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Elizabeth A. Brown  
Clerk of Supreme Court

1 **NOAS**  
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6  
7 DISTRICT COURT  
8  
9 CLARK COUNTY, NEVADA

9 JEFFREY A. MYERS and ANDREW JAMES,  
10 individually,

11 Plaintiff,

12 vs.

13 THI OF NEVADA AT CHEYENNE, LLC a Foreign  
14 Corporation d/b/a COLLEGE PARK  
15 REHABILITATION CENTER; HEALTHCARE  
16 REALTY OF CHEYENNE, LLC a Delaware  
17 Corporation; FUNDAMENTAL ADMINISTRATIVE  
18 SERVICES, LLC a Delaware Corporation; DOES I-  
19 XXX; and ROE CORPORATIONS I-XXX, inclusive,

20 Defendants.

CASE NO. : A-16-735550-C

DEPT. NO.: XVII

18 **NOTICE OF APPEAL**

19 NOTICE IS HEREBY GIVEN that Plaintiffs, Jeffrey A. Myers and Andrew James,  
20 hereby appeal to the Supreme Court of Nevada from the District Court, Clark County, Nevada,  
21 Order Denying Plaintiffs' Motion for New Trial entered by the District Court on September 23,  
22 2022.

23 Dated this 28th day of September, 2022.

24 CAP & KUDLER

25 By: 

26 Donald C. Kudler, Esq.  
27 Nevada Bar No. 005041  
28 3202 W. Charleston Blvd.  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 28<sup>th</sup> day of September, 2022, pursuant to Administrative Order 14-2, I electronically served a true and correct copy of the foregoing **NOTICE OF APPEAL**, addressed as follows:

Alexander F. Giovanniello, Esq.  
Christopher J. Giovanniello, Esq.  
[cjg@giolawgroup.com](mailto:cjg@giolawgroup.com)  
[service@giolawgroup.com](mailto:service@giolawgroup.com)  
Giovanniello Law Group  
3753 Howard Hughes Pkwy., Ste. 200  
Las Vegas, NV 89169  
Tel No. (702) 784-7638  
*Attorney for Defendants*  
*THI of Nevada at Cheyenne, LLC;*  
*Healthcare Realty of Cheyenne, LLC; and*  
*Fundamental Administrative Services, LLC*

  
An Employee of CAP & KUDLER

## EIGHTH JUDICIAL DISTRICT COURT

**CASE SUMMARY****CASE NO. A-16-735550-C****Jeffrey Myers, Plaintiff(s)****vs.****THI of Nevada at Cheyenne, LLC, Defendant(s)**§  
§  
§  
§  
§Location: **Department 17**Judicial Officer: **Vacant, DC 17**Filed on: **04/25/2016**

Case Number History:

Cross-Reference Case  
Number: **A735550****CASE INFORMATION****Statistical Closures**

06/14/2022 Verdict Reached

Case Type: **Negligence - Premises Liability**Case  
Status: **06/14/2022 Closed****DATE****CASE ASSIGNMENT****Current Case Assignment**Case Number A-16-735550-C  
Court Department 17  
Date Assigned 07/18/2022  
Judicial Officer Vacant, DC 17**PARTY INFORMATION**

<b>Plaintiff</b>	<b>James, Andrew</b>	<i>Lead Attorneys</i> <b>Kudler, Donald C</b> <i>Retained</i> 702-878-8778(W)
	<b>Myers, Jeffrey A.</b>	<b>Kudler, Donald C</b> <i>Retained</i> 702-878-8778(W)
<b>Defendant</b>	<b>Fundamental Administrative Services LLC</b>	<b>Giovanniello, Alexander F.,</b> <b>ESQ</b> <i>Retained</i> 702-784-7638(W)
	<b>Healthcare Realty of Cheyenne LLC</b>	<b>Giovanniello, Alexander F.,</b> <b>ESQ</b> <i>Retained</i> 702-784-7638(W)
	<b>THI of Nevada at Cheyenne, LLC</b>	<b>Giovanniello, Alexander F.,</b> <b>ESQ</b> <i>Retained</i> 702-784-7638(W)
<b>Third Party Defendant</b>	<b>SCI Construction Ltd</b>	<b>Stoberski, Michael E</b> <i>Retained</i> 7023844012(W)
<b>Third Party Plaintiff</b>	<b>THI of Nevