get paid overtime?</p> <p>22 A. You know, I can't remember. I can't say for</p> <p>23 sure.</p> <p>24 Q. Okay. How long did you work seven days a week?</p> <p>25 Because you said in the beginning.</p>	<p>1 I'm not sure, so I'd rather not guess.</p> <p>2 Q. No. That's okay. So you were paid an hourly</p> <p>3 rate --</p> <p>4 A. Uh-huh.</p> <p>5 Q. -- somewhere between let's say 7 and \$10?</p> <p>6 A. Yes.</p> <p>7 Q. We can verify the hourly rate. It's not a big</p> <p>8 deal. Okay?</p> <p>9 You were also paid commissions. Tell me how</p> <p>10 the commissions worked.</p> <p>11 A. We never knew that. They would just give us so</p> <p>12 much money.</p> <p>13 Q. Well, I mean --</p> <p>14 A. It was 25 cents a ticket maybe on one, 50 cents</p> <p>15 on another one. That's how it went. It depends on the</p> <p>16 show and what they were paid.</p> <p>17 Q. Okay. So as I understand it, you were working</p> <p>18 at a kiosk for Brand Vegas on one of three different</p> <p>19 kiosk areas in the Grand Canal Shoppes?</p> <p>20 A. Yes.</p> <p>21 Q. And you would go there anywhere from five to</p> <p>22 seven days a week working 9:00 to 7:00 -- 9:00 a.m. to</p> <p>23 7:00 p.m.; correct?</p> <p>24 A. Correct.</p> <p>25 Q. You were paid an hourly rate, plus you got a</p>
Page 58	Page 60
<p>1 A. I don't keep notes. I didn't have a schedule.</p> <p>2 I just knew I had to be there. And I knew in the</p> <p>3 beginning when they were starting they needed the help</p> <p>4 because it was only a couple of us, so...</p> <p>5 Q. So you were willing to work however many days</p> <p>6 they needed you?</p> <p>7 A. Yes.</p> <p>8 Q. And how were you paid by Brand Vegas?</p> <p>9 A. A check.</p> <p>10 Q. That was a bad question.</p> <p>11 Let me ask you: Were you paid hourly?</p> <p>12 A. Yes.</p> <p>13 Q. And what was your hourly pay?</p> <p>14 A. I'm very bad. I didn't even keep those stubs,</p> <p>15 so I don't -- I can't tell you. I don't remember. I</p> <p>16 thought it was \$10, but I can't say for sure so I'm not</p> <p>17 going to.</p> <p>18 Q. Okay. So you were paid hourly.</p> <p>19 And were you paid commissions, like --</p> <p>20 A. Yes.</p> <p>21 Q. So it was hourly plus commissions.</p> <p>22 How were your commissions based?</p> <p>23 A. Oh, it was 7.25, maybe.</p> <p>24 Q. You think your rate might have been 7.25?</p> <p>25 A. It could have been 7.25 now. See, that's why</p>	<p>1 commission based upon tickets sold?</p> <p>2 A. Tickets sold, yeah.</p> <p>3 Q. The commission, as I understand your testimony,</p> <p>4 would be different depending on the show or the event?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. Some might be a dollar, some might be 25</p> <p>7 cents, you know, it depends?</p> <p>8 A. Yes.</p> <p>9 Q. Were you encouraged to push certain shows when</p> <p>10 people would stop by?</p> <p>11 A. We just told them about Venetian shows, and</p> <p>12 then the rest of the shows on the Strip, we had a book</p> <p>13 with all of them.</p> <p>14 Q. I see.</p> <p>15 So how many shows did you sell for?</p> <p>16 I mean, strike that. That was a bad question.</p> <p>17 You mentioned there's other -- you mentioned</p> <p>18 Venetian.</p> <p>19 What other properties were you kind of selling</p> <p>20 tickets for when you were working for Brand Vegas?</p> <p>21 A. Almost all of them on the Strip. I don't</p> <p>22 remember exactly each one.</p> <p>23 Q. That's okay.</p> <p>24 If I were to --</p> <p>25 A. David Copperfield I can remember. We didn't</p>

Page 73	Page 75
<p>1 take any escalators or anything after that to get to 2 your kiosk? 3 A. I could, yes, an escalator up, I think. I'm 4 sorry. It's been a while and I do not remember. I just 5 remember we didn't have a designated area for so long: 6 that we could park anywhere. And the employee thing 7 is -- I just can't remember if I got my badge or not 8 because it was right at the end. 9 Q. Okay. What did the badge look like? Do you 10 know? 11 A. (Shakes head.) 12 Q. Did you have a name tag? 13 A. I had a Brand Vegas name tag. 14 Q. Where would you wear it, what part of your 15 clothing? 16 A. Sometimes here, sometimes here (indicating). 17 depending what I wore. 18 Q. But it would be on the front? 19 A. Yes, it would be on the front. 20 Q. On the left or the right up around your 21 shoulder -- or, you know, between your shoulder and your 22 chest? 23 A. (Nods head.) 24 Q. Is that correct? 25 A. Yes.</p>	<p>1 employment? 2 A. No. Only if we had a question which the guest 3 wanted that particular seat and they couldn't have it 4 because it was reserved for the hotel, so... 5 Q. Okay. The time that -- it sounds to me like 6 you were spending anywhere from 40 to 60 hours a week at 7 the Venetian. 8 A. Yes. 9 Q. Does that sound right? 10 A. Yes. 11 Q. And that would be pretty much from December 26, 12 2015, until the date of the incident? 13 A. Yes. 14 Q. Did you take any vacations? 15 A. No, I did not. And I was always there at least 16 an hour or two prior. 17 Q. What does that mean? Prior to what? 18 A. Prior to my shift starting. 19 Q. So if your shift started at 9:00, you would 20 arrive at 7:00? 21 A. Yeah, because I would set up all the computers 22 for everybody. 23 Q. And you're not paid for that time? 24 A. No. 25 Q. So you actually would have been there from,</p>
Page 74	Page 76
<p>1 Q. Okay. 2 A. I could have had an employee badge, but I don't 3 remember. And it was left there. I don't have anything 4 from there. 5 Q. Okay. Did anyone tell you why they wanted you 6 to have an employee badge? 7 A. They wanted to know who was on property and so 8 they did the background checks and stuff. 9 Q. Did they do a background check of you? 10 A. Yes. 11 Q. Who is "they"? 12 A. The Venetian. Whoever they have do that to get 13 this badge because I remember reading it. 14 Q. Did you have to fill out any forms? 15 A. Yes. 16 Q. Do you remember who you filled them out for? 17 Was it something that your employer required or was it 18 something that Venetian required? 19 A. Venetian required. 20 Q. Okay. Do you remember approximately when you 21 filled the form out? 22 A. No. It was very close to my fall, so that's 23 why probably it's -- I don't remember. 24 Q. Okay. Did you interact very often with the 25 Venetian personnel at the box office as part of your</p>	<p>1 like, what, 7:00 to 7:00? 2 A. Pretty much, or at least 8:00 to 7:00. 3 Q. Okay. I'm just doing the math in my head here. 4 That's a lot of hours. So you're talking about -- you 5 could actually be working 80 hours a week. 6 A. Yeah. 7 Q. Does that sound right? 8 A. Yes. 9 Q. Okay. 10 A. And that wasn't every day, but I tried to help 11 people because -- and have it all ready for them when 12 they walked on the shift. 13 Q. So during the time that you work there for 14 sounds like -- I'm going to say 50 to 70 hours a week 15 maybe -- 16 Does that sound about fair? 17 A. Fair. 18 Q. -- were you ever aware of any incidents where 19 guest or employees would slip and fall? 20 A. No. 21 Q. The times that you were working at this booth, 22 you don't recall ever responding to someone who had 23 fallen; is that correct? 24 A. I would say yes. I don't remember helping 25 anybody.</p>

Page 77	Page 79
<p>1 Q. Okay. When you would go to -- let's say on</p> <p>2 breaks, use the restroom and stuff, do you recall ever</p> <p>3 seeing security responding to somebody on the floor,</p> <p>4 anything like that?</p> <p>5 A. No.</p> <p>6 Q. Did you ever have any conversations that you</p> <p>7 can recall prior to your fall with hotel -- Venetian</p> <p>8 hotel security about incidents occurring on property?</p> <p>9 A. No. I didn't really know anybody there.</p> <p>10 Q. Okay. So prior to your incident of November 4,</p> <p>11 2016, is it fair to say that you were never aware of</p> <p>12 anyone slipping and falling at the Venetian property?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. That was a correct statement; is that</p> <p>15 right?</p> <p>16 A. Yes.</p> <p>17 Q. So for all the time that you were at the</p> <p>18 Venetian working for Allstate Ticketing and Tours and</p> <p>19 then for Brand Vegas, the only fall that you're aware of</p> <p>20 occurring at the Venetian property was your fall?</p> <p>21 A. That's correct.</p> <p>22 Q. Okay. Do you recall during the time that you</p> <p>23 worked at the Venetian property -- now I'm going to</p> <p>24 expand it from any time that you're working there from</p> <p>25 1995 until 2016, I'm just going to ask you all of your</p>	<p>1 happened, it was, like, once.</p> <p>2 Q. Okay. But I'm asking if you have a specific</p> <p>3 memory --</p> <p>4 A. No.</p> <p>5 Q. -- of something like that.</p> <p>6 A. Oh, no.</p> <p>7 Q. Okay. So that's -- that's one of those things</p> <p>8 where I don't want you to speculate. If you have a</p> <p>9 specific memory. "Oh, yeah, I remember once or twice" --</p> <p>10 A. Okay.</p> <p>11 Q. Do you have a specific memory?</p> <p>12 A. No.</p> <p>13 Q. Okay. All right. Did you -- in all your time</p> <p>14 working at the Venetian talking with people, selling</p> <p>15 tickets, people walking by, casual conversation, even</p> <p>16 people that you were working with in your kiosk with</p> <p>17 that other company, okay, do you recall speaking with</p> <p>18 anyone who made any reference to any slip-and-falls that</p> <p>19 occurred on the company?</p> <p>20 A. No.</p> <p>21 Q. This would be a good time to take a break</p> <p>22 because I'm going to move into something else.</p> <p>23 Let's go off the record.</p> <p>24 (A short recess was taken from 11:41 a.m.</p> <p>25 to 11:48 a.m.)</p>
Page 78	Page 80
<p>1 experience as an employee where you were working at a</p> <p>2 kiosk at the Venetian property, do you recall ever</p> <p>3 seeing foreign substances on the floor?</p> <p>4 A. I have to just say this. When I worked for</p> <p>5 Allstate Ticketing, they didn't acquire the Venetian</p> <p>6 kiosk till a few years before, so earlier they weren't</p> <p>7 there. From '96 to -- I just can't remember the date.</p> <p>8 You said from '96 to...</p> <p>9 Q. Okay. Thank you. But what I'm trying to do is</p> <p>10 you said you were probably at the Venetian 10 to 20</p> <p>11 times over the 15 years --</p> <p>12 A. Yeah, not a lot.</p> <p>13 Q. Okay. That's when you were at Allstate?</p> <p>14 A. Right.</p> <p>15 Q. And then you were there it sounds like almost</p> <p>16 every day for almost close to a year --</p> <p>17 A. Oh, for Brand, yes.</p> <p>18 Q. -- for Brand Vegas; correct?</p> <p>19 A. Yes.</p> <p>20 Q. All right. And during all that time,</p> <p>21 collectively, you don't recall ever seeing a substance</p> <p>22 on the floor, like somebody spilled a drink or something</p> <p>23 like that?</p> <p>24 A. Oh, sure, I might have and I might have called</p> <p>25 housekeeping. See, I don't remember that. If that</p>	<p>1 BY MR. ROYAL:</p> <p>2 Q. So off the record we were talking about this</p> <p>3 2008 motor vehicle accident. I just wanted to make sure</p> <p>4 I'm clear on this because I think you did have American</p> <p>5 Family Insurance --</p> <p>6 A. Yes, I did.</p> <p>7 Q. -- auto insurance; right?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And we think that that may have been</p> <p>10 some litigation involving an accident your daughter was</p> <p>11 involved in and you owned the car?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. You don't remember specifically, but</p> <p>14 we're kind of -- that's kind of what we're guessing</p> <p>15 because you weren't involved in an auto accident?</p> <p>16 A. Yes. That's right. That's correct.</p> <p>17 Q. Okay. I wanted to clear that up.</p> <p>18 So let's go to the day of the incident.</p> <p>19 What time did you arrive on the Venetian</p> <p>20 property that day?</p> <p>21 A. I cannot guess on that. Again, sometimes I'm</p> <p>22 there at 7:00, 7:30, or 8 o'clock most of the time.</p> <p>23 Q. Okay. And your normal routine when you get to</p> <p>24 work is to -- I assume things are locked up?</p> <p>25 A. Everything's locked up.</p>

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<p>1 Q. So when you get there --</p> <p>2 A. Or in the cupboard.</p> <p>3 Q. Okay. So you had a key?</p> <p>4 A. No. They were just doors shut.</p> <p>5 Q. So they weren't locked?</p> <p>6 A. (Shakes head.)</p> <p>7 Q. So you had, like, laptops and stuff there?</p> <p>8 A. Yeah, that we would set up. Yes.</p> <p>9 Q. And that stuff was kept somewhere without a</p> <p>10 lock?</p> <p>11 A. With a credit card machine.</p> <p>12 Yes.</p> <p>13 Q. That's crazy.</p> <p>14 Okay. Was it like that at every kiosk?</p> <p>15 A. No. The Tao one had one. And they did have a</p> <p>16 key, but it didn't always work, the lock.</p> <p>17 Q. Okay. Regardless whether you had to unlock</p> <p>18 something or not, you would show up at the kiosk?</p> <p>19 A. Yes. Set up the phone and the credit card</p> <p>20 machine and the computer.</p> <p>21 Q. Okay. And how long did that typically take?</p> <p>22 A. Just depending. Sometimes it didn't go on</p> <p>23 right away. You had to work with it.</p> <p>24 Q. So at least by 9 o'clock you're ready to go?</p> <p>25 A. Oh, definitely. All booths, yes.</p>	<p>1 Q. Okay. On that particular day, do you remember</p> <p>2 taking any breaks between the time of your arrival until</p> <p>3 the break you took at the time of the incident?</p> <p>4 A. No, I don't.</p> <p>5 Q. At the time of the incident, as I recall, you</p> <p>6 had -- you were carrying a beverage in your left hand.</p> <p>7 Do you remember that?</p> <p>8 A. Could have been a coffee cup. That's all I can</p> <p>9 figure at that time.</p> <p>10 Q. So the incident happened around noon, 12:30, I</p> <p>11 think, p.m.; right?</p> <p>12 A. Yes.</p> <p>13 Q. Is that typically when you would take a lunch</p> <p>14 break?</p> <p>15 A. Yes.</p> <p>16 Q. Were you on a lunch break at the time this</p> <p>17 incident occurred?</p> <p>18 A. Yes.</p> <p>19 Q. Now, if you had a cup of coffee in your hand --</p> <p>20 I think it might have had a lid on it --</p> <p>21 A. Yes.</p> <p>22 Q. -- where -- do you know where you bought that?</p> <p>23 A. No.</p> <p>24 Q. It's not something you would have bought and</p> <p>25 brought with you to the property, is it, on your way</p>
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<p>1 Q. And how many tickets would you typically sell</p> <p>2 in a day? I know it's going to vary, but...</p> <p>3 A. There could be anywheres from two maybe up to</p> <p>4 40, 50. It just depended what was going on at the</p> <p>5 hotel.</p> <p>6 Q. So if it's busy because there's a convention or</p> <p>7 something like that --</p> <p>8 A. Correct.</p> <p>9 Q. -- there's going to be people looking for stuff</p> <p>10 to do. More people and more -- more people are going to</p> <p>11 come by and ask you for information?</p> <p>12 A. Right.</p> <p>13 Q. Typically how many people -- just give me an</p> <p>14 estimate of -- will just stop and get information and</p> <p>15 not buy tickets?</p> <p>16 A. Oh, God, that was all day long. That drove us</p> <p>17 nuts, but we did it.</p> <p>18 Q. With a smile?</p> <p>19 A. Yes.</p> <p>20 Q. So it was pretty rare to sell tickets</p> <p>21 proportionately --</p> <p>22 A. You tried to fit it in, yes.</p> <p>23 Q. So between 8:00 a.m. and noon on the day of the</p> <p>24 incident, do you remember if you sold any tickets?</p> <p>25 A. I do not.</p>	<p>1 from home?</p> <p>2 A. I don't think so.</p> <p>3 Q. You typically would buy something like that at</p> <p>4 the property?</p> <p>5 A. Or somebody would for us, yes.</p> <p>6 Q. Okay. So you had a -- you don't remember if</p> <p>7 you got it at -- I don't know. There's a place called</p> <p>8 The Coffee Bean or different --</p> <p>9 A. Oh, was that upstairs in my area?</p> <p>10 Q. Yes.</p> <p>11 A. Yeah. Okay.</p> <p>12 Q. It's kind of close to the escalator.</p> <p>13 A. Yes, it is. Yes.</p> <p>14 Q. So you think --</p> <p>15 A. I do remember Coffee Bean.</p> <p>16 Q. But did you buy coffee that morning at The</p> <p>17 Coffee Bean?</p> <p>18 A. That, I don't remember.</p> <p>19 Q. Okay. So you were taking a break and -- you</p> <p>20 were taking a lunch break.</p> <p>21 Where were you planning on going for lunch on</p> <p>22 the day of the incident?</p> <p>23 A. I couldn't tell you. I just always go to the</p> <p>24 restroom first and...</p> <p>25 Q. Okay. You say you always go to the restroom.</p>

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<p>1 A. Well, when I have to go, yes, but --</p> <p>2 Q. Let me back up.</p> <p>3 As I understand it, you're working at your</p> <p>4 kiosk, you're ready to take a break. You go to the</p> <p>5 escalator that's close to The Coffee Bean.</p> <p>6 A. No. Right around the corner the elevator down</p> <p>7 because then you can just go right to the restroom.</p> <p>8 Q. Okay. So you didn't take --</p> <p>9 A. I didn't take the escalator, no.</p> <p>10 Q. Is there a security guard posted there, do you</p> <p>11 know, at that level?</p> <p>12 A. I do not know that.</p> <p>13 Q. Okay. How close to those elevators -- strike</p> <p>14 that.</p> <p>15 Where the incident happened, the elevators</p> <p>16 you're talking about, where are they located?</p> <p>17 A. If I'm at that booth -- because Coffee Bean is</p> <p>18 right over there -- I go around the corner to these --</p> <p>19 it's a little corner really where the elevators sit.</p> <p>20 There's nothing else there. And I would get out of the</p> <p>21 elevator, turn left, and go straight to the restroom.</p> <p>22 Q. Get out of the elevator, turn left?</p> <p>23 A. Yes, because it's, like, an L-shaped --</p> <p>24 Q. Let me ask you this: Do you know where the</p> <p>25 Grand Cafe --</p>	<p>1 A. At least, yes.</p> <p>2 Q. And so that would be from the time that you</p> <p>3 started at the -- on December 26, 2015, until the</p> <p>4 incident; correct?</p> <p>5 A. Yes.</p> <p>6 Q. So you're used to this path. You always take</p> <p>7 the elevator and you kind of --</p> <p>8 A. Yes, uh-huh.</p> <p>9 Q. Okay. You always --</p> <p>10 A. Oh, sorry.</p> <p>11 Why are you laughing at me?</p> <p>12 Q. No, no. We're laughing just because you're</p> <p>13 interrupting. She knows --</p> <p>14 A. Sorry.</p> <p>15 Q. That's okay. In normal conversation, this is</p> <p>16 how it goes. But when we're on the record, we have to</p> <p>17 be a little more patient. We both have been doing it.</p> <p>18 Let me start over. I can't remember where I</p> <p>19 was.</p> <p>20 MR. KUNZ: It was a path you normally take.</p> <p>21 BY MR. ROYAL:</p> <p>22 Q. Yeah, okay.</p> <p>23 You took the elevator every day. You didn't go</p> <p>24 all the way around to the escalator?</p> <p>25 A. Yes.</p>
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<p>1 A. Oh, yes, yes.</p> <p>2 Q. Okay. Where is the elevator in relation to the</p> <p>3 Grand Cafe?</p> <p>4 A. Well, you have the Grand Cafe, it's right</p> <p>5 across, because the elevator is here. It's in a little</p> <p>6 nook. Then to the right is that and then the restrooms.</p> <p>7 Q. Okay. I think I got it now. It's coming into</p> <p>8 my head here because there's the elevator lobby with all</p> <p>9 the guests. We're not talking about that.</p> <p>10 A. Oh, no, no, no.</p> <p>11 Q. This is a different elevator?</p> <p>12 A. (Nods head.)</p> <p>13 Q. So you come down the elevator. I understand</p> <p>14 where the nook is. And now I get it when you say you</p> <p>15 turn to your left and it's a straight shot --</p> <p>16 A. Exactly, yes.</p> <p>17 Q. -- to the bathrooms; right?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. So you're walking to the bathroom on</p> <p>20 your break and -- is that the bathroom that you would</p> <p>21 typically use during breaks?</p> <p>22 A. Yes.</p> <p>23 Q. And more than once a day?</p> <p>24 A. Could be.</p> <p>25 Q. But at least once a day?</p>	<p>1 Q. Is that correct?</p> <p>2 A. Uh-huh.</p> <p>3 Q. Yes?</p> <p>4 A. Well, it depended if I went to get a salad or</p> <p>5 something and then go to the restroom. Every day I</p> <p>6 can't tell you or every moment exactly.</p> <p>7 Q. And I understand that, and I'm just trying to</p> <p>8 get your routine. Okay?</p> <p>9 But let's say --</p> <p>10 A. But that bathroom was most convenient.</p> <p>11 Q. So every day you would take a break and you</p> <p>12 would use the bathroom that you were headed to the day</p> <p>13 of the incident?</p> <p>14 A. Yes.</p> <p>15 Q. Was there -- so you had -- you leave your</p> <p>16 kiosk, you take the elevator, you've got a cup of</p> <p>17 coffee, and you're planning to use the restroom and then</p> <p>18 you're going to get some lunch or smoke or -- I don't</p> <p>19 know what your -- what were your plans?</p> <p>20 A. That -- that was it, to go to the restroom.</p> <p>21 Q. And then get something to eat?</p> <p>22 A. Uh-huh.</p> <p>23 Q. Yes?</p> <p>24 A. Yes.</p> <p>25 Q. Were you going to go to the food court?</p>

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<p>1 A. Very rarely.</p> <p>2 Q. Okay. Where would you go to eat typically?</p> <p>3 A. They had that little snack shop to the left. I</p> <p>4 can't remember the names.</p> <p>5 Q. Snack shop to the left?</p> <p>6 A. And then the Bouchon Bakery. Is that upstairs</p> <p>7 or down? I don't know.</p> <p>8 Q. I think there's one downstairs, but...</p> <p>9 A. That's the one I went to. They had good</p> <p>10 salads.</p> <p>11 Q. Tell me about -- we're at the date of the</p> <p>12 incident. You've come down the elevator, you've turned</p> <p>13 left, you're walking almost a straight shot to the</p> <p>14 women's restroom. Tell me what happened.</p> <p>15 A. I walked out, focussing on the people because</p> <p>16 it's very crowded there a lot of times because -- during</p> <p>17 the convention. And I was going to the restroom and the</p> <p>18 next thing I know, my -- that's the one thing I can</p> <p>19 remember, is my feet in front of me as I went down hard.</p> <p>20 Q. Okay. When you -- as you're approaching this</p> <p>21 area, did you notice anything unusual about the floor?</p> <p>22 A. No. My eyes were up here looking at the people</p> <p>23 trying not to hit somebody.</p> <p>24 Q. You weren't scanning the floor --</p> <p>25 A. No.</p>	<p>1 Q. Because your initial complaint was your left</p> <p>2 elbow.</p> <p>3 Do you remember striking your left elbow?</p> <p>4 A. Yes, I do. Hard on the marble, yes.</p> <p>5 Q. Do you remember -- other than your left elbow,</p> <p>6 do you remember striking your head?</p> <p>7 A. My shoulder.</p> <p>8 Q. Your left shoulder?</p> <p>9 A. Uh-huh, because it was on the left side because</p> <p>10 I was trying to -- I just went -- it happened so quick.</p> <p>11 Q. Okay. Let's -- I'm trying to take it one frame</p> <p>12 at a time here.</p> <p>13 So you struck your left shoulder -- I'm sorry.</p> <p>14 Strike that.</p> <p>15 Your feet go out in front of you, you strike</p> <p>16 your left elbow, and you remember striking your left</p> <p>17 shoulder -- part of your shoulder; correct?</p> <p>18 A. Yes.</p> <p>19 Q. Do you remember striking your hip, your left</p> <p>20 hip? That's something you remember?</p> <p>21 A. I kind of remember just bouncing and I hit so</p> <p>22 hard, but I don't know -- I don't remember -- it's hard.</p> <p>23 Q. Okay. Do you recall what happened to your</p> <p>24 drink that you were carrying?</p> <p>25 A. No, I do not.</p>
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<p>1 Q. -- as you're walking; right?</p> <p>2 Is that correct?</p> <p>3 A. That's correct.</p> <p>4 Q. Were you in a hurry?</p> <p>5 A. No.</p> <p>6 Q. Do you remember if you had the beverage in your</p> <p>7 right or left hand?</p> <p>8 A. No.</p> <p>9 Q. So you remember your feet going out quickly in</p> <p>10 front of you?</p> <p>11 A. Yes.</p> <p>12 Q. Tell me about as you fell.</p> <p>13 What do you remember about the fall itself, how</p> <p>14 you landed?</p> <p>15 A. I just remember landing hard. Whether it was</p> <p>16 my back, my butt, I don't know. I just remember going</p> <p>17 backwards and I was dazed. I mean, shocked. I can't --</p> <p>18 I don't remember. That's what kills me. I don't</p> <p>19 remember --</p> <p>20 Q. Okay.</p> <p>21 A. -- exactly what was on the floor or...</p> <p>22 Q. Right.</p> <p>23 A. I know it was liquid because my pants felt wet.</p> <p>24 Q. Okay. So let me get back to the fall.</p> <p>25 A. Okay.</p>	<p>1 Q. Okay. Do you recall if any -- so you don't</p> <p>2 recall if any of part of your drink spilled when you</p> <p>3 fell?</p> <p>4 A. No.</p> <p>5 Q. You said that after the fall you're shocked and</p> <p>6 dazed, something you're not expecting; right?</p> <p>7 A. Correct.</p> <p>8 Q. You felt immediate pain in your left elbow?</p> <p>9 A. Yes.</p> <p>10 Q. Did you feel immediate pain in your left</p> <p>11 shoulder?</p> <p>12 A. Yes. My neck, my head, yes.</p> <p>13 Q. Okay. You felt immediate pain in your head?</p> <p>14 A. Again, I fell on my left side hard. And I'm</p> <p>15 not 90 pounds, so when I fell hard, yeah, I felt it, the</p> <p>16 pain, the whole side, the left side.</p> <p>17 Q. So when you say "the whole side," was it the</p> <p>18 left side of your head?</p> <p>19 A. It just went down from my neck down.</p> <p>20 Q. Okay. Now, so I'm pointing to, like, the back</p> <p>21 part of your head.</p> <p>22 Do you recall any part of your head striking</p> <p>23 anything?</p> <p>24 A. Yes. I remember just bouncing.</p> <p>25 Q. Okay. So did you have a sore spot on your head</p>

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<p>1 from when you fell?</p> <p>2 A. Yes.</p> <p>3 Q. Was it, like, a bump or just sore when you</p> <p>4 touched it?</p> <p>5 A. Sore when I touched it.</p> <p>6 Q. Okay. And so you have the left side of your</p> <p>7 head, the left -- or then your neck. I'm going to say</p> <p>8 the left side of your neck only because you've been</p> <p>9 pointing to your left side; is that correct?</p> <p>10 A. Yes.</p> <p>11 Q. And then your left shoulder and your left</p> <p>12 elbow?</p> <p>13 A. Elbow.</p> <p>14 Q. Okay. What do you remember right after the</p> <p>15 incident? What's the next thing you remember? People</p> <p>16 coming to you and seeing if you're okay?</p> <p>17 A. I remember people in my face. "Are you okay?</p> <p>18 Are you okay?" That's all I remember. I just -- I</p> <p>19 don't know what you call it. For me to not remember.</p> <p>20 it's hard.</p> <p>21 Q. Okay. How long were you on the floor?</p> <p>22 A. That, I do not know.</p> <p>23 Q. Do you remember someone from security coming to</p> <p>24 speak with you?</p> <p>25 A. Is that the, like, paramedic?</p>	<p>1 your shirt?</p> <p>2 A. Uh-huh.</p> <p>3 Q. Yes?</p> <p>4 A. Yes.</p> <p>5 Q. Anywhere else?</p> <p>6 A. I didn't -- again, when I hit hard. I do not</p> <p>7 remember a lot from back then, but I do remember being</p> <p>8 wet.</p> <p>9 Q. Okay. And I understand that. And I'm not</p> <p>10 trying to badger you. I'm just trying to get as best</p> <p>11 information I can when you say you felt wet, so I just</p> <p>12 want to know what parts of your body you felt wet.</p> <p>13 So you've indicated the left rear and you think</p> <p>14 maybe --</p> <p>15 A. Back.</p> <p>16 Q. -- the low-back area; correct?</p> <p>17 A. Yes.</p> <p>18 Q. Any other areas where you recall specifically</p> <p>19 that were wet?</p> <p>20 A. I do not recall.</p> <p>21 Q. Okay. So as I understand it, you fell -- you</p> <p>22 didn't see anything on the floor before your fall;</p> <p>23 correct?</p> <p>24 A. Correct.</p> <p>25 Q. You've described your fall. You didn't see</p>
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<p>1 Q. EMT?</p> <p>2 A. The EMT, yes.</p> <p>3 Q. Do you remember --</p> <p>4 A. He was trying to help me up.</p> <p>5 Q. Do you remember anything about your</p> <p>6 conversation with him?</p> <p>7 A. No. I remember him walking me upstairs and</p> <p>8 fixing my arm so that I could drive to the hospital.</p> <p>9 That's all.</p> <p>10 Q. Do you remember -- you said there was liquid on</p> <p>11 your pants?</p> <p>12 A. Yes.</p> <p>13 Q. Where on your pants?</p> <p>14 A. Back side.</p> <p>15 Q. The back left side?</p> <p>16 A. Yes.</p> <p>17 Q. Can you describe -- is it your rear end?</p> <p>18 A. Yes.</p> <p>19 Q. So your left rear end?</p> <p>20 A. Yes.</p> <p>21 Q. Was it --</p> <p>22 A. And my back, so...</p> <p>23 Q. The back of your shirt?</p> <p>24 A. Yes.</p> <p>25 Q. So it was on the left rear end and the back of</p>	<p>1 anything on the floor after your fall? You didn't</p> <p>2 examine the floor and say, "There's something there"?</p> <p>3 A. No, I did not.</p> <p>4 Q. So what I said was correct?</p> <p>5 A. Correct. Yes. The EMT came and walked me</p> <p>6 upstairs.</p> <p>7 Q. Okay. When you stood -- do you remember people</p> <p>8 showing up with mops or anything like that?</p> <p>9 A. I just remember people yelling.</p> <p>10 Q. Okay. When you -- where were you -- or strike</p> <p>11 that.</p> <p>12 I understand that from the fall area you went</p> <p>13 to kind of a back-of-the-house place.</p> <p>14 A. Yeah. I don't even know where they took me.</p> <p>15 Q. That was somewhere in the security office or...</p> <p>16 A. Yes.</p> <p>17 Q. And while you were there, can you just tell us</p> <p>18 what happened?</p> <p>19 A. I remember sitting in a chair and him trying to</p> <p>20 talk to me, and he looked at my arm and then he started</p> <p>21 putting a brace on it or -- I don't know what they call</p> <p>22 it, but -- that's all I remember.</p> <p>23 Q. Okay. Then what happened after he put the</p> <p>24 sling on?</p> <p>25 A. He walked me to the car and I -- it was over</p>

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<p>1 here. And I'm right-handed, so I drove right to</p> <p>2 Centennial Hospital.</p> <p>3 Q. Okay. Before he walked you to your car, did he</p> <p>4 take -- did you go back to your kiosk?</p> <p>5 A. Yes. I remember -- I told him I left my -- no.</p> <p>6 I left -- I left something there. I'm not sure what it</p> <p>7 was, but I left something. I remember him walking me to</p> <p>8 the booth to get it.</p> <p>9 Q. Okay. So you picked up -- the security officer</p> <p>10 walked with you from the medical room, or where he put</p> <p>11 the sling on, to your kiosk where you had last worked?</p> <p>12 A. Correct. Correct.</p> <p>13 Q. You picked up whatever it was --</p> <p>14 A. I don't know what it was, a book. I don't know</p> <p>15 what it was, but I got it.</p> <p>16 Q. And that's the last time that you've ever been</p> <p>17 to your kiosk, a kiosk?</p> <p>18 A. Yes.</p> <p>19 Q. Then he walked you out, and according to his</p> <p>20 report, you went to the eighth floor and then you drove?</p> <p>21 A. Then I must have -- yes, and then I went right</p> <p>22 to the hospital.</p> <p>23 Q. Okay. I'm going to show you what we'll mark as</p> <p>24 Exhibit C.</p> <p>25 ///</p>	<p>1 Q. Do you remember him asking you questions about</p> <p>2 where you worked?</p> <p>3 A. No, but I must have told him upstairs in the</p> <p>4 shops, yeah. I don't know. I don't remember.</p> <p>5 Q. Then the next -- I already asked you about the</p> <p>6 next sentence, but I'll read it. "I noted that a public</p> <p>7 areas department team member was on scene and mopping</p> <p>8 the floor in the area."</p> <p>9 Does that refresh your recollection about</p> <p>10 mopping, people being around mopping?</p> <p>11 A. (Reading document.)</p> <p>12 I'll be honest, I can't remember.</p> <p>13 Q. Okay. The next sentence, "Sekera apologized</p> <p>14 for falling and did not appear to be in any immediate</p> <p>15 distress."</p> <p>16 Do you remember anything like that, apologizing</p> <p>17 for falling?</p> <p>18 A. No.</p> <p>19 Q. Okay. The next paragraph, the second sentence,</p> <p>20 it reads, "She stated she was walking through the area</p> <p>21 when she slipped in what she believed was water on the</p> <p>22 floor." I'll stop there.</p> <p>23 Does that refresh your recollection? Do you</p> <p>24 remember telling anyone you thought there was water on</p> <p>25 the floor?</p>
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<p>1 (Exhibit C was marked.)</p> <p>2 BY MR. ROYAL:</p> <p>3 Q. This is a security report identified as</p> <p>4 VEN 008009. It's called a narrative report and it's two</p> <p>5 pages.</p> <p>6 Have you seen this before?</p> <p>7 A. Never.</p> <p>8 Q. Okay. I'm just going to direct you to a few</p> <p>9 things that are written here and see -- this is one of</p> <p>10 those times where I'm going to show you something and</p> <p>11 see if it helps you remember.</p> <p>12 A. Okay.</p> <p>13 Q. Look at the first paragraph, and it indicates</p> <p>14 in the second sentence, it says, "I arrived on scene and</p> <p>15 met with Las Vegas Tours (business located in Grand</p> <p>16 Canal Shoppes) Employee Sekera, Joyce who was seated on</p> <p>17 the marble flooring."</p> <p>18 A. Right.</p> <p>19 Q. Do you remember being seated on the marble</p> <p>20 flooring after your fall?</p> <p>21 A. I remember after falling -- well, yeah. I</p> <p>22 remember when he -- the EMT came to me. I was like this,</p> <p>23 I remember.</p> <p>24 Q. Being seated?</p> <p>25 A. Yes, on the floor still. I didn't move.</p>	<p>1 A. No, I do not.</p> <p>2 Q. The next sentence. "She reported that she fell</p> <p>3 backwards and put her right hand behind her head to</p> <p>4 protect it."</p> <p>5 Does that refresh your recollection about</p> <p>6 anything?</p> <p>7 A. No. Again, when I hit hard, I -- everything's</p> <p>8 a blur.</p> <p>9 Q. Continuing on, "She landed on the marble floor</p> <p>10 and her left elbow struck the base of the pillar next to</p> <p>11 her."</p> <p>12 Does that refresh your recollection about</p> <p>13 anything?</p> <p>14 A. I just remember falling backwards and hitting.</p> <p>15 That's all.</p> <p>16 Q. Okay. The next sentence, "She denied striking</p> <p>17 her head during the fall and denied losing consciousness</p> <p>18 prior to or after falling."</p> <p>19 Do you recall having that discussion?</p> <p>20 A. No, I do not.</p> <p>21 Q. The next sentence, "She denied any head pain,</p> <p>22 neck pain, back pain, weakness, dizziness, or nausea at</p> <p>23 that time."</p> <p>24 Do you recall having that conversation?</p> <p>25 A. No.</p>

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1 Q. "I noted that she was guarding her left elbow
2 and reported she was only experiencing pain there at the
3 time."
4 Does that refresh your recollection about
5 anything you've testified to?
6 A. I'm sorry?
7 Q. Let me restate it. I'll paraphrase.
8 A. Okay.
9 Q. He says you were guarding your left elbow.
10 That would make sense because your elbow hurt;
11 correct?
12 A. Right.
13 Q. And that probably was the most prominent thing
14 that hurt at the time.
15 Does that sound right?
16 I'm asking you.
17 A. Elbow, neck, yes. All of it.
18 Q. Okay. Head, shoulder, neck, elbow?
19 A. Yes.
20 Q. Do you remember guarding your left elbow,
21 holding your left elbow?
22 A. I don't remember, but it would feel natural to
23 do that if I hit on that side and...
24 Q. "She stated she was embarrassed" -- next
25 sentence. "She stated she was embarrassed, to which I

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1 offered to assist her to a more private area."
2 Do you recall that conversation?
3 A. No.
4 Q. Next sentence, "She agreed and was assisted to
5 a standing position."
6 Do you remember being assisted to a standing
7 position?
8 A. I remember two gentlemen helping me up, yes.
9 Q. From the floor to a standing position?
10 A. Yes.
11 Q. "I asked if she felt any new pain, weakness,
12 dizziness, or nausea, to which she denied at that time."
13 Do you remember that conversation?
14 A. No.
15 Q. "She agreed to be assessed in the medical room
16 and refused wheelchair assistance."
17 Do you remember that?
18 A. I do not.
19 Q. "She was able to ambulate on her own to the
20 medical room and was able to sit without assistance."
21 Do you remember doing that?
22 A. No. I remember him helping me in the room on a
23 chair.
24 Q. Okay. The next paragraph, first sentence on
25 VEN 008, "Sekera's left elbow was exposed which

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1 presented with an abrasion."
2 Do you remembering there being an abrasion on
3 your left elbow?
4 A. I just remember being very sore.
5 Q. Do you remember him examining you by maybe --
6 he says -- he used the word "palpation" where he might
7 be touching certain areas that you say are sore, like
8 your shoulder, your neck, your head, your back,
9 anything?
10 A. No.
11 Q. You don't remember that?
12 A. No.
13 Q. He indicates here that you had limited range of
14 motion in your left elbow due to increase in pain on
15 movement.
16 Do you remember that?
17 A. I just remember I was really sore. I don't
18 remember anything that involved him touching me or...
19 Q. Do you remember having a conversation with this
20 officer about workers' compensation?
21 A. Who? What?
22 Q. Let's go to the next page.
23 A. Okay.
24 Q. And we'll go to the first full paragraph
25 starting with "Sekera."

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1 A. Okay.
2 Q. "Sekera agreed to seek further medical
3 attention but refused ambulance transport."
4 Do you remember having that conversation?
5 A. No, but I would do that. I would get my car
6 out of there and go to the hospital if I could drive,
7 and I had my -- you know, I'm right-handed, so I knew I
8 could get there.
9 Q. Okay. Do you remember refusing ambulance
10 transport?
11 A. No.
12 Q. It says, next sentence, "She stated her job did
13 not provide workers' compensation and did not know where
14 she should go."
15 Do you remember that conversation?
16 A. No.
17 Q. Did you have questions at the time about
18 whether you had workers' compensation?
19 A. No. It had nothing to do with that. No. That
20 was not in my mind. I wanted to make sure I was okay.
21 And, no, I definitely don't.
22 Q. The next sentence is, "After some discussion,
23 she opted to self-transport to Centennial Hills
24 Hospital, as it was close to her home."
25 Do you remember that?

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<p>1 A. No, but that would sound right.</p> <p>2 Q. The next sentence, "She refused to complete a</p> <p>3 voluntary statement for the incident and completed a</p> <p>4 medical release."</p> <p>5 Do you remember that at all?</p> <p>6 A. No.</p> <p>7 Q. "She was escorted to her booth in the Grand</p> <p>8 Canal Shoppes, collected her belongings, and was</p> <p>9 escorted to her vehicle in the team member garage on</p> <p>10 Level 8."</p> <p>11 Does that sound correct?</p> <p>12 A. Yes. I did go to the booth with him, yeah.</p> <p>13 Q. Okay. What about the rest of it, that you were</p> <p>14 escorted to the team member garage on Level 8?</p> <p>15 A. Yes. I remember him escorting me, yes.</p> <p>16 Q. To Level 8?</p> <p>17 A. I don't remember the level.</p> <p>18 Q. Okay.</p> <p>19 A. Yeah.</p> <p>20 Q. He refers to this as the team member garage.</p> <p>21 Do you know what that references?</p> <p>22 A. Most likely I had a badge and I just don't</p> <p>23 remember it because it was right at the end and I didn't</p> <p>24 have it -- I don't have it. So I don't know if I got it</p> <p>25 or not or...</p>	<p>1 my understanding is that's a picture of your left elbow.</p> <p>2 A. Okay.</p> <p>3 Q. You haven't seen these pictures before?</p> <p>4 A. Never.</p> <p>5 Q. Okay. You can't say whether that is or isn't</p> <p>6 your left elbow; right?</p> <p>7 A. You're right, but it's a shirt that looks</p> <p>8 familiar.</p> <p>9 Q. Okay. Let's go to the next one.</p> <p>10 VEN 037. I guess it looks like these are a</p> <p>11 picture of your shoes?</p> <p>12 A. Yes.</p> <p>13 Q. Can you identify those as your shoes?</p> <p>14 A. Yes.</p> <p>15 Q. It's like a Wizard of Oz moment. Did you tap</p> <p>16 these shoes with your heel? Sorry. That was</p> <p>17 inappropriate.</p> <p>18 Okay. Let's go to the next one, VEN 038.</p> <p>19 That's another picture of your shoes?</p> <p>20 A. Yeah. I'm sorry. Yes.</p> <p>21 Q. Do you recognize your purse in the photo?</p> <p>22 A. No. And I don't have that one right now, so...</p> <p>23 Q. What do you mean you don't have that one?</p> <p>24 A. I mean I don't know about the purse. I don't</p> <p>25 remember the purse.</p>
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<p>1 It was a parking badge.</p> <p>2 Q. I see. Okay. That's it for that.</p> <p>3 I just have -- oh, I forgot about these. You</p> <p>4 know what, I'm just going to give you a set of photos,</p> <p>5 and we'll mark these as Exhibit D.</p> <p>6 (Exhibit D was marked.)</p> <p>7 BY MR. ROYAL:</p> <p>8 Q. I'm just going to show you these. We're going</p> <p>9 to go through some of these and I'm going to ask you if</p> <p>10 they refresh your recollection about anything you</p> <p>11 testified to.</p> <p>12 MR. KUNZ: He'll be referring to these numbers</p> <p>13 here.</p> <p>14 THE WITNESS: Okay.</p> <p>15 BY MR. ROYAL:</p> <p>16 Q. I don't really like the order of these</p> <p>17 necessarily, but we'll take them in order.</p> <p>18 The first one, VEN 035, do you recognize</p> <p>19 yourself in the photo?</p> <p>20 A. The shirt and the pants, yeah.</p> <p>21 Q. Do you remember somebody taking pictures --</p> <p>22 A. No.</p> <p>23 Q. -- when you were in the medical room?</p> <p>24 A. Definitely not.</p> <p>25 Q. The next page, VEN 036, I'll represent to you</p>	<p>1 Q. Do you recognize the shoes?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Let's go to the next one, VEN 039.</p> <p>4 Do you recognize what's depicted here?</p> <p>5 A. Oh, yeah. The elevator is over here, yes.</p> <p>6 Q. Okay. So you commented that the elevator would</p> <p>7 be to the left of this photo from this particular</p> <p>8 vantage point?</p> <p>9 A. Yes.</p> <p>10 Q. And you were walking in the direction of that</p> <p>11 man in the white shirt and shorts at the time the</p> <p>12 accident occurred?</p> <p>13 MR. KUNZ: There's two of them.</p> <p>14 MR. ROYAL: Oh, you're right, you're right.</p> <p>15 That was bad of me.</p> <p>16 BY MR. ROYAL:</p> <p>17 Q. You see the column there?</p> <p>18 A. Yes.</p> <p>19 Q. There's a man with a white shirt and shorts</p> <p>20 right next to the column and he's facing the bathroom.</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Is that sort of the direction that you were</p> <p>24 walking at the time of the incident?</p> <p>25 A. That's correct.</p>

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<p>1 Q. This particular photo, this represents the</p> <p>2 bathroom that you were going to at the time of the</p> <p>3 incident?</p> <p>4 A. Yes.</p> <p>5 Q. And this is the bathroom that you would</p> <p>6 typically use at least once a day when you were working</p> <p>7 at the Venetian?</p> <p>8 A. Yes.</p> <p>9 Q. And typically to get to the bathroom, you would</p> <p>10 either go down the elevator or go down the escalator,</p> <p>11 both of which would be off to the left of the photo in</p> <p>12 this vantage point?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Let's go to the next photo. I'll</p> <p>15 represent to you my understanding is is that you'll see</p> <p>16 the column here and that this VEN 040 represents the</p> <p>17 area where you fell.</p> <p>18 Do you recognize it?</p> <p>19 A. Yes.</p> <p>20 Q. As you look at this photo, does anything about</p> <p>21 this photo refresh your recollection to anything you</p> <p>22 testified to at this point?</p> <p>23 A. I'm looking at the pillar and I know they have</p> <p>24 a pillar. I don't remember the floor per se, but I</p> <p>25 fell --</p>	<p>1 if you can. If you can't do it, I'll move on.</p> <p>2 A. Yeah. I don't think I can because I'm not sure</p> <p>3 how close I was to the pillar. I just know it was</p> <p>4 between the bathroom and in front of the pillar.</p> <p>5 Q. How about if we do this --</p> <p>6 A. Okay.</p> <p>7 Q. How about if I just have you put an "X" on the</p> <p>8 pillar to identify that as the pillar that was closest</p> <p>9 to the area of your fall? Can you do that?</p> <p>10 A. Yes. Thank you.</p> <p>11 Q. Okay. Just put an "X" on the pillar, and as I</p> <p>12 understand it, it's going to be next to that guy in the</p> <p>13 shorts and --</p> <p>14 MR. KUNZ: And this is VEN 039?</p> <p>15 MR. ROYAL: Correct.</p> <p>16 MR. KUNZ: So VEN 039, here's the guy. So</p> <p>17 where do you think it was?</p> <p>18 BY MR. ROYAL:</p> <p>19 Q. Just identify the pillar.</p> <p>20 A. Oh, just of the pillar?</p> <p>21 Q. Just the pillar.</p> <p>22 A. Okay.</p> <p>23 (Complies.)</p> <p>24 Q. Okay. So you've made a circle. That</p> <p>25 identifies the pillar that was closest to you when you</p>
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<p>1 Q. Near a pillar?</p> <p>2 A. If this is the same area.</p> <p>3 Q. So let's go back one to VEN 039.</p> <p>4 A. Oh, that's -- yeah.</p> <p>5 Q. So what I'm going to have you do, I think,</p> <p>6 is -- I am going to pull out a marker, if I can find</p> <p>7 one.</p> <p>8 I'm going to have you circle the pillar and</p> <p>9 kind of the area --</p> <p>10 A. See, I --</p> <p>11 Q. If you can.</p> <p>12 A. I can see a pillar. I know they have a pillar</p> <p>13 before that restroom. As far as the floor exactly</p> <p>14 where, I couldn't tell you.</p> <p>15 Q. I understand. What I'm looking for is for you</p> <p>16 to draw just a circle to represent the general area.</p> <p>17 A. Where I was walking?</p> <p>18 Q. Right, at the time you fell.</p> <p>19 So, for example, we know that you fell</p> <p>20 somewhere within, let's say, five or six feet of this</p> <p>21 pillar, would that be a fair statement?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. So if I were to ask you to take this and</p> <p>24 just kind of circle -- you can make it as wide as you</p> <p>25 want -- circle an area on this photo that shows you --</p>	<p>1 fell; correct?</p> <p>2 A. Correct.</p> <p>3 Q. What I want you to do is just on the bottom</p> <p>4 left there, put your initials and today's date.</p> <p>5 A. (Complies.)</p> <p>6 Q. Let's see. Let me just ask you this -- do you</p> <p>7 have a question about what you just marked?</p> <p>8 A. No.</p> <p>9 Q. Okay. Let me ask you this: Let's go to 040,</p> <p>10 and if I were to represent to you that this is the same</p> <p>11 pillar that you marked in VEN 039, are you able to draw</p> <p>12 a circle over the general area where the slip occurred</p> <p>13 in this photo? Either you can or can't.</p> <p>14 A. See, this photo is showing me it could be</p> <p>15 anywhere in the Venetian because it's so big. And if</p> <p>16 you say it's the same pillar --</p> <p>17 Q. Correct.</p> <p>18 A. -- I just don't know the distance on where I --</p> <p>19 Q. So here's my question -- it's a "yes" or</p> <p>20 "no" -- and I'm just asking, as I understand it, looking</p> <p>21 at 0 -- VEN 040, you're not able to -- assuming that the</p> <p>22 pillar that's represented there is the same pillar where</p> <p>23 you fell, you're not able to look at that and say,</p> <p>24 "Okay. This is the general area where I fell," and</p> <p>25 circle it?</p>

EXHIBIT “D”

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May 30, 2019

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Re: Sekera v. Venetian

Dear Mr. Galliher,

Your firm has retained my services as an expert in the above referenced matter. Please accept this document as my rebuttal report. To prepare for this report, I have reviewed the defense expert report of Wilson C. Hayes, Ph.D. dated 5/17/2019.

On Pages 7 and 8 of the Hayes report, Mr. Hayes references the ANSI A326.3 Standard, in particular, the portion that addresses, "that there are many factors that affect the possibility of a slip occurring on a hard surface", and "the COF shall not be the only factor determining the appropriateness of a hard surface flooring material for a particular application".

While both of those references are accurate, in this particular incident, there was a spilled liquid on the marble floor surface and objective slip resistance testing clearly indicated an unsafe and slippery walking surface when contaminated with a liquid substance. That single factor alone was the primary causal factor contributing to plaintiff's slip and fall.

On Page 13 of the report, Mr. Hayes states; "In addition, she was wearing very worn shoes that were well beyond their safe life".

Apparently, Mr. Hayes would like us to consider that as an 'unsafe shoe expert' it is clear that had plaintiff been wearing 'safe' shoes, the potential for the slip and fall would have been considerably less likely.

Following this line of reasoning, we can draw two specific conclusions; one, that 'unsafe shoes' presents a serious risk for slip and fall events as a sole causal factor. And secondly, if that is indeed the case, then the Venetian Hotel-Casino is allowing guests to bring an 'unsafe condition' onto their property!

Continuing with that line of reasoning, it is certainly likely that many guests entering the property are entering with 'unsafe shoes' and should be restricted from entering the property.

That of course, is a ridiculous expectation as it is virtually impossible to enforce such a prohibition. Keeping all walking surfaces in a safe and slip resistant condition is a far more rationale approach and property owners have a responsibility to do so.

Keith E. Galliher, Esq.
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Page Two

On Page 16 of the report, Mr. Hayes makes reference to the Burnfield and Powers study relating to the probability of slips and falls in relation to an established COF.

The Burnfield and Powers study was performed in a laboratory setting with individuals wearing full body harnesses and tethered to an overhead structure to prevent them from falling when they 'slip'. The participants were aware that they would be subjected to various COF levels and that at some point, would indeed slip. The published results of that study clearly indicates that if you are walking in a laboratory on a pre-selected walking surface, with specific footwear, you will slip at a determined COF level.

The overwhelming majority of slips and falls do not occur in laboratories under such controlled conditions -- they occur in the real-world arena of a multitude of walking surfaces in varying conditions with a wide-ranging assortment of footwear.

Within the same page, Mr. Hayes states; "With respect to the role of slip resistance in the initiation of Ms. Sekera's fall, as noted above, the BOT-3000E (BOT) is supported by both national and international standards and widely-used worldwide. While the English XL Variable Incidence Tribometer (XL) is no longer supported by such standards, it continues to be used in the United States".

Mr. Hayes fails to reference exactly which 'national and international standards' he is referencing in relation to the BOT-3000E. It should also be noted that the BOT measures dynamic coefficient of friction and not static coefficient of friction.

Mr. Hayes is wrong with his statement regarding the English XL Tribometer not being supported by national and international standards.

The English XL Tribometer was validated by the publication of the American Society for Testing and Materials Standard; 'ASTM F2508-11'. Additionally, the English XL Tribometer is the instrument of choice for the United States Army, Navy and Air Force in addition to the National Aeronautics and Space Administration (NASA) along with a multitude of national and international corporations.

On Page 17 of the report, Mr. Hayes states in reference to the 0.50 slip resistance standard; "There are, of course, no "accepted national standards" or requirements for safe and slip resistant walking surfaces".

The 0.50 slip resistance level for a safe and slip resistant walking surface is referenced within the ANSI A1264.2-2001 national Standard as well as the Underwriters Laboratory (UL) national Standard, and by the National Safety Council (NSC). All are 'national standards' and all have established the 0.50 threshold for a slip resistant walking surface.

Mr. Hayes conveniently fails to address the seminal study to determine the appropriate level of COF for a safe and slip resistant walking surface. That study is the 1983 'University of Michigan Work Surface

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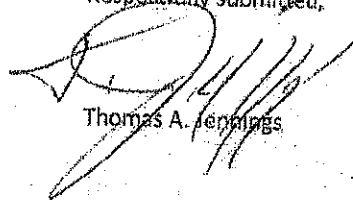
Friction: Definitions, Laboratory and Field measurements and a Comprehensive Bibliography' by James M. Miller, Don B. Chaffin and Robert O. Andres. Within the conclusions of that extensive study is the following:

"The most common recommended COF by standards organizations and by individual authors is 0.5. This value seems reasonable since it allows a small margin of safety over and above the 0.4 COF which was often cited as needed for walking."

From all materials reviewed, it is abundantly clear that the primary causal factor for Ms. Sekera's slip and fall event was the spilled liquid onto the marble walking surface which reduced the slip resistance level of the walking surface to a slippery and unsafe walking surface.

It should also be noted that the Venetian Hotel-Casino has experienced 196 slip and fall events between January 1, 2012 to August 5, 2016 with the majority of those events occurring on the marble flooring within the same approximate area as plaintiff's slip and fall. This level of activity would certainly indicate a 'frequency' issue that should have been addressed by the Venetian Hotel-Casino at some point.

Respectfully submitted,



Thomas A. Jennings

TAJ/gw

EXHIBIT “E”

Deposition of:

Thomas A. Jennings

Case:

Joyce Sekera v. Venetian Casino Resort, LLC, d/b/a The Venetian Las Vegas, et al.
A-18-772761-C

Date:

07/02/2019



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<p>1 MR. KUNZ: Same objection. Mischaracterizes.</p> <p>2 Go ahead.</p> <p>3 THE WITNESS: Yeah, because the property owner</p> <p>4 should and, in my opinion, must be aware that if their</p> <p>5 poring (phonetic) surface, their walking surface is not</p> <p>6 slip resistant when contaminated with a liquid that is</p> <p>7 capable of producing slip-and-fall events based on the</p> <p>8 readings, then, yes, they are aware that they're having</p> <p>9 slips and falls particularly on contamination on the</p> <p>10 walking surface, so do something to make it so people</p> <p>11 will not slip and fall on the contaminant by providing,</p> <p>12 for example, an appropriate application of a</p> <p>13 slip-resistant product.</p> <p>14 BY MR. ROYAL:</p> <p>15 Q. Do you know what strict liability is?</p> <p>16 A. No, I don't.</p> <p>17 Q. Okay. You make reference on page 3 of your</p> <p>18 first report, this December 28th report, down at the</p> <p>19 bottom.</p> <p>20 A. Yes.</p> <p>21 Q. You write, "Thousands of individuals transit</p> <p>22 the floors within the Venetian every month -- Venetian</p> <p>23 Casino Hotel every month."</p> <p>24 Do you see that?</p> <p>25 A. I do.</p>	<p>1 occasionally used. It's constant.</p> <p>2 Q. Right. Yeah. 24/7?</p> <p>3 A. Yeah. I would have no argument with that at</p> <p>4 all.</p> <p>5 Q. So in this particular area, you didn't count</p> <p>6 the number of people that walk through the area of the</p> <p>7 fall from 12:06 p.m. until the incident at 12:36 p.m.?</p> <p>8 A. No. It's almost impossible.</p> <p>9 Q. Well, I did it.</p> <p>10 A. You did?</p> <p>11 Q. And I can tell you it's about 450 people that</p> <p>12 walk through there.</p> <p>13 A. All right.</p> <p>14 Q. And that's just in 30 minutes. So if you watch</p> <p>15 it for an hour, you're going to be up close to 1,000.</p> <p>16 You'd agree with that?</p> <p>17 A. I do. And if you watch it, yeah, it would be</p> <p>18 for that small section that's within the scope of the</p> <p>19 video. This is a large area. So whether you can say</p> <p>20 450, I would probably say every day there's probably</p> <p>21 4,500 or more.</p> <p>22 Q. Okay. Yeah. There would be -- so let's get</p> <p>23 back to this part of your report.</p> <p>24 "Within the general area of Plaintiff's</p> <p>25 slip-and-fall incident, are food courts, cafés, coffee</p>
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<p>1 Q. Now, based -- do you know anything about how</p> <p>2 many rooms there are at that property?</p> <p>3 A. I don't.</p> <p>4 Q. Do you know anything about the occupancy rates?</p> <p>5 A. No.</p> <p>6 Q. You know they have conventions and people</p> <p>7 come -- people who attend conventions will stay there,</p> <p>8 they could stay somewhere else, and they have all kinds</p> <p>9 of people coming to the property.</p> <p>10 You agree with that?</p> <p>11 A. I do.</p> <p>12 Q. You say "thousands."</p> <p>13 Wouldn't it be more fair to say hundreds of</p> <p>14 thousands of people every month, maybe even millions</p> <p>15 come through the property?</p> <p>16 MR. KUNZ: Speculation.</p> <p>17 Go ahead.</p> <p>18 BY MR. ROYAL:</p> <p>19 Q. To the extent -- based on your experience.</p> <p>20 A. Well, yeah, I just use the figure thousands to</p> <p>21 indicate that there's a substantial number of people</p> <p>22 that transit the property. It wouldn't matter to me if</p> <p>23 it was a million or a thousand. That's a lot of people.</p> <p>24 Q. Okay.</p> <p>25 A. It's not something that is irregularly or</p>	<p>1 bars, and other operations that dispense beverages."</p> <p>2 Why do you include that in your report?</p> <p>3 A. Because these are areas that provide liquid</p> <p>4 beverages to guests, and some come in bottles, like the</p> <p>5 bottled water, some come in cups, some come in cans.</p> <p>6 Some are brought in from the outside.</p> <p>7 But we reference and stay with what the</p> <p>8 Venetian provides in this general location. And when</p> <p>9 you do that, some individuals are going to spill it onto</p> <p>10 the surface. There's no doubt about it.</p> <p>11 Q. But we have no evidence that that happened</p> <p>12 here; right? You have no evidence that that happened?</p> <p>13 A. That someone spilled something onto the</p> <p>14 surface?</p> <p>15 Q. From -- well, let me -- yes. Let me ask that.</p> <p>16 You have no direct evidence that someone</p> <p>17 spilled something on the surface in this case?</p> <p>18 A. I did not observe anyone spilling anything onto</p> <p>19 the surface, that's correct.</p> <p>20 Q. Okay. And, in fact, the plaintiff -- strike</p> <p>21 that.</p> <p>22 All you know is that the report says the</p> <p>23 plaintiff thought she slipped in water; correct?</p> <p>24 A. Correct.</p> <p>25 Q. And that you got an understanding later that</p>

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<p>1 substance on the floor, and she'd never even heard of a 2 foreign substance being on the floor? 3 You don't know that? 4 A. I don't know that. 5 Q. And it wouldn't have any factor [sic] on any of 6 the opinions you've presented? 7 A. That would be correct. 8 Q. Okay. Now, on page 5 of your initial report, 9 you have certain slip testing that was performed on 10 December 4, 2018. It tested above .50 -- in fact, it 11 was .70 coefficient of friction when it was dry; 12 correct? 13 A. Correct. 14 Q. Now, do you happen to have any idea -- or 15 strike that. 16 The incident happened November 4, 2016, so you 17 would have taken this reading roughly just a little more 18 than a year after the incident? 19 A. Fair. 20 Q. Okay. You don't know what the coefficient of 21 friction was on the date of the incident; right? 22 A. I have no idea. 23 Q. Okay. How about -- the same with the wet slip 24 testing, you came up with an average of .33 coefficient 25 of friction; correct?</p>	<p>1 to -- on page 3 of your report, you say, "Food courts, 2 cafés, coffee bars, and other operations" -- 3 A. Right. 4 Q. -- "that dispense beverages." 5 I'm wondering, did you observe that or were you 6 told that information? 7 A. No, no, no. I've observed that. I've been to 8 that property multiple times. I can't tell you the 9 names of all those. 10 Q. Okay. All right. I got it. 11 You just say this happened -- the Carol Smith 12 slip-and-fall you say happened somewhere around the base 13 of the escalator that comes down from the parking garage 14 escalator in the Venetian? 15 A. If you went down to the base of the escalator 16 and turned right and then you walked a little bit 17 towards the -- they have, like, a coffee bar that sits 18 sort of behind the escalator, then there's, like, a 19 little general store at the back, it would be right in 20 that general vicinity as I recall the location. 21 Q. There's a shoe shine place there. 22 Do you remember that? 23 A. I do. 24 Q. Is that -- was it near the shoe shine place? 25 A. Near, but near to me is...</p>
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<p>1 A. Correct. 2 Q. Now, you did test it at .40 at least one 3 direction; correct? 4 A. Correct. 5 Q. And according to the study that we just 6 reviewed, in the 1983 study, .40 would have been -- at 7 least they determined to be adequate; correct? 8 A. Under controlled conditions. 9 Q. Got it. Okay. 10 Now, let me ask you about the Smith case. 11 Where did the slip-and-fall occur in Smith, 12 because I'm not actually familiar with that? 13 The Carol Smith case versus Venetian. 14 A. Oh, I believe it was over by the escalator to 15 the right -- you know the escalator where you come down 16 from the upper level? 17 Q. Yes. 18 Well, is this from the parking garage? 19 A. Yes. 20 Q. Okay. So I'm going to ask you a few landmarks. 21 Do you know where the JuiceFarm is, the Bouchon 22 Bakery? 23 A. You're testing my memory. I don't pay 24 attention to the occupancy by name. 25 Q. The reason I ask is because you make reference</p>	<p>1 Q. Okay. Is it between the shoe shine place and 2 the entry to the gift shop? 3 A. Approximately. That's close. 4 Q. Okay. So this would be maybe -- would it be, 5 like, 100 feet or so away from the slip-and-fall that 6 occurred in the Sekera case? 7 A. It's reasonable. Close. 8 Q. So the Smith case did not happen in the Grand 9 Lux rotunda? 10 A. The same area where we're here today? 11 Q. Right. 12 A. No. 13 Q. Now, my understanding is when you did the dry 14 test of the Smith case, it was .90 coefficient of 15 friction? 16 A. Correct. 17 Q. When you did the wet test, it was .40 18 coefficient of friction? 19 A. Correct. 20 Q. Okay. And any explanation as to why it would 21 be different -- your testing would be different in the 22 Smith case versus the Sekera case? 23 A. Well -- 24 MR. KUNZ: Speculation. 25 Go ahead.</p>

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<p>1 THE WITNESS: From an engineering standpoint,</p> <p>2 sure, there's possibilities that can explain that.</p> <p>3 Mostly it would be: Is this area more transited by</p> <p>4 pedestrian traffic than the Sekera incident? Was the</p> <p>5 floor application put on by Venetian at the same level</p> <p>6 in that case as in this case?</p> <p>7 So, yeah, there's multiple possibilities as to</p> <p>8 why you would have a discrepancy between 0.4 and 0.33.</p> <p>9 Frankly, it's not that far off.</p> <p>10 BY MR. ROYAL:</p> <p>11 Q. Okay. Now, you talk about floor applications,</p> <p>12 and you make mention of that on page 2 of your initial</p> <p>13 report?</p> <p>14 A. Yes.</p> <p>15 Q. You don't identify the floor applications</p> <p>16 specifically.</p> <p>17 What floor applications are you talking about?</p> <p>18 A. There are a number of commercial products by</p> <p>19 the dozen that can be applied to any walking surface</p> <p>20 that will increase the slip resistance level to 0.5 or</p> <p>21 higher. And depending on the product, it will retain</p> <p>22 that level even with a heavy volume of pedestrian</p> <p>23 traffic. It depends on the volume of traffic, it</p> <p>24 depends on the surface to which it's being applied, but</p> <p>25 there are those products out there. There's numbers of</p>	<p>1 would probably be given a discount if you were looking</p> <p>2 at 5,000 square feet versus 500.</p> <p>3 Q. Is this something that you have ever personally</p> <p>4 done? Have you ever personally obtained products and</p> <p>5 applied them to floors?</p> <p>6 A. No. I've recommended the products and they've</p> <p>7 been applied to floors by my clients and with a great</p> <p>8 deal of success.</p> <p>9 Q. So that's something where you would have tested</p> <p>10 before and after for the client?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And that would be the MGM?</p> <p>13 A. MGM Mirage Resorts, yes, sir.</p> <p>14 Q. Any others?</p> <p>15 A. Caesars Palace.</p> <p>16 Q. Okay.</p> <p>17 A. Golden Nugget.</p> <p>18 Q. Okay.</p> <p>19 A. Those are the ones that come to mind, hotel</p> <p>20 casinos.</p> <p>21 Q. When is the last time you tested -- you did any</p> <p>22 kind of consulting related to the use of these products?</p> <p>23 A. Oh, six months ago.</p> <p>24 Q. Okay. With who?</p> <p>25 A. Mirage Resorts.</p>
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<p>1 them.</p> <p>2 Q. Can you name some?</p> <p>3 A. Sure. There's SharkGrip, SlipSafe. I think I</p> <p>4 could be off a little bit on this, but I believe it's</p> <p>5 Sure Safe or Sure Slip Safe. Those are the ones that</p> <p>6 come to mind right off the top of my head.</p> <p>7 Q. When you prepared your report, did you pull</p> <p>8 down any information to come up with the pricing here?</p> <p>9 A. Well, I've recommended things such as SharkGrip</p> <p>10 to other consulting clients, and generally you're going</p> <p>11 to be -- depending on whether or not you do it in-house</p> <p>12 or have a contractor do it for you, it could range from</p> <p>13 20-some cents a square foot application to probably 40,</p> <p>14 50 cents a square foot.</p> <p>15 Q. Okay. Now, you didn't attach any of this</p> <p>16 information to your initial report; correct?</p> <p>17 A. Correct.</p> <p>18 Q. This is just something in this paragraph on</p> <p>19 page 2 at the bottom of your report that you presented</p> <p>20 just based on your general experience? You didn't look</p> <p>21 up SharkGrip, SlipSafe, Sure Safe, and price it out?</p> <p>22 A. Well, no, because the price would be a variable</p> <p>23 depending on whether you did it yourself or whether you</p> <p>24 had someone you retained to come in and do it. And it</p> <p>25 depends on the total number of square footage. You</p>	<p>1 Q. What did you do?</p> <p>2 A. Based on some history of slips and falls, I go</p> <p>3 to the client and advise them of a product. This would</p> <p>4 be Mirage Resorts.</p> <p>5 Mirage Resorts contracts to have the product</p> <p>6 applied, and then I come back every six months and test</p> <p>7 certain areas to ensure the product is maintaining its</p> <p>8 slip resistance level, and if not, try to determine</p> <p>9 what's causing the difference and make additional</p> <p>10 recommendations. I do that on a regular basis.</p> <p>11 Q. Does Mirage have marble floors?</p> <p>12 A. At any of their properties? Oh, sure.</p> <p>13 Q. Does Mandalay Bay? Are they an MGM property?</p> <p>14 A. Yes.</p> <p>15 Q. Do they have marble floors?</p> <p>16 A. Yes, they do.</p> <p>17 Q. Have you told MGM that if any of their floors</p> <p>18 test below .50 wet, that they're responsible for any</p> <p>19 slip-and-fall that occurs no matter what?</p> <p>20 A. Yes, sir, I have.</p> <p>21 Q. Okay.</p> <p>22 A. That's my safety engineering opinion as a</p> <p>23 consultant.</p> <p>24 Q. All right. Let's go to -- let me see if</p> <p>25 there's anything else in this report I want to look at.</p>

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<p>1 Just a minute.</p> <p>2 All right. Let's go to the next report. We'll</p> <p>3 mark it as G. May 30th -- your May 30th report.</p> <p>4 A. Hang on a second, Mike.</p> <p>5 (Exhibit G was marked.)</p> <p>6 BY MR. ROYAL:</p> <p>7 Q. So May 30th, 2019, you prepared a rebuttal</p> <p>8 report, and in addition to what we've already reviewed,</p> <p>9 by the time you prepared this report, the only other</p> <p>10 documents that you would have reviewed beyond those</p> <p>11 identified on your December 28, 2018, report would be</p> <p>12 the report of Dr. Hayes; is that correct?</p> <p>13 A. Correct.</p> <p>14 Q. All right. So this is a pure rebuttal report.</p> <p>15 You got his initial report, it was sent to you by</p> <p>16 Mr. Galliher, and then you prepared this?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Okay. No other documents, correct, were</p> <p>19 reviewed that you can recall?</p> <p>20 A. Correct.</p> <p>21 Q. All right. So in the third paragraph here, you</p> <p>22 make the -- we've kind of already bantered this about,</p> <p>23 but I'll just ask a quick question.</p> <p>24 You make the conclusion there was a spilled</p> <p>25 liquid on the marble surface.</p>	<p>1 examination of her shoes.</p> <p>2 A. Correct.</p> <p>3 Q. Now, I think we covered this before, but you</p> <p>4 examined her shoes but you didn't indicate you examined</p> <p>5 her shoes nor did you comment on your examination of her</p> <p>6 shoes in your December 28, 2018, report?</p> <p>7 A. Correct.</p> <p>8 Q. Because it was inconsequential?</p> <p>9 A. Yes. To me, it's irrelevant in this case.</p> <p>10 Q. Okay. And it's irrelevant to you because as</p> <p>11 you -- because no property can control who's wearing</p> <p>12 safe or unsafe shoes when they come on their property;</p> <p>13 right?</p> <p>14 A. Correct.</p> <p>15 Q. You mentioned that you have represented</p> <p>16 Venetian in cases where maybe people are wearing</p> <p>17 flip-flops.</p> <p>18 There are cases that you've handled where shoes</p> <p>19 do become kind of a factor?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Flip-flops in particular would be those kinds</p> <p>22 of shoes?</p> <p>23 A. I'm not a fan of flip-flops.</p> <p>24 Q. Because they don't have a heel, they're not</p> <p>25 very supportive, and they can contribute to slips and</p>
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<p>1 That's your conclusion?</p> <p>2 A. Yes, sir. Based on the plaintiff's testimony,</p> <p>3 yes, sir.</p> <p>4 Q. Well, but you don't have her testimony.</p> <p>5 A. Well, not her testimony, but she said she</p> <p>6 slipped on a wet substance, water.</p> <p>7 Q. She said she believed --</p> <p>8 A. She slipped.</p> <p>9 Q. -- she slipped in water?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And that's it, that's what you're basing it on?</p> <p>12 A. That's it. Yes, sir.</p> <p>13 Q. You don't know how long it was there or how it</p> <p>14 was introduced; correct?</p> <p>15 A. Correct.</p> <p>16 Q. And it's your opinion that that is the single</p> <p>17 primary causal factor contributing to her slip-and-fall,</p> <p>18 the plaintiff?</p> <p>19 A. Correct.</p> <p>20 Q. And that's based on just what is provided in</p> <p>21 the security report that she believed that she slipped</p> <p>22 in water?</p> <p>23 A. Correct.</p> <p>24 Q. All right. He makes -- then you also make a</p> <p>25 comment about Dr. Hayes's opinions related to his</p>	<p>1 falls more so than other kind of footwear?</p> <p>2 A. They can.</p> <p>3 Q. So it's not always your opinion that footwear</p> <p>4 is not a primary causal factor?</p> <p>5 A. I think we discussed that earlier. It could be</p> <p>6 a contributing factor, but I don't believe that was the</p> <p>7 case in this situation.</p> <p>8 Q. Okay. If a jury were to determine that the</p> <p>9 area where the plaintiff slipped and fell was dry, your</p> <p>10 opinion would be that -- would be what?</p> <p>11 A. That the floor was slip resistant.</p> <p>12 MR. KUNZ: Objection. Speculation.</p> <p>13 Go ahead.</p> <p>14 THE WITNESS: If it was dry, that the floor was</p> <p>15 slip resistant as tested.</p> <p>16 BY MR. ROYAL:</p> <p>17 Q. And that the floor did not cause the</p> <p>18 plaintiff's fall?</p> <p>19 MR. KUNZ: Same objection.</p> <p>20 BY MR. ROYAL:</p> <p>21 Q. Would that be your opinion?</p> <p>22 A. I think that would be reasonable, yes, sir.</p> <p>23 Q. All right. I think you -- on page 2 of your</p> <p>24 rebuttal report, you dismiss the Burnfield and Power</p> <p>25 study just because it happened in a laboratory, it was</p>

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<p>1 in a controlled circumstance, and the Venetian is not a</p> <p>2 controlled circumstance?</p> <p>3 A. Yes. That has no relationship to real world</p> <p>4 ambulation and walking surfaces.</p> <p>5 Q. Is the 1983 study different?</p> <p>6 A. Yes, it is.</p> <p>7 Q. Okay. And how so?</p> <p>8 A. The 1983 study comes to somewhat similar</p> <p>9 conclusions. However, after much more of a thorough</p> <p>10 laboratory effort on the part of the University of</p> <p>11 Michigan, they determined -- and I think I testified to</p> <p>12 this earlier -- that 0.4 was the level and -- for</p> <p>13 controlled environments, and that in order to account</p> <p>14 for safety and uncontrollable circumstances, they would</p> <p>15 elevate that to the 0.5, hence the 0.5 consensus.</p> <p>16 Q. I'm going to -- let me see if there's anything</p> <p>17 I want to cover on this.</p> <p>18 Oh, yes. I want to ask you about the English</p> <p>19 XL. There's a reference on page 2 to ASTM F25 --</p> <p>20 A. Page 2?</p> <p>21 Q. Page 2 of your May 30 --</p> <p>22 A. Oh, yeah. 2508-11.</p> <p>23 Q. Yes. You reference that.</p> <p>24 A. Yes.</p> <p>25 Q. What does that particular standard tell us?</p>	<p>1 A. Because most heels slip first, simply cases of</p> <p>2 a walking surface not having the appropriate level of</p> <p>3 slip resistance to prevent a sudden slip.</p> <p>4 And dynamic friction slip-and-falls would mean</p> <p>5 that you're on a sheet of ice and you're sort of skating</p> <p>6 across and you ultimately lose your balance and fall.</p> <p>7 All studies that I have reviewed and all</p> <p>8 lectures I've attended through every engineering course</p> <p>9 at every school, static coefficient of friction is the</p> <p>10 primary -- in fact, 90-some percent cause of slips and</p> <p>11 falls, not dynamic friction.</p> <p>12 Q. I'm just looking at an article from 2008 that</p> <p>13 makes reference to the dynamic coefficient of friction</p> <p>14 with a -- they have a wet value of .42 or greater</p> <p>15 coefficient of friction.</p> <p>16 What would that relate to?</p> <p>17 A. To me, that is a dynamic friction level. How</p> <p>18 they got it, what they used, how many tests did they</p> <p>19 provide, what was the surface, you really can't compare</p> <p>20 dynamic coefficient of friction and static coefficient</p> <p>21 of friction mathematically or in terms of reliability in</p> <p>22 predicting slip-and-fall events. They are two</p> <p>23 completely different physical efforts.</p> <p>24 Q. Are you aware of the .42 coefficient of</p> <p>25 friction recommended level for flooring related to the</p>
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<p>1 A. It tells us that the English XL Tribometer, or</p> <p>2 the XL Tribometer as it's called, is a recognized valid</p> <p>3 instrument for slip resistance testing.</p> <p>4 Q. I looked at that and maybe I missed it. I</p> <p>5 didn't see that particular equipment identified</p> <p>6 specifically there.</p> <p>7 Is it or is it just about calibration?</p> <p>8 A. No, no, no. F2508-11 is about the validation</p> <p>9 of variable instrument tribometers as an objective</p> <p>10 testing instrument for slip resistance. There's a</p> <p>11 history behind all of that, which I think you're</p> <p>12 probably aware of that.</p> <p>13 Q. I wanted to ask you about -- can you just tell</p> <p>14 me, what's the DCOF versus the SCOF?</p> <p>15 A. DCOF is the dynamic coefficient of friction and</p> <p>16 SCOF is the static coefficient of friction. The</p> <p>17 difference between the two is static coefficient of</p> <p>18 friction is the amount of force necessary to incipate</p> <p>19 [sic] motion across the surface.</p> <p>20 A dynamic coefficient of friction is the amount</p> <p>21 of force necessary to continue motion across the</p> <p>22 surface. Quite different.</p> <p>23 Q. Okay. Which one applies here?</p> <p>24 A. Static coefficient of friction.</p> <p>25 Q. And explain why that is.</p>	<p>1 dynamic coefficient of friction that's been -- they make</p> <p>2 reference to a 2014 --</p> <p>3 A. Yes. I have seen multiple articles like that,</p> <p>4 but, again, that presumes that someone is sliding across</p> <p>5 the floor and then proceeds to slip. No relation to</p> <p>6 static friction.</p> <p>7 Q. Okay. All right. Let's go to the last page of</p> <p>8 your May 30th, 2019, report. Look at the last</p> <p>9 paragraph.</p> <p>10 A. Yes, sir.</p> <p>11 Q. It reads, "It should also be noted that the</p> <p>12 Venetian Hotel Casino has experienced 196 slip-and-fall</p> <p>13 events between January 1st, 2012, to August 5th, 2016,</p> <p>14 with the majority of those events occurring on the</p> <p>15 marble flooring within the same approximate area as</p> <p>16 plaintiff's slip-and-fall."</p> <p>17 Did I read that correctly?</p> <p>18 A. You did.</p> <p>19 Q. What information are you drawing from?</p> <p>20 A. I'm drawing from -- and this is post-December</p> <p>21 report. And everything that I base my initial opinions</p> <p>22 and conclusions are based on the materials sent to me at</p> <p>23 that time.</p> <p>24 When I prepared this report, I was provided by</p> <p>25 Mr. Galliher's office a spreadsheet, a run sheet of</p>

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<p>1 slip-and-fall events within that referenced time period</p> <p>2 at that same approximate area as Plaintiff's</p> <p>3 slip-and-fall.</p> <p>4 Q. Did you bring that with you today?</p> <p>5 A. I don't believe so. It was sent to me via an</p> <p>6 e-mail.</p> <p>7 Q. Okay. If you relied on that, why didn't you</p> <p>8 make reference to that document, that information at the</p> <p>9 outset of your report of May 30th, 2019?</p> <p>10 A. Just seemed the appropriate place to put it was</p> <p>11 at the end of the report.</p> <p>12 Q. I mean, this is a rebuttal report.</p> <p>13 A. Yes.</p> <p>14 Q. And so as a rebuttal report, it is intended to</p> <p>15 rebut, as you're understanding --</p> <p>16 A. Yes.</p> <p>17 Q. -- opinions provided by Dr. Hayes; correct?</p> <p>18 A. Yes.</p> <p>19 Q. This information of 196 slip-and-fall events</p> <p>20 was not provided in Dr. Hayes' initial report; correct?</p> <p>21 That's not where you got the information?</p> <p>22 A. Correct. That is true.</p> <p>23 Q. This is additional information that you</p> <p>24 received from Mr. Galliher; correct?</p> <p>25 A. Yes, sir.</p>	<p>1 just continues on like that within that same general</p> <p>2 location. That's how it was arranged as a spreadsheet.</p> <p>3 Q. Okay. So did it identify people by name?</p> <p>4 A. That, I don't recall. I think it was more</p> <p>5 event oriented, but it could have.</p> <p>6 Q. Would it have included Lobby 1, Lobby 2, Lobby</p> <p>7 3, that kind of information?</p> <p>8 A. Yes, sir, I believe it did.</p> <p>9 Q. Would it have included areas like the Grand</p> <p>10 Hall, the front desk, the porte-cochère?</p> <p>11 A. No. It was simply addressed to the marble</p> <p>12 flooring, and as I recall, the vast majority were in the</p> <p>13 same general areas as Plaintiff's fall. I would have to</p> <p>14 pull the spreadsheet out to refresh my memory.</p> <p>15 Q. Would you consider the Carol Smith fall to be</p> <p>16 in the same general area as Plaintiff's fall?</p> <p>17 A. Yes, sir.</p> <p>18 Q. So in your opinion, at least, based on your</p> <p>19 testimony, so I understand, when you say "same</p> <p>20 approximate area," the area where Carol Smith fell would</p> <p>21 be within this Grand Lux rotunda area?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Okay. So you're saying, then, as I understand</p> <p>24 it, you received information from Mr. Galliher that</p> <p>25 there were 196 slip-and-fall events between January 1st,</p>
Page 86	Page 88
<p>1 Q. You didn't look at the actual reports, you just</p> <p>2 saw a spreadsheet?</p> <p>3 A. Correct.</p> <p>4 Q. Is that a spreadsheet that you can produce?</p> <p>5 You can produce it, right, after this deposition today?</p> <p>6 A. If it has not auto-erased itself, yes, sir, I</p> <p>7 can do that.</p> <p>8 Q. Okay. I'm going to ask you to do that --</p> <p>9 A. Okay.</p> <p>10 Q. -- since it's referenced in your report.</p> <p>11 A. Sure.</p> <p>12 Q. You make the comment here, "same approximate</p> <p>13 area."</p> <p>14 A. Yes, sir.</p> <p>15 Q. What are you talking about? What area? Is it</p> <p>16 the whole property or is it just in the Grand Lux</p> <p>17 rotunda? Where is it?</p> <p>18 A. Within the Grand Lux area, based on what I</p> <p>19 reviewed in the details of each recorded incident.</p> <p>20 Q. So you're -- I'm sorry. You say, "The details</p> <p>21 of each recorded incident."</p> <p>22 Tell me what the spreadsheet looks like.</p> <p>23 A. Well, a spreadsheet is a typical spreadsheet.</p> <p>24 It starts at a certain date and month, year. It</p> <p>25 specifies a location. It shows a slip-and-fall and it</p>	<p>1 2012, and August 5th, 2016, occurring in the vicinity of</p> <p>2 the Grand Lux rotunda?</p> <p>3 A. Essentially that's correct, yes, sir.</p> <p>4 Q. Okay. So I'm clear, do you know where the</p> <p>5 Grand Hall is, the entryway to the property?</p> <p>6 A. To the property, yes, sir.</p> <p>7 Q. So when you enter the property, there's a</p> <p>8 fountain, there's the front desk --</p> <p>9 A. Yes, sir.</p> <p>10 Q. -- there's a concierge desk to the right, and</p> <p>11 then if you go to the left as you enter, there's a huge</p> <p>12 grand hall with paintings on the ceiling.</p> <p>13 A. There is, sir.</p> <p>14 Q. Right?</p> <p>15 A. Yep.</p> <p>16 Q. All right. So when you say "same approximate</p> <p>17 area," if there were slip-and-falls there, they would be</p> <p>18 separate from the 196 slip-and-falls.</p> <p>19 Would that be right?</p> <p>20 A. I believe that's accurate.</p> <p>21 Q. And if somebody slipped and fell somewhere in</p> <p>22 the front desk area, that would not be part of this</p> <p>23 196 --</p> <p>24 A. I believe --</p> <p>25 Q. -- number?</p>

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1 A. I believe that's accurate, yes, sir.
 2 Q. And if somebody slipped and fell at the Palazzo
 3 on a marble floor, that's not part of the 196?
 4 A. That would be correct.
 5 Q. And if somebody slipped and fell at a
 6 convention area on a marble floor, that would not be
 7 part of the 196?
 8 A. As I recall, I'm going back on memory reading
 9 line after line. I believe that would be correct.
 10 Q. Okay. Did you ask Mr. Galliher where he got
 11 this information?
 12 A. No, sir. He said it was just provided to him
 13 under discovery and that was it.
 14 Q. Okay. Are they numbered 1 through 96?
 15 A. No. They're by date. I think I testified to
 16 that to start with. You have to start out with the date
 17 and then work your way out.
 18 Q. Did you count them?
 19 A. Yes, I did.
 20 Q. Okay. So this is something you counted?
 21 A. Yes, sir.
 22 Q. All right. And did you see -- did you notice
 23 that all of these 196 slip-and-fall events, did they
 24 occur due to foreign substances on the floor?
 25 A. Mostly that was the case, yes, sir. As I

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1 recall, they were all due to liquid contaminants.
 2 Q. Okay. No trip-and-falls, nobody fainting, no
 3 drunks, you know, swaying and falling to the floor that
 4 you can recall?
 5 A. No, sir.
 6 Q. And that's something that if you still have it,
 7 you will produce?
 8 A. Yes, sir.
 9 Q. When is the last time that you looked at that?
 10 A. It would have been about a month ago prior to
 11 preparing the rebuttal report.
 12 Q. All right. So you would have received it,
 13 what, about five to six weeks ago?
 14 A. That's fair.
 15 Q. Okay. Why would you think it would be erased?
 16 A. Well, I have an auto-erase on my computer that
 17 after a certain period of time, the e-mails are
 18 discarded.
 19 Q. What's it set for?
 20 A. Usually 30 days.
 21 Q. Okay. Is there any other information that
 22 Mr. Galliher's provided you with that you think may have
 23 been erased by your auto-erase?
 24 A. No, sir.
 25 Q. Is there any other information that you've been

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1 provided other than -- that you haven't produced today
 2 at your deposition other than the 196 -- the spreadsheet
 3 that's referenced in your May 30th, 2019, report?
 4 A. That would be correct.
 5 Q. Okay.
 6 A. I can't think of anything else I've been
 7 provided.
 8 Q. Okay. Let's get to your last report here, the
 9 latest one, June 24th, 2019, which we'll mark as H.
 10 (Exhibit H was marked.)
 11 BY MR. ROYAL:
 12 Q. Now, you've already done one rebuttal report.
 13 A. Yes.
 14 Q. Why did you do a second?
 15 A. Because I was requested to do so.
 16 Q. So what specifically was this report rebutting?
 17 A. Mr. Hayes' opinions and conclusions in his --
 18 let me see if I have this right -- in his rebuttal
 19 report to my rebuttal report.
 20 Q. Okay. So this is actually sort of a -- what we
 21 would call a surrebuttal, like a second rebuttal or a
 22 rebuttal to a rebuttal?
 23 A. Yes, sir.
 24 Q. Did I get that right?
 25 A. Yes, sir. Sounds good.

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1 Q. What is there in this particular report that
 2 you -- what have you said in this report that you
 3 haven't already said? That's what I'm trying to figure
 4 out here.
 5 A. Probably the primary one is on page 2,
 6 Mr. Royal, and that would be when Mr. Hayes says that --
 7 on Opinion 8, there is -- while there is no longer an
 8 approved ASTM for its use, referencing the English XL
 9 Tribometer, he's simply way out of date and he's
 10 completely wrong. ASTM F2508-11 is very clear. And why
 11 he's not aware of that frankly surprised me quite a bit.
 12 Q. Okay. But you'd already addressed that in your
 13 rebuttal report; correct?
 14 A. Originally, but he brought it up specifically
 15 in this rebuttal to my rebuttal, and therefore I was
 16 asked to rebut that rebuttal.
 17 Q. So my understanding is Dr. Hayes did an initial
 18 report and then he did a rebuttal report?
 19 A. He did.
 20 Q. You did an initial report, then a rebuttal
 21 report?
 22 A. Yes.
 23 Q. He did not do a rebuttal report to your
 24 rebuttal report?
 25 A. That's my understanding of his rebuttal report

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<p>1 dated June 13, 2019.</p> <p>2 Q. Okay. So your understanding is that he did two</p> <p>3 rebuttal reports?</p> <p>4 A. Yes, sir.</p> <p>5 Q. You note his Opinion No. 7 where he cites to</p> <p>6 witness statements contending there was no liquid on the</p> <p>7 walking surface -- I'll stop right there.</p> <p>8 You would agree that Dr. Hayes at least -- if</p> <p>9 he looked at testimony from other witnesses and so forth</p> <p>10 beyond the two that you've looked at, that he would have</p> <p>11 more information about at least what witnesses said when</p> <p>12 they appeared at the scene than you have?</p> <p>13 A. That's fair.</p> <p>14 Q. And your -- is there a reason -- strike that.</p> <p>15 So at the bottom of page 1 of the June 24,</p> <p>16 2019, report, you say, "I accept Ms. Sekera's version of</p> <p>17 the incident," and then you say, "And if indeed there</p> <p>18 was no liquid contaminant on the walking surface, then</p> <p>19 the slip resistance of the walking surface at the</p> <p>20 location must have fallen well below the .50 standard</p> <p>21 when dry."</p> <p>22 A. Yes, sir.</p> <p>23 Q. All right. Now, you've testified in this</p> <p>24 proceeding today that if there was nothing on the floor,</p> <p>25 that she must have slipped for some other reason?</p>	<p>1 safe when dry?</p> <p>2 A. Or test that I did, yes, correct, at the time</p> <p>3 of the test.</p> <p>4 Q. Okay. And your opinion was the same in the</p> <p>5 Barba case that we reviewed earlier, that the marble</p> <p>6 floor is safe when dry?</p> <p>7 A. Seems to be, yes.</p> <p>8 Q. And that's been your experience at least since</p> <p>9 2011, 2010 when you did that -- prepared that affidavit</p> <p>10 in the Barba case?</p> <p>11 A. Yes, sir.</p> <p>12 Q. I didn't see a reference to this Michigan study</p> <p>13 until the June 24th, 2019, report. I may have missed</p> <p>14 it, but is there a reason why you wouldn't have brought</p> <p>15 that up in an earlier report?</p> <p>16 A. Well, it was only because Mr. Hayes -- well,</p> <p>17 wait a minute. Give me one minute here.</p> <p>18 It's actually my May 30 report on page 2.</p> <p>19 Q. Okay. Give me just a second here.</p> <p>20 (Pause in proceedings.)</p> <p>21 BY MR. ROYAL:</p> <p>22 Q. So you noted off the record that you mentioned</p> <p>23 the Michigan report in the May 30th, 2019, rebuttal --</p> <p>24 A. Yes, sir.</p> <p>25 Q. -- or the Michigan study.</p>
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<p>1 A. Yes, sir.</p> <p>2 Q. Okay. It wouldn't necessarily be the</p> <p>3 coefficient of friction of a dry floor?</p> <p>4 A. It could be but not exclusively, that's true.</p> <p>5 Mr. Royal, if I could just add to that. Absent</p> <p>6 any other fact or factors presented to me, I would make</p> <p>7 that reasonable assumption as a safety engineer that if</p> <p>8 she slips and falls on a dry surface while there's other</p> <p>9 causal factors, still primarily it's because the slip</p> <p>10 resistance level is too low, generally speaking.</p> <p>11 Q. But you tested it at .70?</p> <p>12 A. When I tested it, that's what it was, yes.</p> <p>13 Q. Okay. And you have no reason to believe or</p> <p>14 opine that it was anything less than .70 dry coefficient</p> <p>15 of friction on the date of the incident?</p> <p>16 A. I have nothing to tell me that, correct.</p> <p>17 Q. So you're not going to show up at trial and</p> <p>18 testify that it must have been below .50 coefficient of</p> <p>19 friction dry if the jury were to determine that there's</p> <p>20 no foreign substance on the floor?</p> <p>21 A. No. I would cite at a trial and testimony that</p> <p>22 it's a possible causal factor for a slip-and-fall on a</p> <p>23 dry surface.</p> <p>24 Q. Right.</p> <p>25 But your opinion today is that the floor is</p>	<p>1 A. Yes, sir.</p> <p>2 Q. I'm not seeing anything different in your</p> <p>3 June 24th, 2019, report.</p> <p>4 A. The difference is that Mr. Hayes in his Opinion</p> <p>5 No. 8 was so explicit trying to imply that the English</p> <p>6 XL Tribometer is not a recognized instrument, it's not a</p> <p>7 valid instrument, but it's still used in the United</p> <p>8 States. And he's simply 100 percent incorrect. He's</p> <p>9 simply not up to date in his research.</p> <p>10 Q. Okay. I have just a couple -- well, a few more</p> <p>11 questions.</p> <p>12 I'm just going to ask you a couple of things</p> <p>13 from your report in the Goldstein case. I'm going to</p> <p>14 read a couple things from it.</p> <p>15 On your -- I think I have a copy of it here.</p> <p>16 So this is an April 23rd, 2018, report. This</p> <p>17 is in the Carol Smith versus Venetian case.</p> <p>18 (Exhibit I was marked.)</p> <p>19 BY MR. ROYAL:</p> <p>20 Q. On page 3 of your report at the bottom --</p> <p>21 A. Okay.</p> <p>22 Q. -- it says, "The only method to control the</p> <p>23 frequency of such events is to have a set of policies</p> <p>24 and procedures oriented to prevention, recognition, and</p> <p>25 appropriate spill cleanup as well as maintaining all</p>

EXHIBIT “F”

Thomas A. Jennings

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December 28, 2018

Keith E. Galliher, Esq.
The Galliher Law Firm
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89104

Re: Sekera v. Venetian

Dear Mr. Galliher,

Your firm has retained my services as an expert in the above referenced matter. Please accept this document as my initial report. In addition to this report, I have attached a current copy of my C.V., Fee Schedule, and Case List.

To prepare for this report, I have consulted with your office, performed a site inspection and slip resistance testing of the incident location on December 4th, 2018, and reviewed the following documents provided by your office:

- Complaint
- Surveillance Video
- Seven (7) color photographs of plaintiff and incident area
- Deposition Transcript of Rafael Chavez
- Deposition Transcript of Joseph Larson
- Venetian Security Report -- Case 1611V-0680
- Venetian Security Case MO
- Venetian security Person Profile
- Venetian Security Narrative Report
- Venetian Acknowledgement of First Aid Assistance & Advice to Seek Medical Care
- Venetian Accident Scene Check -- Security

Incident Background

On November 4th, 2016, plaintiff was a guest at the Venetian Hotel-Casino. Within the referenced 'Venetian Security Narrative Report' is the following:

"On November 4th, 2016 at 12:39 pm, I was dispatched to the area outside of the restrooms adjacent to the Grand Lux Café for a report of a slip and fall incident."

Within the referenced 'Complaint' is a description of the slip and fall incident as follows;
"On or about November 4, 2016 at approximately 1:00 p.m. Defendants negligently and carelessly permitted a pedestrian walkway to be unreasonably dangerous in that they allowed liquid on the floor causing the Plaintiff to slip and fall. Defendant had actual and/or constructive notice of the condition which caused the fall."

Safety Engineering and Human Factors Considerations

All places of business open to the general public including the Venetian Casino-Hotel have a responsibility to install and maintain walking surfaces that are slip resistant.

The term 'slip resistant' is referenced in three highly regarded national consensus standards organizations

- *'Underwriters laboratories Standard UL 410 – Slip Resistance of Floor Surface Materials'*
- *"4.1 General"*
- *"4.1.1 The average static coefficient of friction for WCM (Walkway construction materials used as floor plates, ramps, and stair treads that are made of natural stone, composite materials, abrasive-grit surface materials, and metal), FCM (Floor covering materials made of wood or composite materials), and FTM (Floor treatment materials other than water base et al) products shall be at least 0.50."*
- *'American National Standard ANSI/ASSE A1264.2 – 2012 Provision of Slip Resistance on Walking/Working Surfaces'*
- *"E12.2 The ANSI A1264.2 subcommittee suggests a slip resistance guideline of 0.5 for walking surfaces in the workplace under dry or wet conditions"*
- *The 'National Safety Council' (NSC) text; 'Accident Prevention Manual for Business and Industry' – Page 477*
- *"The coefficient of friction (slip Index) 0.5 to 0.6 is ideal."*

Addressing the issue of installing and maintaining slip resistant flooring is the following within the *'National Safety Council' (NSC) 'Accident Prevention Manual for Business and Industry'*

- *"Another method that can provide a safer walking surface is to use slip-resistant flooring products to help prevent falls."*

There are a number of readily available commercial products which can be applied directly over an existing walking surface to increase the slip-resistance level to 0.50 and higher. These products can be applied by in-house staff and/or a specialty contractor with costs in the range of 21 cents – 35 cents per square foot. On walking surfaces with high foot-traffic volume, the products can still present a safe and slip-resistant walking surface for an extended period of time. Periodic slip testing is advised to ensure the walking surface protectant is maintaining the 0.50 or higher slip-resistance level.

Failure to do so may expose customers to a walking surface that presents an 'unsafe condition'.

The safety engineering term, 'unsafe condition' is generally defined as follows:

- *Any condition that when presented with the appropriate set of circumstances may cause an accident resulting in personal injury and/or property damage.*

This would certainly include walking surfaces that fail to maintain a slip-resistance level of 0.50 or higher whether dry or wet.

The 'National Safety Council' (NSC) publication; 'Injury Facts, 2016 Edition' has compiled the following statistical data relevant to falls:

- *For the year 2013, Falls were the leading cause of unintentional injury deaths for people starting at about age 65, and older resulting in a total of 25,464 deaths!*
- *For the year 2014, fall deaths among individuals aged 15-64 and age 65 and older totaled approximately 30,000!*

The 'American Society for Testing and Materials' (ASTM) document; 'ASTM Designation F1637-13, Standard Practice for Safe Walking Surfaces' reads in part:

- *"5. Walkway Surfaces"*
- *"5.1.3 Walkway surfaces shall be slip resistant under expected environmental conditions and use."*
- *"5.1.4 Interior walkways that are not slip resistant when wet shall be maintained dry during periods of pedestrian use."*

Additionally, the 'National Safety Council' publication; 'Data Sheet 495. Rev. November 2009 – Slips, Trips, and Falls on Floors' reads in part; "Causes – 5. The primary causes of slips and falls on floors are – The presence of foreign substances (food, water, grease, oil, sawdust, soap or debris)".

The 'American Society for Testing and Materials' (ASTM) document; 'ASTM Designation F1637-13 Standard Practice for Safe Walking Surfaces' reads in part;

- *"5. Walkway Surfaces"*
- *"5.1.3 Walkway surfaces shall be slip resistant under expected environmental conditions."*

As for the issue of 'notice', when walking surfaces whether dry or wet do not meet the accepted national standard for a safe and slip resistant walking surface, then those walking surfaces are unsafe. Whether or not the property has notice of a spilled liquid is irrelevant as the flooring is an unsafe condition.

Thousands of individuals transit the floors within the Venetian Casino-Hotel every month. Within the general area of plaintiff's slip and fall incident are food courts, cafes, coffee bars, and other operations that dispense beverages. It is also foreseeable that guests arriving from the outside may bring

beverages onto the property. It is certainly foreseeable that some of those beverages will be spilled onto the surface of the floors within the area.

Relative to safe walking surfaces, there are several 'International Building Code' (IBC) issues to consider along with applicable national consensus standards.

The 'International Building Code' (IBC) in Chapter 11 -- 'Accessibility' reads as follows:

- *"Section 1101 -- General"*
- *"1101.2 Design. Buildings and facilities shall be designed and constructed to be accessible in accordance with this code and ICC A117.1"*

When referenced, a national consensus standard such as '*ICC A117.1 -- Accessible and Useable Buildings and Facilities*' becomes a part of the 'International Building Code' with the full force of the 'International Building Code'.

That standard reads in part;

- *"Chapter 3. Building Blocks"*
- *"301 general"*
- *"302 Floor or Ground Surfaces"*
- *"302.1 General. Floor or ground surfaces shall be stable, firm, and slip resistant and shall comply with Section 302."*

The term 'slip resistant' has been accepted and defined as a walking surface having a slip resistance value of 0.50 or higher when tested with a recognized testing instrument.

The 'International Building Code' (IBC) further addresses this issue follows:

- *Chapter 11 Accessibility. The fundamental philosophy of the code on the subject of accessibility is that everything is required to be accessible."*

Certainly, all hotel-casino properties will have guests with a variety of physical disabilities and they will have complete access to all areas of the property and it is critical that all walking surfaces, even those not designated handicapped accessible are safe and slip resistant whether dry or contaminated with liquids.

It must also be noted that some spilled liquids may be clear in color making it extremely difficult to discern by a pedestrian in transit as it blends into the surface of the flooring. This is referred to as a 'conspicuity' issue.

Additionally, a pedestrian in transit has a limited line of sight referred to as the 'Cone of Vision' which makes any substance on the tiled floor surface within 3-4 feet ahead nearly impossible to discern.

Slip Resistance Testing

On December 4th, 2018, slip resistance testing was performed utilizing a calibrated 'XL Tribometer' in accordance with manufacturer's instructions in both the 'dry' mode and 'wet' mode to determine the slip resistance levels of the tiled walking surface. Testing was performed orthogonally, that is, in a north, south, east, and west direction.

The surface tested was marble in good condition.

Slip Resistance Test #1 – Dry Mode

<u>Test Direction</u>	<u>Indicated Slip Resistance Level</u>
North	0.70
South	0.710
East	0.650
West	0.70

Indicated Average Slip Resistance Level 0.70

Slip Resistance Test #2 – Wet Mode

<u>Test Direction</u>	<u>Indicated Slip Resistance Level</u>
North	0.40
South	0.340
East	0.30
West	0.30

Indicated Average Slip Resistance Level 0.330

Test results indicate a safe and slip resistant walking surface when dry with an average slip resistance level of 0.70.

However, when contaminated with a liquid substance such as water, the slip resistance level falls to an average of 0.330 as tested. This is significantly below the referenced national consensus standard level of 0.50 for a safe and slip resistant walking surface!

Keith E. Galliher, Esq.
Sekera v. Venetian Initial Report
December 28, 2018
Page Six

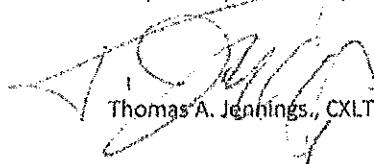
Initial Opinions and Conclusions

As a consulting safety professional, I have investigated numerous slip and fall incidents to determine those causal factors contributing to those events.

Following are my initial opinions and conclusions as to those causal factors contributing to plaintiff's slip and fall incident:

1. The marble flooring in the area of plaintiff's slip and fall incident tested well below the accepted national standard of 0.50 for a safe and slip resistant walking surface when contaminated with liquids.
2. Plaintiff was unable to discern the presence of any spilled liquid while in transit due to line of sight issues which renders any spilled liquid within 3-4 feet ahead on the walking surface nearly invisible.
3. When contaminated with a spilled liquid, the marble flooring is unsafe for pedestrian transit and presents a significant exposure for slip and fall events.

Respectfully submitted,

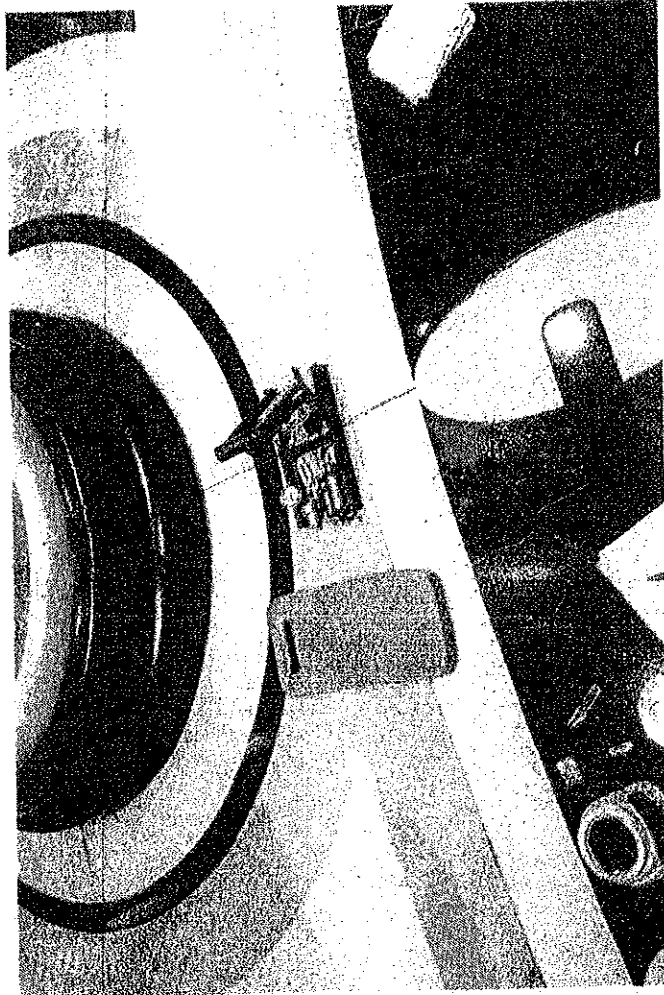


Thomas A. Jennings, CXLT

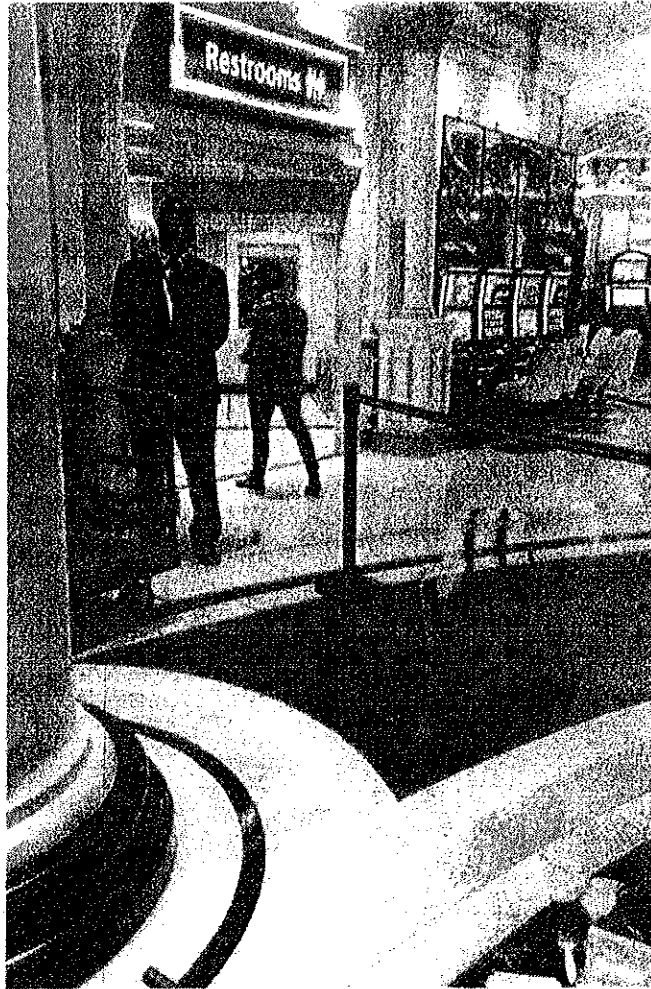
TAJ/gw
Attach.

Note: Thomas A. Jennings is a Registered Professional Engineer duly licensed in the State of California in the discipline of Safety Engineering

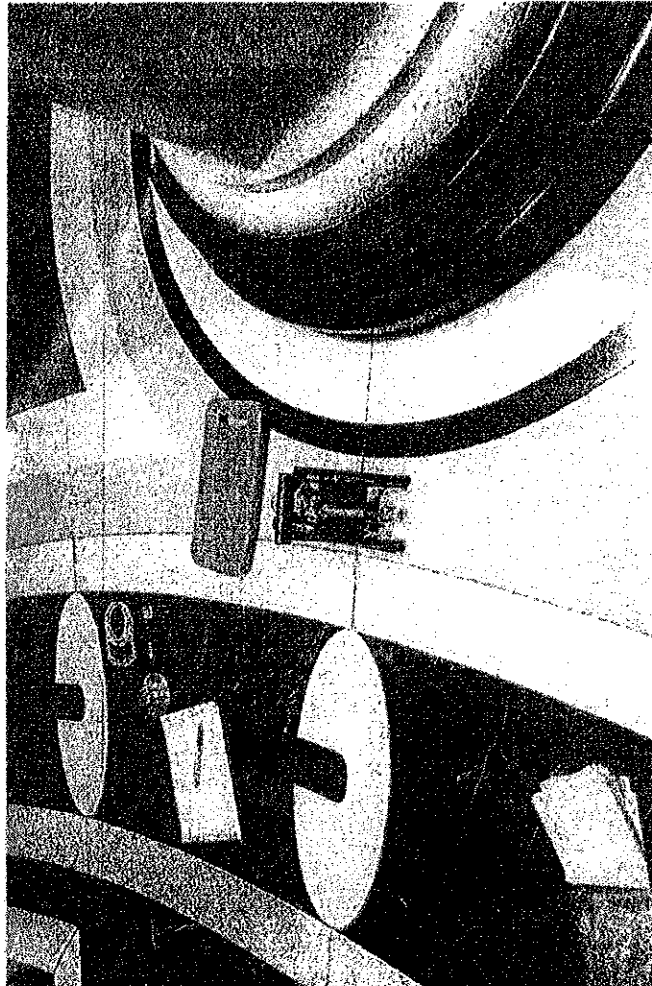
JOYCE SEKERA V. VENETIAN CASINO RESORT, LLC
PHOTOGRAPHS TAKEN DECEMBER 4TH, 2018



JOYCE SEKERA V. VENETIAN CASINO RESORT, LLC
PHOTOGRAPHS TAKEN DECEMBER 4TH, 2018



JOYCE SEKERA V. VENETIAN CASINO RESORT, LLC
PHOTOGRAPHS TAKEN DECEMBER 4TH, 2018



JOYCE SEKERA V. VENETIAN CASINO RESORT, LLC
PHOTOGRAPHS TAKEN DECEMBER 4TH, 2018

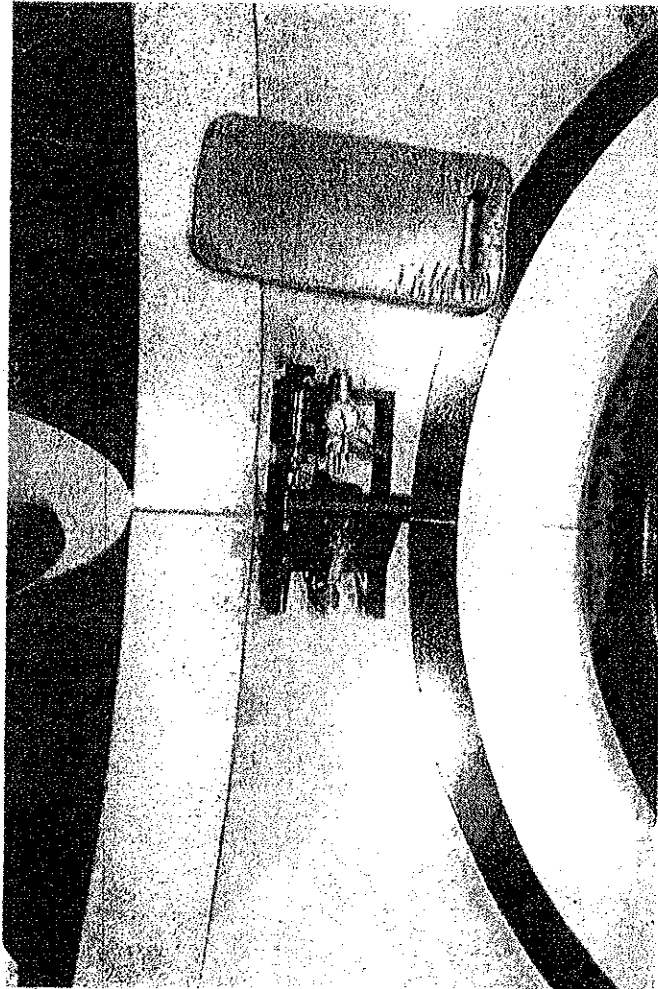


EXHIBIT “G”



1 **ORDR**

2 Michael A. Royal, Esq.

3 Nevada Bar No. 4370

4 Gregory A. Miles, Esq.

5 Nevada Bar No. 4336

6 **ROYAL & MILES LLP**

7 1522 West Warm Springs Road

8 Henderson Nevada 89014

9 Tel: (702) 471-6777

10 Fax: (702) 531-6777

11 Email: mroyal@royalmilesllp.com

12 *Attorneys for Defendants*

13 *VENETIAN CASINO RESORT, LLC and*

14 *LAS VEGAS SANDS, LLC*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 JOYCE SEKERA, an Individual;

CASE NO.: A-18-772761-C

DEPT. NO.: 25

18 Plaintiff,

19 v.

20 VENETIAN CASINO RESORT, LLC, d/b/a
21 THE VENETIAN LAS VEGAS, a Nevada
22 Limited Liability Company; LAS VEGAS
23 SANDS, LLC d/b/a THE VENETIAN LAS
24 VEGAS, a Nevada Limited Liability Company;
25 YET UNKNOWN EMPLOYEE; DOES I
26 through X, inclusive,

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER GRANTING
DEFENDANTS' MOTION FOR PARTIAL
SUMMARY JUDGMENT ON MODE OF
OPERATION THEORY OF LIABILITY**

27 Defendants.

28
29 Defendants VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC
30 (collectively *Venetian*), filed Defendants Motion for Partial Summary Judgment on Mode of Operation
31 Theory of Liability on May 21, 2019. Plaintiff filed an opposition on May 28, 2019. Defendants filed
32 a reply on June 18, 2019. A hearing was held on June 25, 2019, Keith E. Galliher, Jr., Esq., and
33 Kathleen H. Gallagher, Esq., of The Galliher Law Firm, representing Plaintiff JOYCE SEKERA, and
34 Michael A. Royal, Esq., of Royal & Miles LLP, representing Venetian. Upon review of the motion,

ROYAL & MILES LLP
1522 W Warm Springs Road
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1 all responses thereto, the papers and pleadings on file, and argument presented at the hearing, the
2 Court hereby issues the following findings, conclusions of law and order.

3 **FINDINGS OF FACT**

4 1. The Venetian Resort Hotel Casino (*Venetian property*) is a Las Vegas business which
5 provides hotel accommodations, gaming, entertainment, bars and restaurants to guests.

6 2. The Venetian property does not restrict guests from moving through its premises with
7 food and/or drinks.

8 3. On November 4, 2016, Plaintiff slipped and fell in the Grand Lux rotunda area of the
9 Venetian property.

10 4. There are multiple restaurants, shops, bars and other places to purchase food and
11 beverages in the area surrounding the Grand Lux rotunda and throughout the Venetian Property.

12 5. There is no evidence that as a business owner, Venetian chose a mode of operation that
13 requires its customers/guests to perform self-service tasks traditionally performed by Venetian
14 employees.

15 6. There is no evidence that the hazard of which Plaintiff claims to have caused or
16 contributed to the Subject Incident (*Alleged Condition*) was created by a Venetian customer or guest
17 performing a self-service task traditionally conducted by employees.

18 7. There is no evidence in this action that the Alleged Condition was the result of a
19 Venetian customer or guest performing a self-service task traditionally performed by employees.

20 8. There are no genuine issues of material fact which preclude the Court from considering
21 the pending motion for partial summary judgment on the mode of operation theory of liability.

22 ///

23 ///

24 ///

1 CONCLUSIONS OF LAW

2 9. The Self-Service Mode of Operation theory of negligence under Nevada premises
3 liability law is a narrowly limited exception to the law applied in circumstances where a business
4 owner has chosen a self-service mode of operation for its business requiring its guests/customers to
5 perform tasks traditionally performed by employees; and that the guest, in the performance of that task
6 traditionally performed by the businesses employee, caused a hazard to be present on the owner's
7 premises. (See FGA, Inc. v. Giglio, 128 Nev. 271, 281, 278 P.3d 490, 496 (2012), citing Ciminski v.
8 Finn Corp. 13 Wn. App. 815, 537 P.2d 850, 853 (Wash. Ct. App. 1975).)

10 10. There is no evidence to support a claim that Venetian chose a mode of operation that
11 requires its guests/customers to perform tasks traditionally performed by Venetian employees

12 11. There is no evidence to support a claim that any guest/customer of Venetian was
13 performing said self-service task traditionally performed by a Venetian employee that caused the
14 hazardous condition of which Plaintiff complains, to be present at the Venetian premises.

15 12. The absence of evidence that the Alleged Condition was the result of a Venetian
16 customer or guest performing a self-service task that was traditionally performed by employees is
17 dispositive to application of the mode of operation approach.

18 13. The mere fact that the Venetian property sells food and beverages to patrons who are
19 then allowed to move about the premises is not enough to apply the mode of operation theory of
20 liability under Nevada law.

21 ORDER

22
23
24 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants Motion for
25 Partial Summary Judgment on Mode of Operation Theory of Liability is GRANTED.

26 ///

27 ///

1 IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff is
2 precluded from having the jury instructed on the mode of operation theory of liability at trial.

3 DATED this 19th day of Jul, 2019

4
5
6 
DISTRICT COURT JUDGE

7 Submitted by:

8 
ROYAL & MILES LLP

9
10 Michael A. Royal, Esq.
11 Nevada Bar No. 4370
12 Gregory A. Miles, Esq.
13 Nevada Bar No. 4336
14 1522 W. Warm Springs Road
Henderson, NV 89014
Attorneys for Defendants
VENETIAN CASINO RESORT, LLC and
LAS VEGAS SANDS, LLC

Reviewed by:

THE GALLIHER LAW FIRM


Keith E. Galliher, Jr., Esq.
Nevada Bar No. 220
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014
Attorneys for Plaintiff
JOYCE SEKERA

EXHIBIT “H”

THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, Nevada 89104
702-735-0049 Fax: 702-735-0204

Electronically Filed
6/28/2019 9:48 AM
Steven D. Grierson
CLERK OF THE COURT



1 THE GALLIHER LAW FIRM
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16 gkunz@lvlawguy.com
17 kgallagher@galliherlawfirm.com
18 Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

19 JOYCE SEKERA, an Individual,
20
21 Plaintiff,

CASE NO.: A-18-772761-C
DEPT. NO.: 25

22 v.

23 VENETIAN CASINO RESORT, LLC,
24 d/b/a THE VENETIAN LAS VEGAS, a
25 Nevada Limited Liability Company; LAS
26 VEGAS SANDS, LLC d/b/a THE
27 VENETIAN LAS VEGAS, a Nevada
28 Limited Liability Company; YET
UNKNOWN EMPLOYEE; DOES I
through X, inclusive,

FIRST AMENDED COMPLAINT

Defendants.

Plaintiff, by and through her undersigned attorneys, complains of Defendants as follows:

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GENERAL ALLEGATIONS

I

Plaintiff is a resident of the State of Nevada. The incident which gives rise to this cause of action occurred within the State of Nevada

II

Defendants, VENETIAN CASINO RESORT, LLC d/b/a THE VENETIAN LAS VEGAS (hereinafter VENETIAN), LAS VEGAS SANDS, LLC d/b/a THE VENETIAN LAS VEGAS (hereinafter VENETIAN), are, upon information and belief, Nevada Limited Liability Companies duly licensed and doing business within the State of Nevada.

III

1. The true names of DOES I through V, their citizenship and capacities, whether individual, corporate, associates, partnership or otherwise, are unknown to Plaintiff who therefore sues these Defendants by such fictitious names. Plaintiff is informed and believes, and therefore alleges, that each of the Defendants, designated as DOES I through V, are or may be, legally responsible for the events referred to in this action, and caused damages to the Plaintiff, as herein alleged, and Plaintiff will ask leave of this Court to amend the Complaint to insert the true names and capacities of such Defendants, when the same have been ascertained, and to join them in this action, together with the proper charges and allegations.

2. DOES I through V are employers of Defendants who may be liable for Defendants negligence pursuant to NRS 41.130, which states:

Whenever any person shall suffer personal injury by wrongful act, neglect or default of another, the person causing the injury shall be liable to the person injured for damages; and where

1 the person causing such injury is employed by another person or corporation responsible for his
2 conduct, such person or corporation so responsible shall be liable to the person injured for damages.

3
4 IV

5 On or about November 4, 2016 at approximately 1:00 p.m. Defendants negligently and
6 carelessly permitted a pedestrian walkway to be unreasonably dangerous in that they allowed liquid
7 on the floor causing the Plaintiff to slip and fall. Defendant had actual and/or constructive notice of
8 the condition which caused the fall. Pursuant to the mode of operation doctrine Defendant was on
9 continuous notice of the presence of liquid on its floors.

10
11 V

12 At the aforementioned place and time, Plaintiff was walking through the VENETIAN when
13 her foot came into contact with a liquid substance on the floor causing her to slip and fall. The liquid
14 on the floor coupled with the composition of the floor, rendered the area dangerous for use as a
15 passageway for the Plaintiff and for other patrons of the VENETIAN.

16
17 VI

18 The Defendant knew or should have known that liquid located in an area of the fall was
19 dangerous and in the exercise of ordinary care would have had reasonable opportunity to remedy the
20 situation prior to the happening of the fall herein alleged. In spite of Defendants actual, constructive
21 and/or continuous notice of the presence of the liquid, the Defendant failed to take appropriate
22 precautions to prevent injury to Plaintiff and/or guests and/or patrons.

23
24 VII

25 The Defendant knew that its marble floors caused unreasonable amount of injury slip and
26 falls and thus were dangerous to pedestrians, and in the existence of ordinary care, would have had
27 opportunity to remedy the situation prior to Plaintiff's fall.
28

VIII

In the three years prior to Plaintiff's fall there were at least 73 injury slip and falls on the marble floors in Venetian. In spite of Defendant's actual, constructive, and/or continuous notice their marble floors were significantly more slippery than is safe for pedestrians, the Defendant failed to take any appropriate precautions to prevent injury to Plaintiff and other guests.

FIRST CLAIM FOR RELIEF

(Negligence)

I

Plaintiff repeats and realleges the allegations contained in Paragraphs I through VI of her General Allegations as though fully set forth herein.

II

As a direct and proximate result of the negligence of Defendant and its yet unknown employee and/or employees, Plaintiff sustained personal injuries to her head, neck, back, arms and legs and has suffered pain and discomfort all to her damage in a sum in excess of FIFTEEN THOUSAND DOLLARS (\$15,000).

III

Upon information and belief, Defendant had actual or constructive notice of the hazard posed by their marble floors. Defendant knew that the unsafe condition posed an unreasonable hazard or slip and fall risk to the general public, invitees, patrons and business invitees. Defendant's failure to remedy the situation was knowing, wanton, willful, malicious and/or done with conscious disregard for the safety of Plaintiff and of the public. Defendant's outrageous and unconscionable conduct warrants an award of punitive damages pursuant to NRS 42.005.

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IV

Said injuries have resulted in medical treatment all to Plaintiff's damage in a sum in excess of FIFTEEN THOUSAND DOLLARS (\$15,000).

V

Plaintiff has been compelled to retain the services of an attorney to prosecute this action and Plaintiff is, therefore, entitled to reasonable attorney's fees and costs of suit incurred herein.

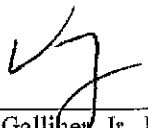
WHEREFORE, Plaintiff prays for judgment in her favor and against Defendant as follows:

FIRST CLAIM FOR RELIEF

1. General damages in a sum in excess of \$15,000;
2. Special damages in a sum in excess of \$15,000;
3. Punitive damages;
4. Attorney's fees and costs of suit incurred herein; and,
5. For such other and further relief as the Court may deem just and proper on the premises.

DATED this 27th day of June, 2019

THE GALLIHER LAW FIRM



Keith E. Galliher, Jr., Esq.
Nevada Bar Number 220
1850 E. Sahara Avenue, Ste. 107
Las Vegas, Nevada 89104
Attorney for Plaintiff

EXHIBIT “I”



1 NEO
MICHAEL M. EDWARDS
2 Nevada Bar No. 6281
RYAN A. LOOSVELT
3 Nevada Bar No. 8550
DAVID P. PRITCHETT
4 Nevada Bar No. 10959
MESSNER REEVES LLP
5 8945 W. Russell Road, Suite 300
Las Vegas, Nevada 89148
6 Telephone: (702) 363-5100
Facsimile: (702) 363-5101
7 Email: medwards@messner.com
Email: rloosvelt@messner.com
8 Email: dpritchett@messner.com
Attorneys for Defendant Venetian Casino
9 *Resort, LLC*

10 DISTRICT COURT
11 CLARK COUNTY, NEVADA
12

13 ANGELICA BOUCHER, individually,
14 Plaintiff,

Case No.: A-18-773651-C
Dept. No.: X

15 vs.

**NOTICE OF ENTRY OF ORDER
REGARDING PLAINTIFF'S LIMITED
OBJECTION TO THE DISCOVERY
COMMISSIONER'S REPORT AND
RECOMMENDATION ON PLAINTIFF'S
MOTION TO COMPEL PRODUCTION OF
DOCUMENTS**

16 VENETIAN CASINO RESORT, LLC; d/b/a
VENETIAN RESORT HOTEL CASINO d/b/a
17 THE VENETIAN d/b/a THE VENETIAN/THE
PALAZZO; LAS VEGAS SANDS, LLC d/b/a
18 VENETIAN RESORT HOTEL CASINO/
PALAZZO RESORT HOTEL CASINO d/b/a
19 THE VENETIAN CASINO d/b/a VENETIAN
CASINO RESORT; LAS VEGAS SANDS
20 CORP.; DOES 1 through 100 and ROE
CORPORATIONS 1 through 100, inclusive,

21 Defendants.
22

23 PLEASE TAKE NOTICE that on the 28th day of October, 2019, the Order Regarding
24 Plaintiff's Limited Objection to the Discovery Commission's Report and Recommendation on
25 Plaintiff's Motion to Compel Production of Documents was entered on the Court's docket.

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A copy of said Order is attached hereto and incorporated herein.

DATED this 18 day of October, 2019.

MESSNER REEVES LLP

By 

MICHAEL M. EDWARDS

Nevada Bar No. 6281

RYAN A. LOOSVELT

Nevada Bar No. 8550

DAVID P. PRITCHETT

Nevada Bar No. 10959

8945 W. Russell Road, Suite 300

Las Vegas, Nevada 89148

Attorneys for Defendant

Venetian Casino Resort, LLC

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PROOF OF SERVICE
LV-Boucher v. Venetian Casino Resort, LLC
Case No.: A-18-773651-C

The undersigned does hereby declare that I am over the age of eighteen (18) years and not a party to the within entitled action. I am employed by Messner Reeves LLP, 8945 W. Russell Road, Suite 300, Las Vegas, Nevada 89148. I am readily familiar with Messner Reeves LLP's practice for collection and processing of documents for delivery by way of the service indicated below.

On October 29, 2019, I served the following document(s):

**NOTICE OF ENTRY OF ORDER REGARDING PLAINTIFF'S LIMITED OBJECTION
TO THE DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATION ON
PLAINTIFF'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

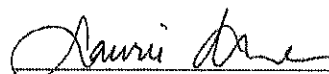
on the interested party(ies) in this action as follows:

FARHAN R. NAQVI
Nevada Bar No. 8589
SARAH M. BANDA
Nevada Bar No. 11909
NAQVI INJURY LAW
9500 West Flamingo Road, Suite 104
Las Vegas, Nevada 89147
Telephone: (702) 553-1000
Facsimile: (702) 553-1002
Attorneys for Plaintiff
Angelica Boucher

By Hand Delivery and Electronic Service. Pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR, I caused said documents(s) to be transmitted to the person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, State of Nevada. A service transmission report reported service as complete and a copy of the service transmission report will be maintained with the document(s) in this office.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed on October 29, 2019, at Las Vegas, Nevada.



An employee of Messner Reeves LLP

Steven D. Grierson

1 **ORDR**
2 MICHAEL M. EDWARDS
3 Nevada Bar No. 6281
4 RYAN A. LOOSVELT
5 Nevada Bar No. 8550
6 DAVID P. PRITCHETT
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11 Tel.: (702) 363-5100
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13 m Edwards@messner.com
14 rloosvelt@messner.com
15 dpritchett@messner.com
16 *Attorneys for Defendant, Venetian Casino Resort, LLC*

10 **EIGHTH JUDICIAL DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 ANGELICA BOUCHER, individually,
13 Plaintiff,

14 vs.

15 VENETIAN CASINO RESORT, LLC; d/b/a
16 VENETIAN RESORT HOTEL CASINO d/b/a
17 THE VENETIAN d/b/a THE
18 VENETIAN/THE PALAZZO; LAS VEGAS
19 SANDS, LLC d/b/a VENETIAN RESORT
20 HOTEL CASINO/ PALAZZO RESORT
21 HOTEL CASINO d/b/a THE VENETIAN
22 CASINO d/b/a VENETIAN CASINO
23 RESORT; LAS VEGAS SANDS CORP.;
24 DOES 1 through 100 and ROE
25 CORPORATIONS 1 through 100, inclusive,

26 Defendants.

Case No.: A-18-773651-C
Dept. No.: X

**ORDER REGARDING PLAINTIFF'S
LIMITED OBJECTION TO THE
DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATION
ON PLAINTIFF'S MOTION TO
COMPEL PRODUCTION OF
DOCUMENTS**

22 This matter having come on for hearing on September ¹⁰ 10, 2019 Plaintiff, ANGELICA
23 BOUCHER, appearing by and through her counsel of record, the law firm NAQVI INJURY LAW,
24 and Defendant, VENETIAN CASINO RESORT, LLC, by and through its counsel of record,
25 MESSNER REEVES, LLP, that Plaintiff's Limited Objection to the Discovery Commissioner's
26 Report and Recommendation on Plaintiff's Motion to Compel Production of Documents is DENIED.
27
28

///

ORDER

Based upon the ORDER OF THE COURT of the parties and good cause appearing therefore,
IT IS HEREBY ORDERED that Plaintiff's Limited Objection to the Discovery
Commissioner's Report and Recommendation on Plaintiff's Motion to Compel Production of
Documents is DENIED.

IT IS FURTHER ORDERED that at Page 3, Line 17-18 the Court orders that the Discovery
Commissioner language is expressly adopted and shall read: "Subsequent incident reports do not need
to be provided, because liquid on a walkway is a transient condition."

IT IS FURTHER ORDERED that the Discovery Commissioner's Report and
Recommendation, with all other handwritten edits expressly incorporated in total was not objected to
and, therefore, are hereby AFFIRMED and incorporated into the DCCR and this Order, attached
hereto as Exhibit "A".

DATED this 24 day of October, 2019.


DISTRICT COURT JUDGE

Respectfully submitted,

Approved as to Form:

MESSNER REEVES LLP

NAQVI INJURY LAW


MICHAEL M. EDWARDS


FARHAN R. NAQVI

Nevada Bar No. 6281
RYAN A. LOOSVELT
Nevada Bar No. 8550
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8945 W. Russell Road, Suite 300
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Attorneys for Defendant,
Venetian Casino Resort, LLC

Nevada Bar No. 8589
SARAH M. BANDA
Nevada Bar No. 11909
9500 West Flamingo Road, Suite 104
Las Vegas, Nevada 89147
Attorneys for Plaintiff,
Angelica Boucher

EXHIBIT “A”

Steven D. Grierson

1 DCRR
2 FARHAN R. NAQVI
3 Nevada Bar No. 8589
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5 Nevada Bar No. 11909
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11 naqvi@naqvilaw.com
12 sarah@naqvilaw.com
13 Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

11 ANGELICA BOUCHER, individually,
12 Plaintiff,

14 vs.

15 VENETIAN CASINO RESORT, LLC d/b/a
16 VENETIAN RESORT HOTEL CASINO
17 d/b/a THE VENETIAN d/b/a THE
18 VENETIAN/THE PALAZZO; LAS VEGAS
19 SANDS, LLC d/b/a VENETIAN RESORT
20 HOTEL CASINO / PALAZZO RESORT
21 HOTEL CASINO d/b/a THE VENETIAN
CASINO d/b/a VENETIAN CASINO
RESORT; LAS VEGAS SANDS CORP.,
DOES 1 through 100 and ROE
CORPORATIONS 1 through 100, inclusive,

22 Defendants.

Case No.: A-18-773651-C
Dept. No.: X

DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATION

23 HEARING DATE: June 14, 2019

24 HEARING TIME: 9:30 a.m.

25 Counsel for Plaintiff: SARAH M. BANDA, Esq. of NAQVI INJURY LAW

26 Counsel for Defendant: MICHAEL M. EDWARDS, Esq. of MESSNER REEVES LLP
27
28



I.

FINDINGS

The matter having come on for hearing on June 14, 2019 at 9:30 a.m., on *Plaintiff's First Motion to Compel Production of Documents, and Request for Sanctions on an Order Shortening Time ("Motion to Compel")*, filed on June 7, 2019, and *Defendant's Opposition and Countermotion for Protective Order*, filed on June 13, 2019, the Court having considered all pleadings on file associated therewith; there being good cause appearing, the Discovery Commissioner finds and recommends as follows:

THE COURT HEREBY FINDS that the JCCR was filed in this case on August 13, 2018.

THE COURT FURTHER FINDS Plaintiff propounded her first set of requests for production of documents on Defendant on October 18, 2018 and Defendant provided responses on December 4, 2018.

THE COURT FURTHER FINDS that Plaintiff served a letter on Defendant outlining the deficiencies in Defendant's Responses to Plaintiff's First Request for Production on December 10, 2018, which included but was not limited to a request for Defendant to produce the insurance policies.

THE COURT FURTHER FINDS that the Defendant did not supplement the responses thereafter.

THE COURT FURTHER FINDS that the Defendant's general statement that "[r]esponding Defendant does not have any documents responsive to this request at this time," is insufficient and leaves potential loopholes based upon the caveat "at this time."

THE COURT FURTHER FINDS that the Defendant must produce the applicable insurance policies *and declaration pages* ^{EN} (Request No. 2) under NRS 16.1(a)(1)(A)(v), NRCP 16.1(a)(1)(D), Vanguard

Piping v. Eight Jud. Dist. Ct., 129 Nev. 602, 309 P.3d 1017 (2013), and pursuant to the

Plaintiff's written discovery request.

THE COURT FURTHER FINDS that the claims file is discoverable, and must be

produced with a privilege log, if a privilege log is applicable (Request No. 1).

THE COURT FURTHER FINDS that the parties stipulated that the Defendant will provide the prior six months' worth of record and documents related to any waxing, cleaning, polishing or other maintenance of the walking surface. However, Plaintiff still seeks the construction and repair documents, which are also discoverable (Request No. 7).

THE COURT FURTHER FINDS that any documents related to any warning provided to Plaintiff regarding the subject condition are discoverable (Request No. 14).

THE COURT FURTHER FINDS that that parties have stipulated that Defendant will provide documents related to changes to the walking surface, such as tile replacement. However, changes made to the walking surface, such as subsequent remedial measures, and any changes to the walking surface are discoverable (Request No. 15). Subsequent incident reports do not need to be provided, because liquid on a walkway is a transient condition.

THE COURT FURTHER FINDS that sub rosa video surveillance and research are discoverable and must be produced (Request No. 16) within 30 days of the Plaintiff's deposition if it will be utilized at trial.

THE COURT FURTHER FINDS that subsequent remedial measures are discoverable (Requests No. 19 and 20).

THE COURT FURTHER FINDS that the individual employee files of any specifically identified employee who was responsible for maintenance of the location of the area at issue, or inspection of the area, on the day of the incident is discoverable. The remainder of the employee files are not discoverable at this time (Request No. 22).

1 THE COURT FURTHER FINDS that the Defendant agreed to produce documents
2 related to Team Member job performance, if any, that directly relate to the incident at issue.
3 ~~performance~~ ^{training, policy and procedure} (ad)
4 However, all job ~~performance~~ documents are discoverable (Request No. 23).

5 THE COURT FURTHER FINDS that the training materials and policies and procedures
6 for the employees responsible for inspection the Walking Surface on the day of the incident at
7 issue are discoverable (Request No. 24).

8 THE COURT FURTHER FINDS that the Plaintiff's request for "citations, warnings,
9 reprimands, and/or code violations [Venetian] received concerning the Premises in the five years
10 preceding the subject Incident through the present" is overbroad and should be limited to the
11 ^{subject} (ad)
12 flooring in the lobby only (Request No. 25).

13 THE COURT FURTHER FINDS that the Plaintiff's request for "documents and items
14 evidencing any inspection, maintenance and/or cleaning performed on the Walking Surface..."
15 should be limited to the flooring in the lobby only ^{subject and only for the 24 hours before and after the incident at issue.} (ad) (Request No. 29).

16 THE COURT FURTHER FINDS that Defendant filed a Countermotion requesting a
17 protective order be issued regarding: ^(ad) Venetian incident reports stemming from unrelated
18 incidents, team member personnel files, and construction or repairs within the Venetian.

20 II.

21 RECOMMENDATIONS

22 IT IS HEREBY RECOMMENDED that Plaintiff's Motion to Compel is GRANTED IN
23 PART.
24

25 IT IS HEREBY FURTHER RECOMMENDED that the Defendant shall produce the
26 ^{subject to a privilege log.} (ad)
27 entire pre-litigation claims file, with reference to bates number. This includes, but is not limited
28 to, every note, email, and correspondence regarding the incident at issue. If there is no specific

claims file, Defendant must provide an explanation why a claims file does not exist. Defendant must produce a privilege log for any documents deemed privileged from the claims file (Request No. 1).

IT IS HEREBY FURTHER RECOMMENDED that the Defendant shall produce any and all insurance policies and declarations pages, the policy amount of SIR, and whether the policy was self-depleting (Request No. 2).

IT IS HEREBY FURTHER RECOMMENDED that the Defendant shall produce the prior six months' worth of records^(a) and documents related to any waxing, cleaning, polishing or other maintenance of the walking surface^{at issue in the subject lobby.} Defendant shall also produce the construction and repair documents from five years prior to the Incident to the present. The Defendant must clearly outline what it has, what it is giving, and what it is trying to obtain. If no such documentation exists, the Defendant must state that no such documentation exists (Request No. 7).

IT IS HEREBY FURTHER RECOMMENDED that the Defendant shall produce evidence of any warnings to Plaintiff, such as photographs, signage, and statements. If no such documentation exists, the Defendant must state that no such documentation exists. Defendant must also state that a diligent inquiry was conducted and there were no documents located responsive to this request (Request No. 14).

IT IS HEREBY FURTHER RECOMMENDED that Defendant shall produce documents related to repairs, replacements, improvements, and/or changes to the walking surface^{in the subject lobby} including, but not limited to, tile replacement, from five years prior to the subject Incident to the present. If no such documentation exists, the Defendant must state that no such documentation exists (Request No. 15).

IT IS HEREBY FURTHER RECOMMENDED that sub rosa documents^{surveillance,} and information shall be produced within 30 days after the Plaintiff's deposition or it cannot be utilized at trial by the Defendant for any purpose. If sub rosa is conducted after the Plaintiff's deposition, said document and information must be produced within 30 days of receipt by counsel. If no such documentation exists, the Defendant must state that no such documentation exists (Request No. 16).

IT IS HEREBY FURTHER RECOMMENDED that any documents that any party obtains that are relevant and can be used for impeachment, including public information, must be produced under NRCP 16.1, unless subject to privilege and then a privilege log must be submitted.

IT IS HEREBY FURTHER RECOMMENDED that Defendant must produce any and all documents regarding action taken following the subject Incident to render the Walking Surface in a safer condition and/or any changes made to the Walking surface since the Incident, including subsequent remedial measures. If no such documentation exists, the Defendant must state that no such documentation exists. (Requests No. 19 and 20).

IT IS HEREBY FURTHER RECOMMENDED that the individual employee files are PROTECTED WITHOUT PREJUDICE until he/she is identified as an employee with responsibility to maintain or inspect knowledge of or involvement in the incident or inspection of the area on the day of the incident at rssve. (Request No. 22).

IT IS HEREBY FURTHER RECOMMENDED that the Defendant shall produce documents related to Team Member job performance of any specifically identified employee with knowledge of or involvement in the incident or inspection of the area on the day of the incident (Request No. 23).



1 IT IS HEREBY FURTHER RECOMMENDED that the Defendant shall produce ^{and}
2 training materials and policies and procedures for the employees responsible for inspection the ^{maintenance and/or}
3 Walking Surface on the day of the incident at issue (Request No. 24). ^{of}

4 IT IS HEREBY FURTHER RECOMMENDED that the Defendant shall produce
5 citations, warnings, reprimands, and/or code violations Defendant received concerning the
6 subject lobby flooring in the Premises in the five years preceding the subject Incident through
7 the present. If no such documentation exists, the Defendant must state that no such
8 documentation exists (Request No. 25).

9 IT IS HEREBY FURTHER RECOMMENDED that the Defendant shall produce
10 documents and items evidencing any inspection, maintenance and/or cleaning performed on the
11 Walking Surface in the subject lobby during the 24-hour period prior to the Incident through the
12 24-hour period after the subject Incident including but not limited to, any maintenance logs
13 (Request No. 29).

14 IT IS HEREBY FURTHER RECOMMENDED that Plaintiff's Request for Sanctions is
15 DENIED.

16 IT IS HEREBY FURTHER RECOMMENDED that *Defendant's Countermotion for*
17 *Protective Order* is GRANTED WITHOUT PREJUDICE as to the personnel files as outlined
18 above and DENIED on the issues of construction/repairs and incident reports. On the issue of
19 incident reports stemming from unrelated incidents, Defendant must hold an EDCR 2.34
20 meeting and file a separate Motion as incident reports were not addressed in Plaintiff's
21 underlying Motion to Compel.

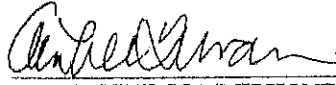
22 ///



1 IT IS HEREBY FURTHER RECOMMENDED that a status check hearing is set for July
2 25, 2019 in chambers.

3 The Discovery Commissioner, met with counsel for the parties, having discussed the
4 issues noted above and having reviewed any materials proposed in support thereof, hereby
5 submits the above recommendations.

6 DATED this 5th day of July, 2019.

7 
8

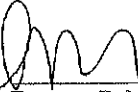
9 DISCOVERY COMMISSIONER

10 Respectfully Submitted by:

Approved as to Form and Content by:

11 NAQVI INJURY LAW

MESSNER REEVES LLP

12 

13 refused to sign

14 FARHAN R. NAQVI, ESQ.
15 Nevada Bar No. 8589
16 SARAH M. BANDA, ESQ.
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Las Vegas, Nevada 89148
Attorney for Defendant

1
2
3
4
5 **NOTICE**

6 Pursuant to NRC 16.3(c)(2), you are hereby notified that within fourteen (14) days after being
7 served with a report any party may file and serve written objections to the recommendations.
8 Written authorities may be filed with objections, but are not mandatory. If written authorities
9 are filed, any other party may file and serve responding authorities within seven (7) days after
10 being served with objections.

11 Objection time will expire on July 23 2019.

12 A copy of the foregoing Discovery Commissioner's Report was:

13 _____ Mailed to Plaintiff/Defendant at the following address on the _____ day of
14 _____ 2019;

15 / Electronically filed and served counsel on July 9, 2019, Pursuant to
16 N.E.F.C.R. Rule 9.
17

18
19
20 By: 
21 COMMISSIONER DESIGNEE
22
23
24
25
26
27
28

EXHIBIT “J”

7989 COA
FILED

SEP 27 2019

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

Supreme Court No.

District Court Case No. A-18-772761-C

Electronically Filed

Sep 26 2019 02:49 p.m.

Elizabeth A. Brown
Clerk of Supreme Court

VENETIAN CASINO RESORT, LLC, a Nevada limited liability company,
LAS VEGAS SANDS, LLC, a Nevada limited liability company,
Petitioners,

v.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK, AND THE HONORABLE KATHLEEN
DELANEY in her capacity as District Judge,
Respondent,
JOYCE SEKERA, an individual,
Real Party in Interest

EMERGENCY PETITION UNDER NRAP 27(e)

PETITIONERS' EMERGENCY PETITION FOR WRIT OF MANDAMUS
AND/OR WRIT OF PROHIBITION UNDER NRAP RULES 21(a)(6) AND 27(e)

ACTION IS NEEDED IMMEDIATELY BEFORE PETITIONER IS REQUIRED
TO DISCLOSE THE CONFIDENTIAL INFORMATION

ALTERNATIVE EMERGENCY MOTION TO STAY UNDER NRAP RULES 8
AND 27(e) IS BEING FILED CONCURRENTLY WITH THIS PETITION

Michael A. Royal, Esq. (SBN 4370)

Gregory A. Miles, Esq. (SBN 4336)

ROYAL & MILES LLP

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19-40385

Docket 79689 Document 2019-40111

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclose. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

VENETIAN CASINO RESORT, LLC, Nevada limited liability company licensed to do business in the State of Nevada, active since 1997, doing business as the Venetian Resort Hotel Casino.

LAS VEGAS SANDS, LLC, Nevada limited liability company licensed to do business in the State of Nevada since 2005.

VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC is represented in the District Court and in this Court by Michael A. Royal, Esq., and Gregory A. Miles, Esq., of the law firm of Royal & Miles LLP.

DATED this 26 day of September, 2019.

ROYAL & MILES LLP

By 

Michael A. Royal, Esq. (SBN 4370)

Gregory A. Miles, Esq. (SBN 4336)

1522 W. Warm Springs Rd.

Henderson, NV 89014

(702) 471-6777

Counsel for Petitioners

ROUTING STATEMENT

This case is presumptively assigned to the Court of Appeals to hear and decide pursuant to NRAP Rule 17(b). NRAP Rule 17(b)(13) provides the Court of Appeals is presumptively assigned to hear and decide: "Pretrial writ proceedings challenging discovery orders" The instant writ petition challenges a discovery order denying Petitioners request to protect the information of non-litigant individuals from disclosure. This statement is made pursuant to NRAP 28(a)(5).

**AFFIDAVIT OF MICHAEL A. ROYAL, ESQ. IN SUPPORT OF
PETITIONERS' EMERGENCY PETITION FOR WRIT OF MANDAMUS
AND/OR WRIT OF PROHIBITION AND NRAP 27(E) CERTIFICATE**

STATE OF NEVADA }
COUNTY OF CLARK } ss:

1. I am an attorney licensed to practice in the State of Nevada and am an attorney at the law firm of Royal & Miles LLP, Attorneys for Petitioners VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC, in support of this PETITIONERS' EMERGENCY PETITION FOR WRIT OF MANDAMUS AND/OR WRIT OF PROHIBITION UNDER NRAP RULES 21(a)(6) AND 27(e).

2. The telephone numbers and office addresses of the attorneys for the Real Party in Interest are listed as follows:

Keith E. Galliher, Jr., Esq.
THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014
(702) 735-0049
Attorneys for Real Party in Interest

3. Counsel for Real Party in Interest was served with this Petition via electronic service as identified on the proof of service in this document. Prior to filing this Petition and Motion my office contacted, by telephone, the clerk of the Supreme Court, the Clerk of the Eight Judicial District Court of the State of Nevada, and Real Party in Interest's attorney to notify them that Petitioners were

filing the instant Petitioners' Emergency Petition for Writ of Mandamus and/or Writ of Prohibition Under NRAP Rules 21(A)(6) And 27(E).

4. Petitioners will be required to divulge confidential information of non-party litigants immediately, if this Court does not take action. Concurrently with this Petition, Petitioner is filing an Emergency Motion for Stay pursuant to Rules 8 and 27(e). If this Court grants that motion, then this Petition may be considered on a non-emergency basis.

5. This case is set to begin trial on August 3, 2020. Plaintiff has alleged that she sustained injuries in a slip and fall due to the presence of a foreign substance on a marble floor within the Venetian on November 4, 2016.

6. On January 4, 2019, in response to a request for production from Plaintiff, Petitioners produced redacted documents regarding reports of other incidents occurring on property from November 4, 2013 to November 4, 2016. Petitioners had redacted the identity and personal information of the individuals identified in these reports. Plaintiff's attorney objected to the redactions. Accordingly, on February 1, 2019, Petitioners filed a motion for protective order under NRCP 26(c) to protect the identities of Venetian patrons involved in the reports produced to Plaintiff. The motion was granted by the Discovery Commissioner in a Report and Recommendation filed April 4, 2019, providing that

reports produced by Petitioners should be in redacted form and be restricted to use only for purposes of the present litigation.

7. Plaintiff filed an objection with the District Court, which issued an order dated July 31, 2019 reversing the Discovery Commissioner and ordering the production of prior incident reports in unredacted form, without any protection related to the circulation of information obtained by Plaintiff in the instant litigation (such that the documents would divulge the names, addresses, telephone numbers, dates of birth, social security number, and driver's license/identification card numbers of individuals who are not parties or witnesses to the instant tort action and such information could be freely shared with third-parties who are not involved in the instant litigation). Petitioners learned that all the redacted documents produced by Petitioners to Plaintiff have been shared with attorneys and persons outside this litigation, and that Plaintiff's attorney plans to share the unredacted reports as well.

8. Petitioners filed a motion for reconsideration and stay of the District Court's order which was heard on September 17, 2019. The District Court denied the Petitioners' motion. On September 18, 2019, the Discovery Commissioner ruled that Petitioners now have to produce incident reports from November 4, 2011 to the present, representing three years of post-incident guest related reports of slip and fall events occurring on the Venetian marble floor from a foreign substance.

All such reports must be produced in unredacted form, per the Discovery Commissioner, based on the District Court's order of July 31, 2019 and its forthcoming ruling denying reconsideration. Production of this information will result in irreparable harm to the privacy of the individuals identified in the reports, the Venetian, and its guests.

9. The relief sought in this Writ Petition is not available by the District Court. Petitioners made a written Motion for Stay with the District Court on August 12, 2019 and again orally on September 17, 2019. The District Court denied the Motion for Stay and indicated that relief would need to be obtained from the appellate court pursuant to NRAP 8. It is imperative this matter be heard at the Court's earliest possible convenience.

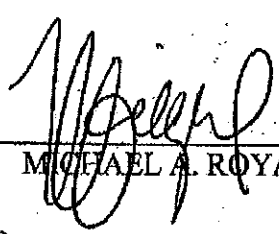
10. I certify that I have read this petition and, to the best of my knowledge, information and belief, this Petition complies with the form requirements of Rule 21(d) and is not frivolous or interposed for any improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

11. I further certify that this brief complies with all Nevada Rules of Appellate Procedure, including the requirements of Rule 28(e) every assertion in the brief regarding matters in the record be supported by a reference to the appendix where the matter relied upon is to be found. I understand I may be

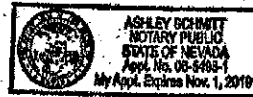
subject to sanctions in the event the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

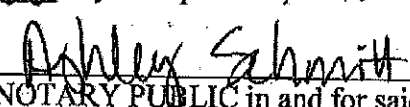
12. I have discussed the PETITION FOR WRIT OF PROHIBITION AND/OR MANDAMUS with my Client, and have obtained authorization to file this Writ Petition.

Further affiant sayeth naught.


MICHAEL A. ROYAL, ESQ.

SUBSCRIBED AND SWORN to before me by Michael A. Royal, Esq., on this 26 day of September, 2019.




NOTARY PUBLIC in and for said County and State

PETITION

COMES NOW, Petitioners, VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC ("Petitioners"), by and through their counsel of record, ROYAL & MILES LLP, and hereby petition this Court for a Writ of Prohibition and/or Mandamus under NRAP 21(a) ordering the Eighth Judicial District Court to vacate the July 31, 2019 order compelling Petitioners to produce unredacted reports of other incidents occurring on the property of the Venetian Resort Hotel Casino ("Venetian"). Petitioners further request that this relief be granted on an emergency basis pursuant to NRAP 27(e) and NRAP 21(a)(6). This matter involves the compelled disclosure of non-litigants private personal information and if the emergency relief is not granted irreparable harm will result.

Alternatively, Petitioners are filing concurrently with this petition a motion for an emergency stay of the order pursuant to NRAP 8(a) and NRAP 27(e). This motion requests a stay of the July 31, 2019 order. If this Court grants that motion then this writ petition may be considered on a non-emergency basis.

Pursuant to NRAP Rule 17(b)(13) this writ petition challenges a discovery order and should presumptively be assigned to the Court of Appeals.

This Petition and Motion are based on the following Memorandum of Points and Authorities, the Appendix of record and such oral arguments as presented to this Honorable Court.

DATED this 26 day of September, 2019.

ROYAL & MILES LLP

By 

Michael A. Royal, Esq. (SBN 4370)

Gregory A. Miles, Esq. (SBN 4336)

1522 W. Warm Springs Rd.

Henderson, NV 89014

(702) 471-6777

Counsel for Petitioners

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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF THE CASE

This case arises from an alleged slip and fall at the Venetian that occurred on November 4, 2016, involving JOYCE SEKERA ("Sekera"). More specifically, Sekera alleges that as she was walking through the Grand Lux rotunda area of the Venetian property, she slipped on water and fell, resulting in bodily injuries.

In the course of discovery, Sekera requested that Petitioners produce incident reports related to slip and falls from November 4, 2013 to the present. Petitioners responded by producing sixty-four (64) redacted prior incident reports from November 4, 2013 to November 4, 2016. When Sekera objected to the production of redacted reports, Petitioners filed a motion for protective order pursuant to NRCP 26(c) on February 1, 2019 with the Discovery Commissioner. While the motion was pending, Sekera's counsel shared the redacted prior incident information with an attorney representing a plaintiff in unrelated litigation against Petitioners also in the Eighth Judicial District Court. One day prior to the March 13, 2019 hearing on Petitioners' motion for protective order, the subject documents were filed with the district court in a different department on a different matter.

Following the hearing on March 13, 2019, the Discovery Commissioner issued a Report and Recommendation granting Petitioners' motion for protective order noting the need to protect the privacy interests of the uninvolved third-parties and potential HIPAA related information. Sekera filed an objection to the

Discovery Commissioner's Report and Recommendation on April 4, 2019, which was heard by the Honorable Kathleen Delaney in Department XXV of the Eighth Judicial District Court on May 14, 2019. Judge Delaney, having been advised of the circumstances surrounding Sekera's sharing of information, nevertheless reversed the Discovery Commissioner and ordered Petitioners to produce prior incident reports in unredacted form without any restrictions related to dissemination of private guest information.

The order reversing the Discovery Commissioner's Report and Recommendation of April 4, 2019 was filed on July 31, 2019. Pursuant to the order, Sekera is to receive unredacted incident reports involving other Venetian guests, including those guests' names, addresses, telephone numbers, dates of birth, social security numbers, and driver's license/identification card numbers. Under the current order Sekera has no restrictions whatsoever on how the private information of Venetian guests will be used and shared. Petitioners filed a motion for reconsideration on an order shortening time with a request to stay the order allowing sufficient time to file a writ of mandamus and/or writ of prohibition with the Nevada Supreme Court, which was not heard until September 17, 2019. Judge Delaney denied Petitioners' motion for reconsideration and their request for a stay.

The motion for protective order filed by Petitioners was intended to protect the privacy of Venetian guests. Information related to prior incidents, such as the

date, time, place and circumstances, identifying Venetian employees involved, is already available to Sekera via the initial production. While Judge Delaney expressed some trepidation regarding the potential misuse of the subject private information, she did not provide any protection, concluding that she could not find a legal basis upon which to protect the private information at issue. Yet, when this issue was again before Judge Delaney on September 17, 2019, she expressed a belief that the unredacted incident reports were "for attorney eyes only." The District Judge was mistaken; yet, she still would not revisit the order and provide the requested protection. Petitioners assert that once this information is produced in unredacted form, it will be immediately shared with others outside the litigation and the harm will be irreparable. Accordingly, circumstances necessitate the filing of this writ in order to clarify important issues of law and right the injustice to Petitioners as well as any other property owners or innkeepers concerned with the protection of patron privacy.

II. RELIEF SOUGHT

Pursuant to Nev. Const. Art. 6, § 4, NRS § 34.320 or NRS § 34.160 and NRAP 21, Petitioners request that this Court issue a Writ of Mandamus and/or Writ of Prohibition instructing Respondent, the Eighth Judicial District Court of the State of Nevada and the Honorable Judge Delaney to:

1. Vacate the July 31, 2019 Order directing Petitioners to produce unredacted other incident reports to Sekera without any protections requested under NRCP 26(c); and

2. Provide clarification on the issue of privacy rights of guests and non-employees identified in other incident reports obtain and retained by Petitioners and other like property owners and innkeepers.

Petitioner is requesting this relief on an emergency basis as irreparable harm will be caused to individuals who are not involved in this litigation if there private personal information is released before this Court rules on this writ petition.

Concurrently with this writ petition Petitioner is filing an emergency motion to stay the July 31, 2019 Order. If this Court grants that motion, then this writ may be considered on a non-emergency basis.

III. ISSUES PRESENTED

ISSUE ONE: Whether the District Court erred, as a matter of law, in denying Petitioners' motion for a protective order under NRCP 26(c) related to the privacy of guest information within other incident reports having nothing to do with the subject incident.

ISSUE TWO: Whether the District Court erred, as a matter of law, in denying Petitioners' motion for reconsideration related to the July 31, 2019 order denying Petitioners' motion for protective order under NRCP 26(c), failing to

weigh the issues of relevance and proportionality required under NRCP 26(b)(1) in refusing to provide protection of personal information of guests involved in other incidents on Venetian property.

IV. STANDARD OF REVIEW

A. Standards for Writ Review and Relief.

The Nevada Supreme Court has original jurisdiction to issue writs of prohibition and mandamus. Nev. Const. Art. 6, § 4. Mandamus is available to compel performance of an act which the law especially enjoins as a duty resulting from an office, trust or station, or to control an arbitrary or capricious exercise of discretion. *Ivey v. Dist. Ct.*, 299 P.3d 354 (2013). *See also* NRS 34.160. "[W]here an important issue of law needs clarification and public policy is served by this court's invocation of its original jurisdiction, our consideration of a petition for extraordinary relief may be justified." *Mineral County v. State, Dep't of Conserv.*, 117 Nev. 235, 243, 20 P.3d 800, 805 (2001) (internal citations omitted).

Writ relief is warranted where the Petitioners do not have a plain, speedy, and adequate remedy at law. *Millen v. District Court*, 122 Nev. 1245, 1250-1251 (2006). Special factors favoring writ relief include status of underlying pleadings, types of issues raised by the writ petition, and whether a future appeal will permit this court to meaningfully review the issues presented. *D.R. Horton v. District Court*, 123 Nev. 468, 474-75 (2007). An appellate court generally will address

only legal issues presented in a writ petition. *See, Poulos v. Eighth Jud. Dist. Ct.*, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982). "[T]he standard" in the determination of whether to entertain a writ petition is "[t]he interests of judicial economy." *Smith v. Eighth Jud. Dist. Ct.*, 113 Nev. 1343, 1355, 950 P.2d 280, 281 (1997). When the parties raise only legal issues on appeal from a district court order, the Court reviews the matter de novo. *St. James Village, Inc. v. Cunningham*, 125 Nev. 211, 216 (2009).

Petitioners contend that if they are forced to reveal private information of guests involved in other Venetian incidents without requested protections, "the assertedly [private and confidential] information would irretrievably lose its [private and confidential] quality and petitioners would have no effective remedy, even later by appeal." *Wardleigh v. Second Judicial Dist. Court*, 111 Nev. 345, 350, 891 P.2d 1180, 1183-84 (1995). Guests involved in other incidents, who are adversely impacted by the present district court order, are not parties to the district court proceedings, and are themselves are not aggrieved parties within the meaning of NRAP 3A(a) rendering this the only forum for which relief can be granted. *Watson Rounds, P.C. v. Eighth Judicial Dist. Court*, 358 P.3d 228, 231 (Nev. 2015). In addition, the Supreme Court of Nevada is the proper forum to assess whether Petitioners are entitled to the relief being sought. Therefore, Petitioners

seek to protect the privacy rights of Venetian guests wholly unaffiliated with the present litigation.

Petitioners moved for a stay of execution in district court, which was denied. Due to the exigent circumstances, and the potential violation of NRS § 34.320, where privacy rights for hundreds of individuals wholly unconnected to the subject litigation are at issue, this Emergency Petition being filed with this Court pursuant to NRAP Rules 21(a)(6) and 27(e) asking this Court to grant the relief requested in less than 14 days. Alternatively, Petitioners herein move for an immediate stay pursuant to NRAP 8(a) so that the ordered discovery can be withheld until this Court can review the legal issues at hand in a non-emergency writ proceeding. Petitioners have no other available avenue for relief. This is a matter of great importance to Petitioners not only as to this litigation, but as to all future litigation, as there are presently no restrictions placed on Sekera regarding what she is allowed to do with the personal information ordered produced. Accordingly, without immediate relief or a stay, once Petitioners comply with the order by providing unredacted incident reports of unrelated matters to Sekera without any restrictions, there is no reasonable means of repairing the damage associated with Sekera's stated intent to distribute the information.

**B. This Petition Presents Extraordinary Circumstances
Calling for Extraordinary Relief**

The subject litigation arises from a slip and fall incident allegedly occurring due to a foreign substance on the Venetian marble floor on November 4, 2016. Petitioners argue that these prior incident reports have only marginal relevance to the case in light of prevailing Nevada law. *See, Eldorado Club, Inc. v. Graff*, 78 Nev. 507, 511, 377 P.2d 174, 176 (1962) ("where a slip and fall is caused by the temporary presence of debris or foreign substance on a surface, which is not shown to be continuing, it is error to receive "notice evidence" of the type here involved for the purpose of establishing the defendant's duty"). Given the questionable relevance of this discovery, Petitioners contend there is no need for the discovery to include personal information on non-litigants. On the other hand, the irreparable damages of providing this unredacted information to Sekera without any of the requested protection under NRCP 26(c), where Sekera has acknowledged an intent to share the information with persons outside the litigation, will cause irreparable harm to the identified individuals and Petitioner. Therefore Petitioners argue that it is clearly erroneous to require the production of this private guest information.

Absent intervention by this Court, Petitioners, and others similarly situated will suffer irreparable harm. In issuing its Order, the District Court created an avenue through which plaintiffs, in all premises liability negligence claims, can obtain reports of other unrelated incidents in unredacted form and not only use

them for purposes of the pending litigation, but to circulate them widely without restriction, thereby subjecting the private information of non-party former guests to abuse.

This case is set to commence trial on August 3, 2020. This Petition for Writ contains an important issue of law that will most certainly reoccur absent immediate direction from the Supreme Court. While Judge Delaney's rulings in this case are not controlling authority in other cases, it is common practice within the Eighth Judicial District Court for an attorney to attach rulings from other judges to motions as persuasive or suggestive of how a particular judge should handle a similar issue.

A substantial risk exists that Judge Delaney's ruling will be adopted by other judges in the Eighth Judicial District Court, and will result in an increase in cases in which plaintiffs seek unredacted other incident reports in similar cases without any privacy consideration or protection. Moreover, deciding this issue on Writ will promote judicial economy, as it will avert the expenditure of increased time associated with Sekera (and like plaintiffs) repeatedly contacting potentially hundreds of non-parties involved in matters wholly unaffiliated with the subject litigation to engage in a prolonged fishing expedition to obtain information not admissible at trial. The issue is compounded by the fact that Sekera has already shared information provided to her by Petitioners with numerous other litigants in

unrelated matters, which sharing began even while the initial motion for protective order was pending.

Moreover, on September 18, 2019, the Discovery Commissioner ordered that Petitioners must now produce incident reports for slip and falls occurring on Venetian premises following the November 4, 2016 incident. Because of the Court's prior July 31, 2019 order the referee felt compelled to also order that these records be produced in unredacted form, without any requested protections to address privacy. While this latter ruling is not the subject of this Writ, it highlights the scope of privacy issues now presented not only to Petitioners and their guests, but to all similarly positioned business owners and innkeepers.

Accordingly, Petitioners respectfully request that this Court grant the emergency petition vacating the District Court's July 31, 2019 order and issue an order directing the District Court to protect the private information of non litigant individuals.

V. RELEVANT FACTS

This litigation arises from a slip and fall allegedly occurring from a foreign substance on the floor on November 4, 2016. The underlying case was filed on April 12, 2018 by Sekera, who alleged that on November 4, 2016 at approximately 1:00 pm, "Petitioners negligently and carelessly permitted a pedestrian walkway to be unreasonably dangerous in that they allowed liquid on the floor causing the

Sekera to slip and fall.”¹ Sekera related to Venetian security personnel at the scene following the incident that “she was walking through the area when she slipped in what she believed was water on the floor.”²

Sekera worked at a kiosk located in the Grand Canal Shops within the Venetian premises for nearly a year prior to the subject incident and testified in deposition that she walked through the subject fall area (“Grand Lux rotunda”) hundreds of times prior to the subject fall without incident.³ Sekera asserts that the condition which made the marble floors unsafe, causing her to slip and fall, was the presence of a liquid substance.⁴ On June 28, 2019, Sekera filed a First Amended Complaint after receiving leave of court to include a claim for punitive damages.⁵ In the First Amended Complaint, Plaintiff specifically alleged: “On or about November 4, 2016 at approximately 1:00 p.m. Defendants negligently and

¹ Appendix, Vol. 1, Tab 1, VEN 001-04, *Complaint* (filed April 12, 2018) at VEN 002, ln 25-28.

² Appendix, Vol. 1, Tab 2, VEN 005-06, *Venetian Security Narrative Report, No. 1611V-0680* (November 4, 2016); Appendix Vol 1, Tab 3, VEN 007, *Acknowledgment of First Aid Assistance & Advice to Seek Medical Care, No. 1611V-0680*; Appendix Vol 1, Tab 4, VEN 008-014, *Venetian Security Scene Photos*.

³ Appendix, Vol. 1, Tab 5, VEN 015-32, *Transcript of Joyce Sekera Deposition* (taken March 14, 2019) at VEN 021-025.

⁴ *Id.* at VEN 018, ln 13-25; VEN 019, ln 1-4; VEN 026, ln 23; VEN 030, ln 10-25; VEN 031, ln 1-20.

⁵ Appendix, Vol. 1, Tab 6, VEN 033-037, *First Amended Complaint* (filed June 28, 2019).

carelessly permitted a pedestrian walkway to be unreasonably dangerous in that they allowed liquid on the floor causing the Plaintiff to slip and fall.”⁶

VI. **RELEVANT PROCEDURAL HISTORY**

In the course of discovery, Sekera requested that Petitioners produce incident reports related to slip and falls on the Venetian marble floors from November 4, 2013 to the present.⁷ Petitioners responded by producing sixty-four (64) incident reports related to events from November 4, 2013 to November 4, 2016, redacting the names, addresses, phone numbers, dates of birth and other personal information of the individuals identified in the reports.⁸ When Sekera objected to the redactions, Petitioners filed Defendants’ Motion for Protective Order with the Discovery Commissioner, seeking an order protecting the personal information of prior guests.⁹ While the motion for protective order was pending, unbeknownst to Petitioners or the Discovery Commissioner, Sekera provided a copy of the redacted prior incident reports to another attorney involved in a

⁶ *Id.* at VEN 035, ln 4-7.

⁷ Appendix, Vol. 1, Tab 7, , VEN 038-041, *Plaintiff’s Request for Production of Documents and Materials to Defendant* (served August 16, 2018) at VEN 040, Request No. 7

⁸ Appendix, Vol. 1, Tab 8, VEN 042-053, *Fifth Supplement to Defendants’ 16.1 List of Witnesses and Production of Documents For Early Case Conference* (served January 4, 2019) at VEN 045, ln 9. .

⁹ Appendix, Vol. 1, Tab 9, VEN 054-083, *Defendants’ Motion for Protective Order* (filed February 1, 2019).

different lawsuit.¹⁰ Petitioners became aware of this sharing after the motion for protective order was filed and thereafter moved to keep the documents in redacted form for attorney eyes only.¹¹ One day prior to the March 13, 2019 hearing on the motion for protective order, also unbeknownst to Petitioners or the Discovery Commissioner, the redacted prior incident reports were filed in another department of the Eighth Judicial District Court in separate litigation against Venetian.¹²

At the March 13, 2019 hearing on Petitioners' motion for protective order, Sekera did not advise the court or Petitioners' counsel that the redacted prior incident reports had been shared with counsel outside the litigation and then filed

¹⁰ Appendix, Vol. 1, Tab 10, VEN 084-085, *Declaration of Peter Goldstein, Esq.* (date February 13, 2019) at VEN 084, ln 21-25, indicating that the subject prior incident reports were produced to Mr. Goldstein by Sekera counsel on February 7, 2019.

¹¹ Appendix, Vol. 1, Tab 11, VEN 086-096, *Defendants' Reply to Plaintiff's Opposition to Motion for Protective Order* (filed March 5, 2019). (At this time, Petitioners were unaware that redacted copies of prior incident reports produced on January 4, 2019 in this matter had been provided to Peter Goldstein, Esq., on February 7, 2019, after the motion for protection had been filed with the Court and before it was heard on March 13, 2019, only that some kind of sharing between counsel in other involving Venetian was occurring.)

¹² Appendix, Vol. 1, Tab 12, VEN 140-85, *Sekera's Reply to Defendant Venetian Casino Resort, LLC's Opposition to Sekera's Motion for Terminating Sanctions, in the matter of Smith v. Venetian, case no. A-17-753362-C* (filed March 12, 2019), at VEN 141, ln 15-26, VEN 147, ln 12-13, VEN 173.

with the district court in another department.¹³ The Discovery Commissioner granted Petitioners' motion for protective order.¹⁴

Sekera filed an objection to the April 4, 2019 Discovery Commissioner's Report and Recommendation, which was heard by the district judge on May 14, 2019. The district judge, being apprised of Sekera's past conduct and her intention to freely share unredacted information with others outside the litigation, wholly reversed the Discovery Commissioner's Report and Recommendation.¹⁵ Judge Delaney relayed that she could not identify a legal basis in which to protect the identity of Petitioners' guests in prior incident reports or to grant a protective order preventing Sekera's counsel from distributing them as he desires to persons wholly unaffiliated with the subject litigation.¹⁶ However, Judge Delaney added the following:

I struggle with the decision in all candor because I do think because of the sheer volume of the amount of people involved here, that it could become something that's problematic. It could be viewed as something that would be something, like, a - you know, a marketing list that's out there on the loose that somebody could get their hands on and tie into, but I can't just because of that qualm tie it up.

¹³ Appendix, Vol. 1, Tab 13; VEN 186-200, *Recorder's Transcript of Hearing [On] Defendant's Motion for Protective Order* (March 13, 2019).

¹⁴ Appendix, Vol. 1, Tab 14, VEN 201-06, *Discovery Commissioner's Report and Recommendation* (filed April 4, 2019), VEN 201-206.

¹⁵ Appendix, Vol. 2, Tab 15, VEN 207-66, *Transcript of Hearing on Objection to Discovery Commissioner's Report* (May 14, 2019).

¹⁶ See *id.* at VEN 251, ln 22-25; VEN 252, ln 1-25; VEN 253, ln 1-2.

* * *

... I would caution Mr. Galliher that, you know, how you share this information who gets ahold (sic) of it and who has what information doesn't necessarily protect folks from being upset and coming after and wanting to attack this. . . . but it is potentially problematic to the extent that this information could be shared and could contain personal identifying information. There is -- there is statutory law out there that talks about those who come into possession of large quantities of information that contain personal identifying information and do not handle it carefully and disseminate it or do other things with it.¹⁷

Despite the caution given by the Court to Sekera counsel, the Order of July 31, 2019 does not preclude counsel from freely distributing information obtained in this litigation.¹⁸ The July 31, 2019 Order addressing the prior incident reports merely provides: "the Court strongly cautions Plaintiff to be careful with how she shares and uses this information"; however, no actual protection of the subject guest information was provided.¹⁹

Upon receipt of the Court's order on July 31, 2019, Petitioners filed a motion for leave to file a motion for reconsideration on the issue of the required production of unredacted incident reports on an order shortening time, with a motion to stay pending application of a writ on the issue in the alternative.²⁰ The

¹⁷ See *id.* at VEN 254, ln 10-16, 24-25; VEN 255, ln 1-3; 14-22.

¹⁸ Appendix, Vol. 2, Tab 16, VEN 267-70, *Order* (filed July 31, 2019).

¹⁹ *Id.* at VEN 269, ln 11-14.

²⁰ Appendix, Vol. 2, Tab 17, VEN 271-448, *Motion for Leave to File Motion for Reconsideration on Order Reversing Discovery Commissioner's Report and Recommendation and Motion to Stay Order Until Hearing On Reconsideration or*.

hearing was initially set for August 27, 2019, but was moved to September 17, 2019 at the request of Sekera counsel.²¹

At the September 17, 2019 hearing, Judge Delaney stated at the outset that she was under the mistaken impression that the order related to production of other Venetian incident reports was for attorney eyes only.²² Consider the following exchange from the hearing:

[MR. ROYAL]: I think, Your Honor, that the thing that we want to point out is as it relates to the -- the privacy concerns that my client has, once -- once these documents are produced and in unredacted form, they're out there. There's nothing in the present order that prevents plaintiff's counsel from sharing them with anyone and everyone. Even though the Court has expressed, in the Order, some concerns or at least Your Honor

Alternatively, Motion to Stay All Proceedings Pending Application for Writ of Mandamus On Order Shortening Time (filed August 12, 2019).

²¹ After the requested expedited hearing date was set, Sekera requested an extension of the hearing to accommodate counsel's trial schedule. On July 23, 2019, the district court entered an order granting Petitioners' motion for partial summary judgment on Sekera's claim that the mode of operation doctrine of liability applies under the given set of circumstances. (Appendix, Vol. 2, Tab 18, VEN 449-52, *Findings of Fact, Conclusions of Law and Order Granting Petitioners' Motion for Partial Summary Judgment on Mode of Operation Theory of Liability* (filed July 23, 2019). On August 28, 2019, the district court issued an order granting a continuance of discovery and the trial. (See Appendix, Vol. 2, Tab 19, VEN 453-55, *Order Granting in Part and Denying in Part Sekera's Motion to Extend Discovery Deadlines and Continue Trial (Second Request) on Order Shortening Time* (filed August 28, 2019).) The new discovery cut-off is now April 6, 2020. (*Id.* at VEN 455, ln 9-10.) Accordingly, the hearing on Petitioners' motion for reconsideration was held on September 17, 2019.

²² Appendix, Vol. 3, Tab 20, VEN 456-83, *Transcript of Hearing on Motion for Leave to File Motion for Reconsideration* (September 17, 2019), at VEN 460, ln 4-25; VEN 461, ln 1-7.

kind of admonished them to be a little careful, I mean, there's no teeth in any –

THE COURT: Well, and it's funny, and I don't mean to interrupt you, but I want to share this point with you. It's funny as I was reading the briefings I'm like, we didn't do that? Because it felt to me like when we talked about it, that I made it clear that this was to be for attorneys to have for -- because I felt they were entitled to this evidence, but not necessarily -- and we know coming in that, yes, Mr. Galliher has some of the information he has because someone else in plaintiffs' bar has shared with him things, **but I thought we had a discussion about, you know, while we maybe numbers or circumstances or things, you know, would somehow be public record or known that anything that was private or personal to these individuals really is not -- that would be personal identifiers, but otherwise would need to be redacted out of litigation, maybe, you know, the attorneys would need to see to have some ability to contact or follow up, but it would not be something that could be circulated to others. We didn't clarify any of that?**

MR. ROYAL: We did not, and I appreciate the Court bringing that up. That was our primary concern in the first place when we filed our motion before the Discovery Commissioner. Our concern was that this was -- all this information would be for Attorneys Eyes Only. And, of course, the Discovery Commissioner granted that, and she also granted that we would leave the prior Incident Reports in redacted form.²³

Petitioners argued that Plaintiffs did not meet the requirements of NRCP 26(b)(1) to demonstrate relevance and proportionality in light of the privacy rights of guests involved in unrelated other incidents on Venetian property and *Eldorado*

²³ *Id.* at VEN 460, ln 4-25; VEN 461, ln 1-13 (emphasis added).

*Club, Inc., supra.*²⁴ Judge Delaney agreed that there is merit to looking at case holdings by the United States District Court where it has addressed this issue and ruled under near identical circumstances.²⁵ However, Judge Delaney determined that she would not reconsider the issue, finding the July 31, 2019 order to be in agreement with Nevada law, finding that “the Court’s prior decision was sound [and] ... supported by the case law.”²⁶ Judge Delaney expressly denied Petitioners’ request for a stay pending the filing of this writ.²⁷ In so doing, Judge Delaney added:

And we understand that this information is going to be not only received by the plaintiff, but it's going to potentially be shared with others, but we think that that unbalance (sic) is something that is a natural perhaps circumstance or consequence of what we have in these cases, but it is allowed in this case because it is relevant to the actual case that the plaintiffs have brought, and it is calculated to not only be relevant information, but lead to discovery of relevant information.²⁸

However, Judge Delaney also stated: “Because there is something here that could cause them [the appellate court] to take a look at it and make a decision, I certainly believe that this [a writ] is a viable option for the Venetian to pursue if they so

²⁴ See Appendix, Vol. 2, Tab 17, VEN 271-448, Appendix, Vol. 3, Tab 20, VEN 456-83, *generally*.

²⁵ See Appendix, Vol. 3, Tab 20, at VEN 474, ln 6-16.

²⁶ *Id.* at VEN 475, ln 4-9.

²⁷ *Id.* at VEN 476, ln 24-25; VEN 477, ln 1-13.

²⁸ *Id.* at VEN 476, ln 7-15 (emphasis added).

choose.”²⁹ In so doing, the district court judge relayed that she welcomes some guidance on this issue.³⁰ That stated, the judge stated: “if you are going to get relief on this point, Mr. Royal, it is going to have to come from Mandamus relief, because I think we have fully flushed out, fully vetted and fully considered the matters at this level, and that the Court's ruling that was previously made is sound and is going to stand.”³¹ Petitioners therefore have no other avenue for seeking relief and, accordingly, this emergency petition for stay is properly before this Honorable Court.

This writ is filed prior to the filing of the order on Petitioners' motion for reconsideration, which was the subject of the September 17, 2019 hearing, since reconsideration was denied and the July 31, 2019 order is the controlling order at issue.

On a related note, on September 18, 2019, the Discovery Commissioner, based on Judge Delaney's prior rulings, ordered that Petitioners to now produce unredacted incident reports from November 4, 2013 to the present (which includes nearly three years of post incident information).³² While this latter ruling is not before the Court, as Petitioners have not yet had the opportunity to bring it before

²⁹ *Id.* at 475, ln 18-23.

³⁰ *Id.* at VEN 458, ln 12-18; VEN 475, ln 18-25; VEN 477, ln 21-23.

³¹ *Id.* at VEN 477, ln 15-20.

³² See Appendix, Vol. 3, Tab 21, VEN 484-85, *Court Minutes, Discovery Commissioner* (September 18, 2019) (indicating production of unredacted incident reports for the five years preceding and the three years after the subject incident)

Judge Delaney (*i.e.* specifically challenging the production of post incident reports for a slip and fall incident), it highlights the need for Petitioners to have the present issue reviewed by the Nevada Supreme Court and provide relief in an emergency fashion.

VII. LEGAL ARGUMENT

A. **ISSUE ONE: WHETHER THE DISTRICT COURT ERRED IN ORDERING PETITIONERS TO PRODUCE UNREDACTED OTHER INCIDENT REPORTS WITHOUT REQUESTED PROTECTIONS PURSUANT TO NRCP 26(C)**

1. Sekera Did Not Meet Her Burden of Proof Under NRCP 26(b)(1) to Establish the Need for Unredacted Prior Incident Reports

This litigation arises from a slip and fall occurring from a temporary transitory condition on November 4, 2016 in the Venetian Grand Lux rotunda.³³ Although Sekera walked through the Grand Lux rotunda area hundreds of times previously, on the day of the incident Sekera encountered a foreign substance for the first time, which caused her to slip and fall.³⁴

In *Eldorado Club, Inc.*, *supra*, 78 Nev. at 511, 377 P.2d at 176, the Nevada Supreme Court held that evidence of prior incident reports in cases involving the temporary presence of debris or foreign substances on a walking surface is not

³³ See Appendix, Vol. 1, Tabs 1-6, VEN 001-037, *generally*.

³⁴ See Appendix, Vol. 1, Tab 5, at VEN 021-025. See also Appendix, Vol. 1, Tabs 1-4, VEN 001-014, Tab 6, VEN 033-037, *generally*.

admissible for the purpose of establishing notice. Rule 26(b)(1), Nevada Rules of Civil Procedure, reads as follows:

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is **relevant** to any party's claims or defenses and **proportional** to the needs of the case, **considering the importance of the issues at stake** in the action, the **amount in controversy**, the **parties' relative access to relevant information**, the **parties' resources**, the **importance of the discovery** in resolving the issues, and whether the **burden or expense of the proposed discovery outweighs its likely benefit**. Information within this scope of discovery need not be admissible in evidence to be discoverable. (Emphasis added.)

Accordingly, Sekera has the burden of establishing that the production of unredacted prior incident reports is both **relevant** to issues surrounding the November 4, 2016 incident and that the production of this discovery is **proportional** to the needs of the case in light of five factors: 1) importance of issues at stake; 2) amount in controversy; 3) parties' relative access to relevant information; 4) parties' resources; the importance of the discovery in resolving contested issues; and 5) the burden of proposed discovery vs. the likely benefit.

Sekera claims to have sustained injuries primarily to her neck and back. Her known treatment is approximately \$80,000, to date, thus far all conservative in nature nearly three (3) years post incident. Petitioners have produced evidence of other slip/fall incidents from a foreign substance occurring at Venetian occurring

prior to Sekera's incident of November 4, 2016. The information for each such report identifies the date of incident, area of the incident, and the facts surrounding the incident. Sekera argued this information was insufficient and she needed the personal information of the guests involved in each incident. Her only purported need for obtaining this private information was to contact these people in the event Petitioners will present arguments at trial related to comparative fault.³⁵ Sekera provided no other reason for needing the non litigant guests' private information. Sekera also argued she has an unqualified right to share the guests' private information with anyone she desires.

Sekera's argument claiming there is no law restricting her use of confidential information is an inaccurate analysis of Nevada laws. Rule 26(b)(1), Nevada Rules of Civil Procedure, places restrictions on her ability to obtain this information. Sekera is required to show this information is relevant and that her need for this information outweighs the guests' need to protect their private information. Sekera utterly failed to make this showing in the District Court.

2. Personal, Private Information of Guests Identified in Prior Incident Reports is Entitled to NRCP 26(c) Protection

Pursuant to the July 31, 2019 Order, the District Court has herein provided Sekera with unfettered access to personal and sensitive information from non

³⁵ See Appendix, Vol. 2, Tab 15, at VEN 214, ln 12-25; VEN 215, ln 1-14; VEN 222, ln 14-25; VEN 223, ln 1-11; VEN 234, ln 3-25; VEN 235, ln 1-18; Appendix, Vol. 3, Tab 20, at VEN 469, ln 16-25; VEN 470, ln 1-12.

parties to this action, which is not relevant to any claims or defenses in this matter. She has already been provided with redacted prior incident reports to establish issues associated with notice.

The Nevada Supreme Court has found that writ relief is appropriate when a District Court's ruling exceeds the scope of NRCP 26(b)(1) and requires the production of private information. *Schlatter v. Eighth Judicial Dist. Court In and For Clark County*, 93 Nev. 189, 192, 561 P.2d 1342, 192-93 (1977). While Petitioners have not found Nevada case law applying the rule to protecting the privacy rights of persons involved in other incidents, the United States District Court for the District of Nevada has dealt with this issue and found in favor of protecting the privacy rights of third parties by redacting personal information.

In *Izzo v. Wal-Mart Stores, Inc.*, 2016 U.S. Dist. LEXIS 12210; 2016 WL 409694, the plaintiff, who slipped and fell on a clear liquid within a Las Vegas Wal Mart store on May 18, 2013, filed a motion to compel the defendant to produce evidence of prior claims and incidents for the three (3) years preceding the subject incident. The court evaluated the claim under the federal equivalent of NRCP 26(b)(1) and Nevada law as set forth in *Eldorado Club, Inc.*, *supra* at 511, 377 P.2d at 176. In *Izzo*, the defense had previously produced a list of prior reported slip and falls. The plaintiff sought the incident reports including personal information of the other Wal Mart customers. The federal district court found that

the burden on defendant and the privacy interests of the non litigants outweighed the tangential relevance of the information to the issues in the lawsuit. (*Id.* at 4, 2016 U.S. Dist LEXIS at *11.) Similarly, in the instant matter, Sekera has shown no compelling reason under NRCP 26(b)(1) for the production of non litigant individual's private information. Accordingly, the District Court should have granted Petitioner's motion for a protective order.

In *Rowland v. Paris Las Vegas*, 2015 U.S. Dist. LEXIS 105513; 2015 WL 4742502, the federal district court applying the federal equivalent of NRCP 26(b)(1) found that third parties have a protected privacy interest in their identities, phone numbers and addresses. In *Rowland*, Plaintiff sued the defendant for injuries after slipping and falling on a recently polished tile floor. The plaintiff sought to compel the defendant to identify by name (with phone numbers and addresses) any person who had previously complained about the subject flooring. The court not only found the request to be overly broad, but also determined that it violated the privacy rights of the persons involved. It explained as follows:

Further, the Court finds that requiring disclosure of the addresses and telephone numbers of prior hotel guests would violate the privacy rights of third parties. "Federal courts ordinarily recognize a constitutionally-based right of privacy that can be raised in response to discovery requests." *Zuniga v. Western Apartments*, 2014 U.S. Dist. LEXIS 83135, at *8 (C.D. Cal. Mar. 25, 2014) (citing *A. Farber & Partners, Inc. v. Garber*, 234 F.R.D. 186, 191 (C.D. Cal. 2006)). However, this right is not absolute; rather, it is subject to a balancing test.

Stallworth v. Brollini, 288 F.R.D. 439, 444 (N.D. Cal. 2012). "When the constitutional right of privacy is involved, 'the party seeking discovery must demonstrate a compelling need for discovery, and that compelling need must be so strong as to outweigh the privacy right when these two competing interests are carefully balanced.'" *Artis v. Deere & Co.*, 276 F.R.D. 348, 352 (N.D. Cal. 2011) (quoting *Wiegele v. Fedex Ground Package Sys.*, 2007 U.S. Dist. LEXIS 9444, at *2 (S.D. Cal. Feb. 8, 2007)). "Compelled discovery within the realm of the right of privacy 'cannot be justified solely on the ground that it may lead to relevant information.'" *Id.* Here, Plaintiff has not addressed these privacy concerns, much less demonstrated that her need for the information outweighs the third party privacy interests. Therefore, the Court will not require Defendant to produce addresses or telephone numbers in response to Interrogatory No. 5.

(*Id.* at *7. Emphasis added.)

Based upon the foregoing it is clear that the non litigant individuals have a protected privacy interest and Sekera has done nothing to demonstrate a "compelling need" to violate that protected interest. Given the Nevada Supreme Court's finding that prior incident information is irrelevant to establish notice in the facts at issue here before the Court (*i.e. Eldorado Club, Inc., supra*), Plaintiff necessarily cannot demonstrate a need outweighing the third party guests' privacy interest. Accordingly, the District Court's July 31, 2019 order denying Petitioner's request for a protective order is clearly in error. (*See also, Bible v. Rio Props., Inc.*, 246 F.R.D. 614, 620-21, 2007 U.S. Dist. LEXIS 80017 at *16-17 ("the rights of third parties can be adequately protected by permitting defendant to redact the guest's complaints and staff incident reports to protect the guest's name and

personal information, such as address, date of birth, telephone number, and the like"); *Dowell v Griffin*, 275 F.R.D. 613, 620 (S.D. Cal. 2011) (ruling that the plaintiff was not entitled to identity, phone number, address, date of birth, social security number, or credit card number of unrelated third parties); *Shaw v. Experian Info. Sols., Inc.*, 306 F.R.D. 293, 299 (S.D. Cal. 2015) (redaction is appropriate to protect private information).)

The above cases support Petitioners' position in this case - that protection of sensitive personal information of anyone not a party to this suit should be redacted. Certainly, under *Eldorado Club, Inc., supra*, which provides the prior incident reports in circumstances such as those present here are not admissible, it is questionable whether Sekera has a right to them at all.

The incident reports at issue here contain the sensitive, and private information of individuals who are not parties to this lawsuit, and who are not believed to have any information, facts or circumstances surrounding Sekera's allegations. There is a recognized interest in protecting the disclosure of personal client information, as unauthorized disclosure would likely damage the Petitioners' guest relationships.³⁶ Guests who stay at the Venetian do so with an expectation that their personal information will not be disclosed or disseminated without their

³⁶ See *Gonzales v. Google, Inc.*, 234 FRD 674, 684 (N.D. CA 2006) (disclosing client information "may have an appreciable impact on the way which [the company] is perceived, and consequently the frequency with which customers use [the company]").

consent. There is simply no legitimate discovery interest which outweighs these third party privacy concerns in light of *Eldorado Club, Inc., supra*. Moreover, Sekera has not demonstrated a compelling need for this information. Furthermore, as discussed further below, it could subject Petitioners to liability for privacy violations.

3. Petitioners Should Not Be Required to Re-Produce Venetian Incident Reports Without the Existing Redactions of Confidential and Private Information Relating to Defendant's Guests as it Exposes Petitioners to Liability

The Nevada Legislature has demonstrated a desire to protect the personal data in the possession of business entities in NRS § 603A.010, *et seq.*, which relates to the Venetian's duty to securely maintain and protect the information collected from its guests and customers. By disclosing personal information of potentially hundreds of guests, Petitioners may be required under NRS § 603A.220 to contact each non-employee identified within every prior incident report to advise of the disclosure. The information contained within the incident reports at issue includes names, phone numbers, addresses, dates of birth, Social Security numbers, health information (*i.e.* handwritten notes from EMT evaluations, and typewritten summaries of alleged injuries, prior health related conditions, etc.) The mass dissemination of Venetian's guests' private information is the equivalent to a data breach, thereby exposing Venetian to additional third-party claims arising from the leaking of this information. There is simply no good reason to provide

this information to Sekera, much less to allow her to provide it to anyone else she desires outside the litigation.

As established below, good-cause exists to support an order providing that the personal, private information of Venetian's guests contained in the Incident Reports remain redacted.

Petitioners have a published policy to protect the privacy of their guests. The Venetian's Data Privacy Policy ("Privacy Policy") states in relevant part, as follows:

This is the Data Privacy Policy ("Privacy Policy") of Venetian Casino Resort, LLC and its parent, affiliate and subsidiary entities (collectively, the "Company") located in the United States. ... This Privacy Policy applies to activities the Company engages in on its websites and activities that are offline or unrelated to our websites, as applicable. We are providing this notice to explain our information practices and the choices you can make about the way your information is collected and used.

This Privacy Policy sets forth the principles that govern our treatment of personal data. We expect all employees and those with whom we share personal data to adhere to this Privacy Policy.

The Company is committed to protecting the information that our guests, prospective guests, patrons, employees, and suppliers have entrusted to us.

This Privacy Policy applies to all personal data in any format or medium, relating to all guests, prospective guests, patrons,

employees, suppliers and others who do business with the Company.³⁷

Venetian's Privacy Policy describes to Venetian's guests (and prospective guests) that Venetian collects its guests' personal data or information, stating in relevant part as follows:

We only collect personal data that you provide to us, or that we are authorized to obtain by you or by law. For example, we obtain credit information to evaluate applications for credit, and we obtain background check information for employment applications. The type of personal data we collect from you will depend on how you are interacting with us using our website, products, or services. For example, we may collect different information from you when you make reservations, purchase gift certificates or merchandise, participate in a contest, or contact us with requests, feedback, or suggestions. The information we collect may include your name, title, email address, mailing information, phone number, fax number, credit card information, travel details (flight number and details, points of origin and destination), room preferences, and other information you voluntarily provide.³⁸

Venetian's Privacy Policy includes offering Venetian's guests an opportunity to choose what personal information, if any, they wish to share and/or with whom Venetian may share information. Venetian provides guests with the ability to control what information Venetian maintains and to whom it is disseminated. For example, Venetian's Privacy Policy provides the following:

³⁷ Appendix, Vol. 3, Tab 22, VEN 486-95, *Privacy Policy, The Venetian Resort Las Vegas* (July 7, 2019), <https://www.venetian.com/policy.html> at VEN 486-87 (emphasis added).

³⁸ *Id.* at VEN 488.

Access, Correct, Update, Restrict Processing, Erase: You may have the right to access, correct, and update your information. You also may request that we restrict processing of your information or erase it. To ensure that all of your personal data is correct and up to date, or to ask that we restrict processing or erase your information, please contact us using the methods in the Contact Us section below.³⁹

Petitioners' guests are promised and expect the Venetian to protect their confidential information. The District Court's order currently compels Petitioners to utterly disregard this promise to protect guest's confidential information. The wide dissemination of this information intended by Sekera may very well result in claims by those guests for the disclosure of this information without their consent or notice.

Petitioners contend that if the July 31, 2019 order is not vacated and the privacy rights of the innocent individuals protected, then Venetian may face further claims from aggrieved guests. Moreover, it will cause irreparable damage to Petitioners' relations with its guests and prospective guests. Therefore Petitioners respectfully request that this Court issue an order vacating the District Court's July 31, 2019 order and directing the District Court to issue an order protecting the private information on the third party individuals.

**B. ISSUE TWO: WHETHER THE DISTRICT COURT
ERRED IN DENYING PETITIONERS' MOTION FOR
RECONSIDERATION OF THE JULY 31, 2019 ORDER
RELATED TO THE PRODUCTION OF UNREDACTED**

³⁹ *Id.* at VEN 492.

**OTHER INCIDENT REPORTS WITHOUT REQUESTED
PROTECTION PURSUANT TO NRCP 26(C)**

Petitioners moved the District Court for reconsideration of its July 31, 2019 Order on August 12, 2019.⁴⁰ At the hearing on September 18, 2019, the District Court refused to reconsider its Order of July 31, 2019, finding fully in compliance and accordance with Nevada law.⁴¹ Petitioners moved for relief from the July 31, 2019 order by requesting a stay until a writ could be filed, which was denied,⁴² rendering Petitioners without any other means of relief beyond filing this writ and requesting a stay until this important legal issue can be reviewed and determined by this Honorable Court. Respectfully, Petitioners have met the requirements of NRAP Rules 21(a)(6), 27(e) and 8(a) and have set forth the need for an emergency stay under the circumstances, having no other speedy, and adequate remedy at law other than to seek relief from this Honorable Court.⁴³

Finally, as noted earlier, the Discovery Commissioner recently ordered that Petitioners must now produce unredacted subsequent incident reports (*i.e.* from November 4, 2016 to the present) based on Judge Delaney's ruling of July 31, 2019, and Sekera's new claim for punitive damages. While the issue of having to

⁴⁰ See Appendix, Vol. 2, Tab 17, VEN 271-448, *generally*.

⁴¹ Appendix, Vol. 3, Tab 20, at VEN 475, ln 4-6; VEN 476, ln 4-6; VEN 477, ln 15-20.

⁴² *Id.* at VEN 476, ln 19-25; VEN 477, ln 1-20.

⁴³ Petitioners have met the requirements set forth under NRAP 8(a)(1) by requesting a stay in the District Court below, and herein requesting a stay in this emergency request under NRAP 8(a)(2).

produce subsequent incident reports is not presently at issue before this Court, this latest ruling demonstrates the position Petitioners and their guests have now been placed, which highlights the need for requested protections sought herein.⁴⁴

VIII. CONCLUSION

This petition seeks relief from this Court surrounding an important issue of law; *to wit*: whether property owners and innkeepers can be compelled to produce the private information of individuals who are not involved in a slip and fall tort lawsuit when the party seeking this confidential information has failed to make the showing required by NRCP 26(b)(1). This matter requires resolution on an emergency basis because once the confidential information is provided to plaintiff's attorney it will be freely distributed with impunity to third parties that are not involved in the instant litigation. This will effectively result in the Court sanctioning a widespread violation of individual's confidential information. If the requested relief is not granted on an emergency basis, or alternatively a stay ordered, then innocent third parties will have their privacy rights irreparably damaged. Petitioners herein respectfully move for the following:

1. That this Court issue an immediate order vacating the District Court's July 31, 2019 order directing Venetian to provide Sekera with unredacted

⁴⁴ See Appendix, Vol. 3, VEN 484-85.

copies of prior incident reports related to guests involved in other incidents occurring on the Venetian premises.

2. That this Court clarify the subject issue of law regarding the protection of private information produced in the course of discovery pursuant to NRCP 26(b)(1) and issue an order directing the District Court to protect the private information of guests contained in the incident reports at issue.

In the interests of judicial economy and the administration of justice, reversal is required in order to avoid severe prejudice to Petitioner, innocent individuals, and any future defendants in similar cases as this.

DATED this 26 day of September, 2019.

ROYAL & MILES LLP

By 

Michael A. Royal, Esq. (SBN 4370)
Gregory A. Miles, Esq. (SBN 4336)
1522 W. Warm Springs Rd.
Henderson, NV 89014
(702) 471-6777
Counsel for Petitioners

CERTIFICATE OF COMPLIANCE

STATE OF NEVADA }
COUNTY OF CLARK } ss:

I, Michael A. Royal, hereby affirm, testify and declare under penalty of perjury as follows:

1. I am an attorney licensed to practice in the State of Nevada, and am a member of the law firm of Royal & Miles LLP, attorneys for Petitioners VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC.

2. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[X] This brief has been prepared in a proportionally spaced typeface using Word Perfect in Times Roman 14 point font.

3. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

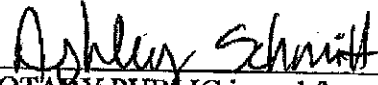
[X] Proportionately spaced, has a typeface of 14 points or more, and contains 7,403 words in compliance with NRAP 32(a)(1)(A)(ii) (having a word count of less than 14,000 words).

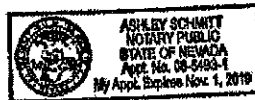
4. Finally, I hereby certify that I have read this Writ, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Further affiant sayeth naught.


MICHAEL A. ROYAL, ESQ.

SUBSCRIBED AND SWORN to before
me by Michael A. Royal, Esq., on this
26 day of September, 2019.


NOTARY PUBLIC in and for said
County and State

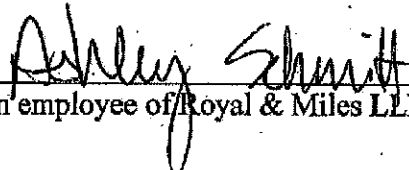


CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the law firm of Royal & Miles LLP, attorney's for Petitioners, VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC, and that on the 26 day of September, 2019, I served true and correct copy of the foregoing PETITIONERS' EMERGENCY PETITION FOR WRIT OF MANDAMUS AND/OR WRIT OF PROHIBITION UNDER NRAP RULES 21(a)(6) AND 27(e), by delivering the same via U.S. Mail addressed to the following:

Keith E. Galliher, Jr., Esq.
THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014
Attorneys for Real Party in Interest

Honorable Kathleen Delaney
Eighth Jud. District Court, Dept. 25
200 Lewis Avenue
Las Vegas, NV 89155
Respondent


An employee of Royal & Miles LLP

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ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court No. 79689
District Court Case No. A-18-772761-C

Electronically Filed
Sep 26 2019 04:59 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

VENETIAN CASINO RESORT, LLC, a Nevada limited liability company,
LAS VEGAS SANDS, LLC, a Nevada limited liability company,
Petitioners,

v.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK, AND THE HONORABLE KATHLEEN
DELANEY in her capacity as District Judge,
Respondent,
JOYCE SEKERA, an individual,
Real Party in Interest

EMERGENCY MOTION UNDER NRAP 27(e)

EMERGENCY MOTION UNDER NRAP 8 STAYING EXECUTION OF
ORDER DIRECTING PETITIONERS TO DISCLOSE PRIVATE, PROTECTED
INFORMATION OF GUESTS NOT INVOLVED IN UNDERLYING LAWSUIT

ACTION IS NEEDED BY OCTOBER 2, 2019 BEFORE PETITIONER IS
REQUIRED TO DISCLOSE THE CONFIDENTIAL INFORMATION
THIS MOTION IS BEING FILED CONCURRENTLY WITH AN EMERGENCY
PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION

Michael A. Royal, Esq. (SBN 4370)
Gregory A. Miles, Esq. (SBN 4336)
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gmiles@royalmilesllp.com

19-40392
Docket 79689 Document 2019-40190

VEN 2166

AFFIDAVIT OF MICHAEL A. ROYAL, ESQ. IN SUPPORT OF
PETITIONERS' EMERGENCY MOTION FOR STAY AND
NRAP 27(E) CERTIFICATE

STATE OF NEVADA }
COUNTY OF CLARK } ss:

1. I am an attorney licensed to practice in the State of Nevada and am an attorney at the law firm of Royal & Miles LLP, Attorneys for Petitioners VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC, in support of this PETITIONERS' EMERGENCY PETITION FOR WRIT OF MANDAMUS AND/OR WRIT OF PROHIBITION UNDER NRAP RULES 21(a)(6) AND 27(e).

2. The telephone numbers and office addresses of the attorneys for the Real Party in Interest are listed as follows:

Keith E. Galliher, Jr., Esq.
THE GALLIHER LAW FIRM
1850 E. Sahara Avenue, Suite 107
Las Vegas, NV 89014
(702) 735-0049
Attorneys for Real Party in Interest

3. The facts showing the existence and nature of Petitioners' emergency are as follows: An order was entered on July 31, 2019 directing Venetian to produce unredacted reports of other incidents involving Venetian guests without providing requested protection under NRCP 26(c). The motion for reconsideration brought on an order shortening time was thereafter denied. Venetian's motion for stay by the district court to allow for filing of a writ of mandamus and/or writ of

A

prohibition was denied. Therefore, immediate action is required to prevent Venetian and its guests from suffering irreparable harm.

4. Counsel for Real Party in Interest was served with Petitioners' Petition and this Motion via electronic service as identified on the proof of service in this document. Prior to filing this Petition and Motion my office contacted, by telephone, the clerk of the Supreme Court, the Clerk of the Eight Judicial District Court of the State of Nevada, and Real Party in Interest's attorney to notify them that Petitioners were filing the instant Emergency Motion and Petitioners' Emergency Petition for Writ of Mandamus and/or Writ of Prohibition Under NRAP Rules 21(A)(6) And 27(E).

5. Petitioners will be required to divulge confidential information of non-party litigants immediately, if this Court does not take action. Concurrently with this Motion, Petitioner is filing an Emergency Petition for Writ of Mandate and/or Prohibition. If this Court grants this motion, then the emergency will be abated and the concurrently filed Petition may be considered on a non-emergency basis.

6. The relief sought in the Writ Petition is not available by the District Court. Petitioners made a written Motion for Stay with the District Court on August 12, 2019 and again orally on September 17, 2019. The District Court denied the Motion for Stay and indicated that relief would need to be obtained

from the appellate court pursuant to NRAP 8. It is imperative this matter be heard at the Court's earliest possible convenience.

7. I certify that I have read this motion and, to the best of my knowledge, information and belief, this motion complies with the form requirements of Rule 21(d) and is not frivolous or interposed for any improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

8. I further certify that this brief complies with all Nevada Rules of Appellate Procedure, including the requirements of Rule 28(e) every assertion in the brief regarding matters in the record be supported by a reference to the appendix where the matter relied upon is to be found. I understand I may be subject to sanctions in the event the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Further affiant sayeth naught.


MICHAEL A. ROYAL, ESQ.

SUBSCRIBED AND SWORN to before
me by Michael A. Royal, Esq., on this
20 day of September, 2019.

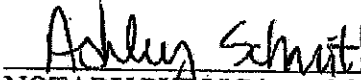

NOTARY PUBLIC in and for said
County and State



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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT AS TO RELIEF SOUGHT IN DISTRICT COURT

COMES NOW Petitioners VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC, by and through their counsel of record, ROYAL & MILES LLP, and respectfully petition this Court for the following immediate relief related to Eighth District Court Case A-18-772761-C ("Case A772761"), JOYCE SEKERA ("Sekera") v. VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC ("Venetian").

Petitioners moved for a stay of execution in district court, which was denied. Due to the exigent circumstances, and the potential violation of privacy rights for hundreds of individuals wholly unconnected to the subject litigation, this Emergency Motion is being filed with this Court. It has been brought in good faith. In addition, Petitioners have no other available avenue for relief. This is a matter of great importance to Petitioners not only as to this litigation, but as to all future litigation, as there are presently no restrictions placed on Sekera regarding what she is allowed to do with the personal information of guests ordered produced. Accordingly, once Petitioners comply with the order, there is no reasonable means of repairing the damage.

II. BASIS FOR RELIEF

1. The District Court failed to fairly consider the privacy rights of individual non-parties to the litigation by reversing the April 4, 2019 Discovery

Commissioner's Report and Recommendation granting Petitioners' motion for protective order under NRCP 26(c) .

2. The district court failed to weigh the issues of relevance and proportionality required under NRCP 26(b) (1) in refusing to provide protection of personal information of guests involved in other incidents on Venetian property.

Petitioners will be irreparably harmed without the issuance of a stay of the order directing Venetian to provide unredacted incident reports to Sekera. In discovery, Sekera requested reports of prior slip-and-fall incidents. Petitioners produced such reports with redactions to protect guests' personal private information. The July 31, 2019 District Court order requires Petitioner to produce these reports without redactions. Under the circumstances of the accident at issue in this matter, these prior incident reports have marginal relevance to the case in light of prevailing Nevada law.¹ Therefore, providing this unredacted information to Sekera without any of the requested protection under NRCP 26(c) will cause Petitioners (and the identified guests) irreparable harm. Accordingly, Petitions respectfully request that this Court **grant the emergency motion and issue an immediate order staying the production of unredacted incident reports until such time as the Court can rule on the writ of mandamus and/or prohibition that will be filed in this case.**

¹ *Eldorado Club, Inc. v. Graff*, 78 Nev. 507, 511, 377 P.2d 174, 176 (1962).

III. STATEMENT OF FACTS

This case arises from an alleged slip and fall at the Venetian that occurred on November 4, 2016, involving JOYCE SEKERA ("Sekera"). More specifically, Sekera alleges that as she was walking through the Grand Lux rotunda area of the Venetian property, she slipped on water and fell, resulting in bodily injuries.

In the course of discovery, Sekera requested that Petitioners produce incident reports related to slip and falls from November 4, 2013 to the present. Petitioners responded by producing sixty-four (64) redacted prior incident reports from November 4, 2013 to November 4, 2016. When Sekera objected to the production of redacted reports, Petitioners filed a motion for protective order pursuant to NRCP 26(c) on February 1, 2019 with the Discovery Commissioner.

Following a hearing on March 13, 2019, the Discovery Commissioner issued a Report and Recommendation granting Petitioners' motion for protective order. (See Appendix, Vol. 1, Tab 14, VEN 201-06, *Discovery Commissioner's Report and Recommendation* (filed April 4, 2019).) Sekera filed an objection to the Discovery Commissioner's Report and Recommendation on April 4, 2019, which was heard by the Honorable Kathleen Delaney in Department XXV of the Eighth Judicial District Court on May 14, 2019. Judge Delaney reversed the Discovery Commissioner and ordered Petitioners to produce prior incident reports in unredacted form without any restrictions related to dissemination of private guest

information. (See Appendix, Vol. 2, Tab 15, VEN 207-66, *Transcript of Hearing on Objection to Discovery Commissioner's Report* (May 14, 2019); Appendix, Vol. 2, Tab 16, VEN 267-70, *Order* (filed July 31, 2019).)

The order reversing the Discovery Commissioner's Report and Recommendation of April 4, 2019 was filed on July 31, 2019. Pursuant to the order, Sekera is to receive unredacted incident reports involving other Venetian guests, including those guests' names, addresses, telephone numbers, dates of birth, social security numbers, and driver's license/identification card numbers. Under the current order Sekera has no restrictions whatsoever on how the private information of Venetian guests will be used and shared. Petitioners filed a motion for reconsideration on an order shortening time with a request to stay the order allowing sufficient time to file a writ of mandamus and/or writ of prohibition with the Nevada Supreme Court, which was not heard until September 17, 2019. Judge Delaney denied Petitioners' motion for reconsideration and their request for a stay. (See Appendix, Vol. 3, Tab 20, VEN 456-83, *Transcript of Hearing on Motion for Reconsideration* (September 17, 2019).) On a related note, on September 18, 2019, the Discovery Commissioner ordered that Petitioners must now produce unredacted copies of incident reports after November 4, 2016 to the present, without redacting personal information or limitations on sharing of the documents to others outside the litigation. (See Appendix, Vol 3, Tab 21, VEN 484-85, *Court*

Minutes, Discovery Commissioner (September 18, 2019.) While the Discovery Commissioner's latest ruling is not directly related to this motion, it highlights the emergent nature of the circumstances.

IV. LEGAL ARGUMENT

A. **Sekera Did Not Meet Her Burden of Proof under NRCP 26(b)(1) to Establish the Need for Unredacted Prior Incident Reports**

This litigation arises from a slip and fall occurring from a temporary transitory condition on November 4, 2016 in the Venetian Grand Lux rotunda.² Although Sekera walked through the Grand Lux rotunda area hundreds of times previously, on the day of the incident Sekera encountered a foreign substance for the first time, which caused her to slip and fall.³

In *Eldorado Club, Inc.*, *supra*, 78 Nev. at 511, 377 P.2d at 176, the Nevada Supreme Court held that evidence of prior incident reports in cases involving the temporary presence of debris or foreign substances on a walking surface is not admissible for the purpose of establishing notice. Rule 26(b)(1), Nevada Rules of Civil Procedure, reads as follows:

... Parties may obtain discovery regarding any nonprivileged matter that is **relevant** to any party's claims or defenses and **proportional** to the needs of the case, **considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the**

² See Appendix, Vol. 1, Tabs 1-7, VEN 001-41, *generally*.

³ See Appendix, Vol. 1, Tab 5, VEN at VEN 021-025. See also Appendix, Vol. 1, Tab 1, VEN 001-06, Tab 2, VEN 038-41, *generally*.

importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. . . . (Emphasis added.)

Accordingly, Sekera has the burden of establishing that the production of unredacted prior incident reports is both **relevant** to issues surrounding the November 4, 2016 incident and that the production of this discovery is **proportional** to the needs of the case in light of the above stated five factors. Petitioners have produced evidence of other slip/fall incidents from a foreign substance occurring at Venetian occurring prior to Sekera's incident of November 4, 2016. The information for each such report identifies the date of incident, area of the incident, and the facts surrounding the incident. Sekera argued this information was insufficient and she needed the personal information of the guests involved in each incident. Her only purported need for obtaining this private information was to contact these people in the event Petitioners will present arguments at trial related to comparative fault.⁴ Sekera also argued she has an unqualified right to share the guests' private information with anyone she desires.

Sekera's argument claiming there is no law restricting her use of confidential information is an inaccurate analysis of Nevada laws. Rule 26(b)(1), Nevada Rules of Civil Procedure, places restrictions on her ability to obtain this

⁴ See Appendix, Vol. 2, Tab 15 at VEN 214, ln 12-25; VEN 215, ln 1-14; VEN 222, ln 14-25; VEN 223, ln 1-11; VEN 234, ln 3-25; VEN 235, ln 1-18; Appendix, Vol. 3, Tab 20, VEN at VEN 469, ln 16-25; VEN 470, ln 1-12.

information. Sekera is required to show that her need for this information outweighs the guests' need to protect their private information. Sekera failed to make this showing in the District Court.

B. Personal, Private Information of Guests Identified in Prior Incident Reports is entitled to NRCPP 26(c) Protection

Pursuant to the July 31, 2019 Order, the District Court has herein provided Sekera with unfettered access to personal and sensitive information from non-parties to this action, which is not relevant to any claims or defenses in this matter. She has already been provided with redacted prior incident reports to establish issues associated with notice:

The Nevada Supreme Court has recognized that individuals have privacy interests that are protected from disclosure in discovery under NRCPP 26(b)(1). *Schlatter v. Eighth Judicial Dist. Court In and For Clark County*, 93 Nev. 189, 192, 561 P.2d 1342, 192-93 (1977). While Petitioners have not found Nevada case law applying the rule to individuals involved in prior incidents, the United States District Court for the District of Nevada has dealt with this issue and found in favor of protecting the privacy rights of third parties by redacting personal information.

In *Izzo v. Wal-Mart Stores, Inc.*, 2016 U.S. Dist. LEXIS 12210; 2016 WL 409694, the plaintiff, who slipped and fell on a clear liquid within a Las Vegas Wal-Mart store, filed a motion to compel the defendant to produce evidence of

prior claims and incidents for the three (3) years preceding the subject incident.

The court evaluated the claim under the federal equivalent of NRCP 26(b)(1) and Nevada law as set forth in *Eldorado Club, Inc., supra* at 511, 377 P.2d at 176. In *Izzo*, the defense had previously produced a list of prior reported slip and falls.

The plaintiff sought the incident reports including personal information of the other Wal-Mart customers. The federal district court found that the burden on defendant and the privacy interests of the non-litigants outweighed the tangential relevance of the information to the issues in the lawsuit. (*Id.* at 4, 2016 U.S. Dist LEXIS at *11.) Similarly, in the instant matter, Sekera has shown no compelling reason under NRCP 26(b)(1) for the production of non-litigant individual's private information. Accordingly, the District Court should have granted Petitioner's motion for a protective order.

In *Rowland v. Paris Las Vegas*, 2015 U.S. Dist. LEXIS 105513; 2015 WL 4742502, the federal district court applying the federal equivalent of NRCP 26(b)(1) found that third parties have a protected privacy interest in their identities, phone numbers and addresses. In *Rowland*, Plaintiff sued the defendant for injuries after slipping and falling on a recently polished tile floor. The plaintiff sought to compel the defendant to identify by name (with phone numbers and addresses) any person who had previously complained about the subject flooring.

The court not only found the request to be overly broad, but also determined that it violated the privacy rights of the persons involved. It explained as follows:

Further, the Court finds that requiring disclosure of the addresses and telephone numbers of prior hotel guests would violate the privacy rights of third parties. ... "When the constitutional right of privacy is involved, 'the party seeking discovery must demonstrate a compelling need for discovery, and that compelling need must be so strong as to outweigh the privacy right when these two competing interests are carefully balanced.'" *Artis v. Deere & Co.*, 276 F.R.D. 348, 352 (N.D. Cal. 2011) (quoting *Wiegele v. Fedex Ground Package Sys.*, 2007 U.S. Dist. LEXIS 9444, at *2 (S.D. Cal. Feb. 8, 2007)).

(*Id.* at *7.)

Based upon the foregoing it is clear that the non-litigant individuals have a protected privacy interest and Sekera has done nothing to demonstrate a "compelling need" to violate that protected interest. Given the Nevada Supreme Court's finding that prior incident information is irrelevant to establish notice in the facts at issue here before the Court (*i.e. Eldorado Club, Inc., supra*), Plaintiff cannot demonstrate a need outweighing the third party guests' privacy interest. Accordingly, the District Court's July 31, 2019 order denying Petitioner's request for a protective order is clearly in error.

C. An Emergency Stay is Necessary to Prevent Irreparable Harm

As set forth in more detail above, Petitioners have met the requirements of NRAP 8(a) and have set forth the need for an emergency stay under the

circumstances, having no other speedy and adequate remedy at law other than to seek relief from this Honorable Court.

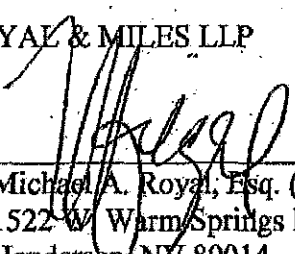
V. **CONCLUSION**

The order by the District Court to compel Petitioners to provide private information of individuals who are not involved in the underlying action shocks the conscience. In a world where privacy of personal information is placed at a premium, it is difficult to comprehend that Nevada would be unwilling to protect this kind of information in a case where it has no relevance. Therefore, Petitioners hereby move for emergency relief as requested herein so that this Court may consider Petitioners' Writ of Mandamus and/or Prohibition on a non-emergency basis. If the requested relief is not granted on an emergency basis then innocent third parties will have their privacy rights irreparably damaged.

DATED this 24 day of September, 2019.

ROYAL & MILES LLP

By


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CERTIFICATE OF COMPLIANCE

STATE OF NEVADA }
COUNTY OF CLARK } ss:

I, Michael A. Royal, hereby affirm, testify and declare under penalty of perjury as follows:

1. I am an attorney licensed to practice in the State of Nevada, and am a member of the law firm of Royal & Miles LLP, attorneys for Petitioners VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC.

2. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

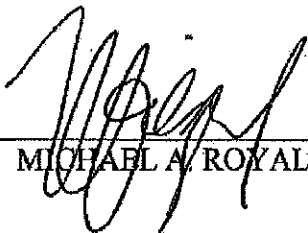
[X] This brief has been prepared in a proportionally spaced typeface using Word Perfect in Times Roman 14 point font.

3. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is:

[X] Proportionately spaced, has a typeface of 14 points or more, and contains 2,212 words in compliance with NRAP 32(a)(1)(A)(ii) (having a word count of less than 14,000 words).

4. Finally, I hereby certify that I have read this motion, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Further affiant sayeth naught.



MICHAEL A. ROYAL, ESQ.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the law firm of Royal & Miles LLP, attorney's for Petitioners, VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC, and that on the 26 day of September, 2019, I served true and correct copy of the foregoing EMERGENCY MOTION UNDER NRAP 8 STAYING EXECUTION OF ORDER DIRECTING PETITIONERS TO DISCLOSE PRIVATE, PROTECTED INFORMATION OF GUESTS NOT INVOLVED IN UNDERLYING LAWSUIT, by delivering the same via U.S. Mail addressed to the following:

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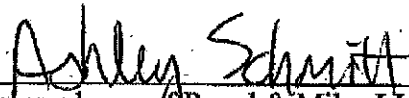

An employee of Royal & Miles LLP

EXHIBIT “K”

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

Appellate Court No. 79689-COA
District Court Case No. A-18-772761-C

Electronically Filed
Oct 28 2019 11:36 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

VENETIAN CASINO RESORT, LLC, a Nevada limited liability company,
LAS VEGAS SANDS, LLC, a Nevada limited liability company,
Petitioners,

v.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK, AND THE HONORABLE KATHLEEN
DELANEY in her capacity as District Judge,
Respondent,
JOYCE SEKERA, an individual,
Real Party in Interest

PETITIONERS' REPLY BRIEF

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MEMORANDUM OF POINTS AND AUTHORITIES

I. General Reply to Sekera's Answering Brief

Real-Party-in-Interest Joyce Sekera's Answering Brief is all noise with no signal, "full of sound and fury, signifying nothing" (Macbeth, Act 5, Scene 5, Lines 25-27). Petitioners' position is quite simple: the privacy rights of individuals wholly unaffiliated with the present litigation were not given the proper consideration by the District Court. The majority of the discussion in Sekera's Answering Brief is focused on irrelevant mudslinging; she devotes precious little discussion to explaining how her alleged need for this information outweighs the privacy interests of these unaffiliated individuals. Her only stated reason for desiring the private information of these unaffiliated individuals is to refute any claims of comparative fault. However, on its face this argument fails. Sekera does not provide a cogent rationale to explain why individuals who are not witnesses to the alleged slip-and-fall, or the circumstances leading up to the fall, will have any relevant information regarding any argument that she is comparatively at fault. It appears that the only reason Sekera is seeking the private information of these unaffiliated individuals is to disseminate it to other attorneys pursuing claims against Petitioners. This is not valid reason for violating the privacy rights of these unaffiliated individuals.

Sekera has taken the untenable position that NRCP 1 provides her with absolute rights to both obtain the private information of persons wholly unaffiliated with the present litigation and to share it with anyone of her choosing, whenever and however she pleases, without the slightest limitation or regard for the privacy rights of those persons. In so doing, Sekera has entirely avoided any analysis under NRCP 26(b)(1), determining that critical and fundamental discovery rule to be “irrelevant.” (*See* RAB at 20.) Sekera is mistaken. Indeed, a fair reading of the applicable rules, related case law, and plain common sense supports Petitioners’ position that the privacy rights of guests involved in other unrelated incidents — having provided Petitioners with information such as names, addresses, phone numbers, driver’s license, dates of birth, medical history and other health related information associated with an EMT examination, etc. — deserve protection and must be given consideration when a plaintiff, such as Sekera, makes a carte blanche request for such information.

Sekera’s argument to support her alleged need for the private information of perhaps hundreds of persons entirely unrelated to her November 4, 2016 incident is that it is necessary for her to defend against an affirmative defense of comparative fault — suggesting she needs persons involved in unrelated other incidents to testify that they likewise did not see anything on the floor prior to their alleged events occurring somewhere else on the property of Venetian Resort Hotel Casino

(“Venetian”). This purported need is clearly without merit. The facts of completely different incidents, involving different circumstances, different locations, and different accident mechanisms have no tendency whatsoever to prove or disprove whether Sekera was comparatively negligent at the time of her accident.

Sekera also rightly notes that Petitioners dispute her claim that there was a foreign substance on the floor at all. (*See* RAB at 2.) Indeed, Petitioners are not asserting that Sekera should have seen a foreign substance on the floor; instead, Petitioners deny the existence of a foreign substance. Thus, Sekera’s claim that she needs the other incident reports to defend against an affirmative defense of comparative fault is disingenuous and without merit.¹

As nearly every case cited by both parties herein provides, a proper analysis of Rule 26(b)(1) in discovery disputes similar to the instant matter requires Sekera to demonstrate both the relevance and proportionality of the information sought.

Sekera has not done that in either the District Court or her Answering Brief.

Petitioners posit that this is because it would lead directly to a conclusion that

¹ Sekera also argues she needs other incident information so “the public” will “know the magnitude of the problem of Venetian’s floors.” (*See* RAB at 7.) However, this argument appears to be solely directed to the challenge against Sekera circulating the redacted incident reports. While Petitioners dispute that this is a valid reason to permit discovery, it is clear that the redacted incident reports already produced by Petitioners, and already disseminated by Sekera’s attorney, are sufficient to satisfy this “public notice” argument.

supports Petitioners' request to protect the private information of the unaffiliated individuals.

Instead of addressing the merits of the important privacy issues at hand, Sekera has chosen to provide a misleading and distorted view of the litigation and attack the character of Petitioners and their counsel. As discussed below, these are red herrings designed to mislead this Honorable Court by presenting Petitioners as bad actors unworthy of relief. While Petitioners believe these topics are not relevant to the issue before this Honorable Court, in an abundance of caution Petitioners will address these topics at the end of this brief. Suffice to say that while Sekera has repeatedly made improper reference to other cases presently litigated against Venetian, she has not produced one court order supporting her claim that there has been any kind of discovery abuse by Petitioners or Venetian. As for the assertion related to disgruntled former Venetian employee Gary Shulman, that is a matter presently pending before the District Court. It has nothing to do with any issue at hand. That stated, a full reading of the Shulman deposition transcript attached by Plaintiff, as explained briefly below, demonstrates that the facts are not as presented by Sekera in her Answering Brief.

This writ is not about alleged past discovery issues involving the parties, but the right of privacy by those persons involved in other incidents, which Sekera repeatedly demeans and grossly mischaracterizes as “**phonebook** ... plus date of

birth information.” (*See* RAB 4. Emphasis added.) This misleading characterization completely fails to account for the context of the individual’s private information being included in an accident report. The inclusion of the personally identifiable information in the context of an incident report maintained by the Venetian is clearly not the same as the information found in a “phonebook.” Moreover, there is much more personal information within the subject incident reports than contact information, each of which note on every CR-1 form that they include “Protected Health Information.” (*See* RAB, Appendix Vol. 1, APP129,-35, 37-38.) These documents also contain medical history information which, of course, is not found in a “phonebook.” (*See id.* at APP 136.)²

Accordingly, Petitioners hereby implore this Honorable Court to focus on the privacy issues at hand, and not be distracted by Sekera’s tactics.

II. Response to Sekera’s Given Procedural History

Petitioners brought a motion for protective order under NRCP 26(c) before the Discovery Commissioner which was appropriately granted by way of recommendation. (*See* Petitioners’ Appendix, Vol. 1, Tab 14, VEN 201-06.)

² Sekera enclosed only twelve (12) pages of more than 660 pages produced by Petitioners, which include many more examples of Acknowledge of First Aid Assistance & Advice to Seek Medical Care forms with completed medical history information, along with notes provided by the responding emergency medical technician. (*See* RAB, Appendix Vol. 1, APP127-38.) Also, contrary to Sekera’s representation that driver’s license information is not collected by Venetian, that is inconsistent with documents Sekera produced herein. (*See, i.e., id.* at APP130.)

During the March 13, 2019 hearing, the Discovery Commissioner weighed Sekera's alleged need for the private information of persons involved in other incidents against the privacy rights of these unrelated third parties and recommended protection. (*See* Petitioners' Appendix, Vol. 1, Tab 13, VEN 186-200.)

At the March 13, 2019 hearing, the Discovery Commissioner considered Sekera's argument that she needs the ability to contact persons involved in other incidents to respond to a comparative fault affirmative defense. However, the Discovery Commissioner stated: "... the comparative negligence of another party versus your own party wouldn't be relevant to this action." (*See id.* at VEN 194, ln 9-11.) The Discovery Commissioner further noted: "I do believe there ... are privacy and HIPAA issues that are to be considered, and so my inclination is not to disclose the names and contact information for all people on all reports." (*See id.* at VEN 197, ln 24-25; 198, ln 1.) She further stated: "I am going to issue a protective order that the reports that are disclosed in this case are not to be circulated outside of this case and for use only in this case." (*See id.* at VEN 198, ln 1-5.)

In her answering brief, Sekera's counsel admits that the prior incident reports at issue were provided to another attorney, Peter Goldstein, Esq., who was involved in another case against the Venetian property, on February 7, 2019, after

the motion for protective order was filed with the Discovery Commissioner. (*See* RAB at 6.) To Petitioners' knowledge, this is the first time such an admission has occurred.

At the March 13, 2019 hearing before the Discovery Commissioner, Sekera did not advise the court that the information deemed protected was shared with Mr. Goldstein on February 7, 2019 or that it had already all been filed as an exhibit with the court in another proceeding by Mr. Goldstein. (*See id.* at VEN 186-200; Petitioners' Appendix, Appendix, Vol. 1, Tab 12, VEN 140-85 at VEN 141, ln 15-26, VEN 147, ln 12-13, VEN 173.) When the issue of sharing these documents was before the District Court at a hearing held on May 14, 2019, the following exchange between Sekera's counsel and the court occurred:

MR. GALLIHER: .What happened when I got my redacted reports, I exchanged them with him (Attorney Peter Goldstein). He sent them to me -- **and by the way, there was no Protective Order in place. There was no motion practice in place, despite what's being represented.**

THE COURT: I was going to say because I do have a counter motion for you --

MR. GALLIHER: Yeah. I know.

THE COURT: -- to comply with the Court order and a counter motion for sanctions related --

MR. GALLIHER: This was done right upfront. **The minute I got the information, I -- I exchanged it with counsel.** George Bochanis also got a set. He exchanged

a set. (Appendix, Vol. 2, Tab 15 at VEN 218, ln 2-13, emphasis added.)

Accordingly, while Sekera counsel now admits prior incident reports were, in fact, shared with Mr. Goldstein after the motion for protective order was filed and pending before the Discovery Commissioner, no explanation has been given as to why there was a complete failure by Sekera counsel to advise the court below as counsel has here. More importantly, what was the purpose behind Sekera's sharing of the information provided? How did it advance any interests of Sekera in her litigation against Petitioners? The District Judge below, after being advised by Petitioners of the actions taken by Sekera counsel, did not consider the conduct of counsel after determining that the documents at issue are unworthy of any protection whatsoever. (*See id.* at VEN 254, ln 17-23.) In so doing, the judge found that the persons identified in other incident reports have no privacy rights.

At the September 17, 2019 hearing on Petitioners' motion for reconsideration, the District Court judge opened the hearing by stating a belief that some kind of protection was already in place. (*See* Petitioners' Appendix, Vol. 3, Tab 20 at VEN 460, ln 4-25; VEN 461, ln 1-7.) Unfortunately, it was not. The motion for reconsideration was not granted, and this petition followed.

III. Petitioners Demonstrated “Good Cause” for a Protective Order under NRCP 26(c) and the District Court Failed to Consider NRCP 26(b)(1) and Applicable Case Law When It Reversed the Discovery Commissioner’s Report and Recommendation of April 4, 2019

Petitioners respectfully submit that they presented ample evidence that the privacy rights of third parties identified in incident reports regarding other alleged accidents are worthy of protection under NRCP 26(c) below. The District Court overruled the Discovery Commissioner’s granting of a protective order, knowing full well that Sekera had already shared the deemed protected information and that she intends to continue doing so however she chooses, being unable to find any law in support of such protection. However, there is sufficient law in support of the protection recommended by the Discovery Commissioner.

In *RKF Retail Holdings, LLC v. Tropicana Las Vegas, Inc.*, 2017 U.S. Dist. LEXIS 104850 (D. Nev. July 6, 2017) (*19-*22) (quoting *In re Bard IVC Filters Prods. Liab. Litig.*, 317 F.R.D. 562, 563 (D.Ariz. 2016)), the court related the following in regards to the application of Rule 26(b)(1) to such issues:

Relevancy alone is no longer sufficient—discovery must also be proportional to the needs of the case. The Advisory Committee Note makes clear, however, that the amendment does not place the burden of proving proportionality on the party seeking discovery. The amendment “does not change the existing responsibilities of the court and the parties to consider proportionality, and the change does not place on the party seeking discovery the burden of addressing all proportionality considerations.” Rule 26, Advis. Comm. Notes for 2015 Amends. **Rather, “[t]he parties**

and the court have a collective responsibility to consider the proportionality of all discovery and consider it in resolving discovery disputes." Bard, 317 F.R.D. at 564.

Generally, the party opposing discovery has the burden of showing that it is irrelevant, overly broad, or unduly burdensome. Graham v. Casey's General Stores, 206 F.R.D. 251, 253-4 (S.D.Ind. 2000); Fosbre v. Las Vegas Sands Corp., 2016 U.S. Dist. LEXIS 1073, 2016 WL 54202, at *4 (D.Nev. Jan. 5, 2016); Izzo v. Wal-Mart Stores, Inc., 2016 U.S. Dist. LEXIS 17701, 2016 WL 593532, at *2 (D. Nev. Feb. 11, 2016). **When a request is overly broad on its face or when relevancy is not readily apparent, however, the party seeking discovery has the burden to show the relevancy of the request.** Desert Valley Painting & Drywall, Inc. v. United States, 2012 U.S. Dist. LEXIS 145771, 2012 WL 4792913, at *2 (D.Nev. Oct. 9, 2012) (citing Marook v. State Farm Mut. Auto. Ins. Co., 259 F.R.D. 388, 394-95 (N.D. Iowa 2009)). **The 2015 amendments to Rule 26(b) have not changed these basic rules, although they must now be applied with a greater degree of analysis and emphasis on proportionality.** (Emphasis added.)

Petitioners argued below that the requested information is irrelevant, overly broad and unduly burdensome – based in large part on the privacy issues presented. At that point, under Rule 26(b)(1), the burden then shifted and Sekera had to demonstrate relevance and proportionality. Sekera did not do that below, and has not attempted to do that here. She merely dismissed it as “irrelevant.” (See RAB at 20.)

Keep in mind that Sekera's repeated use of "phonebook" to trivialize and marginalize the privacy rights of persons involved in other incidents in favor of her alleged absolute right to obtain the information is not limited to this litigation, but extends to her right to freely share it. Petitioners respectfully submit that Sekera is wrong, and that the district judge abused her discretion by reversing the Discovery Commissioner and ordering the production of unredacted information to be disclosed to Sekera without recognizing any privacy rights or granting any protection.

IV. Nevada Favors the Protection of Private Information of Guests Identified in Other Incident Reports under NRCP 26(c)

Sekera's repeated use of "phonebook" to refer to the information at issue is inappropriate. A phonebook provides a name, address and phone number; however, it does not provide dates of birth, driver's license information, social security information, health history and medical examination information, nor does it connect the name, address and phone information to a specific event to be freely shared, without limitation.

Sekera asserts that Petitioners are mostly concerned with Sekera's unfettered interest in sharing the private information of Venetian guests. (*See* RAB at 15.) That is an incorrect characterization of the issue. Petitioners are concerned with protecting the privacy rights of Venetian guests involved in other incidents where they have provided information pertaining to injury related events, examination of

their physical condition, documentation of their medical history, etc. These guests have a reasonable expectation of privacy, which rights have not been fairly considered by the lower court.

Sekera asserts that there is no Nevada law protecting the information at issue. (*See* RAB at 21.) That is not only unfounded, but is belied by many of the cases Sekera relies upon in her Answer Brief.

First, in *Eldorado Club, Inv. v. Graff*, 78 Nev. 507, 377 P.2d 174 (Nev. 1962), the Nevada Supreme Court held that the use of prior incident reports in slip and fall cases such as this are inadmissible as evidence of constructive notice.³ Therefore, the relevance of the information sought is questionable. Second, *Schlatter v. Eighth Judicial Dist. Court In and For Clark County*, 93 Nev. 189, 192, 561 P.2d 1342, 192-93 (1977), provides that discovery must be carefully tailored to protect privacy interests while meeting the needs of the party requesting the information. That is consistent with the balancing test required under NRCp 26(b)(1).

Sekera suggests that Petitioners did not fairly represent *Izzo v. Wal-Mart Stores, Inc.*, 2016 U.S. Dist. LEXIS 12210; 2016 WL 409694 (D. Nev. February 2,

³*See Lologo v. Wal-Mart Stores, Inc.*, U.S. Dist. LEXIS 100559 (D.Nev. July 29, 2016), the plaintiff (who slipped/fell at a Wal-Mart) sought to introduce evidence of prior incidents. Defendant's motion to exclude the evidence (citing *Eldorado Club, Inc.*, and FRE 402) was granted.

2016), to the Court in the petition. (*See* RAB at 23.) In *Izzo*, the plaintiff sought prior incident reports in slip/fall litigation. The Court, based in part on the defendant's desire to protect the privacy interests of guests, determined that the information previously produced to the plaintiff, which did not identify individuals involved in prior incidents, was sufficient. Similarly, here, Sekera already has the information she seeks. Petitioners argued below and again here that Venetian is likewise unduly burdened by the prospect of having prior guests being contacted not only by Sekera's counsel but by untold others litigating unrelated matters against Venetian. In fact, Plaintiff is now seeking unredacted subsequent incident reports where she likewise plans to contact witnesses and circulate information to other counsel all in the name of NRCP 1.⁴

Sekera also discredits *Bible v. Rio Props., Inc.*, 246 F.R.D. 614, 620-21 (C.D. Cal. 2007), by suggesting the decision is based on the California Constitution. While that is referenced in the body of the decision, the decision is based on a broader review of privacy under the Rule 26(b)(1) analysis:

Finally, defendant objects that responsive documents invade third parties' privacy rights. In California, the right to privacy is set forth in Article I, Section I of the California Constitution, as defendant cites (despite claiming Nevada law applies). *See* Defendant's Supp.

⁴ A Report and Recommendation granting Sekera's motion to compel unredacted subsequent incident reports to Sekera has been issued by the Discovery Commissioner and an objection will be filed once the Report and Recommendation is filed.

Memo. at 4:11-12. However, **privacy is not an absolute right, but a right subject to invasion depending upon the circumstances.** *Heller v. Norcal Mut. Ins. Co.*, 8 Cal. 4th 30, 43-44, 32 Cal. Rptr. 2d 200, 207-08, 876 P.2d 999 (1994), cert. denied, 513 U.S. 1059, 115 S. Ct. 669, 130 L. Ed. 2d 602 (1994). Thus, "the privilege is subject to balancing the needs of the litigation with the sensitivity of the information/records sought." *Davis v. Leal*, 43 F. Supp. 2d 1102, 1110 (E.D. Cal. 1999); see also *Pioneer Elecs. v. Superior Court*, 40 Cal. 4th 360, 371-75, 53 Cal. Rptr. 3d 513, 520-24, 150 P.3d 198 (2007) [*17] (balancing privacy rights of putative class members with discovery rights of civil litigants). Here, the rights of third parties can be adequately protected by permitting defendant to redact the guest's complaints and staff incident reports to protect the guest's name and personal information, such as address, date of birth, telephone number, and the like. With the limitations set forth herein, the Court grants plaintiff's motion to compel, in part, and denies it, in part. (*Id.* at 620-21. Emphasis added.)

The *Bible* decision, therefore, is on point. It imposed the kind of balancing test under FRCP 26(b)(1) that should have been utilized below under NRCP 26(b)(1).

Sekera likewise dismisses *Rowland v. Paris Las Vegas*, 2015 U.S. Dist. LEXIS 105513; 2015 WL 4742502 (S.D. Cal. Aug 11, 2015), as a "rogue decision." (See RAB at 22, note 7.) However, the holding in *Rowland* is consistent with *Izzo* and *Bible* in its application of Nevada law on this issue. The following language is directly on point in support of Petitioners:

Further, the Court finds that requiring disclosure of the addresses and telephone numbers of prior hotel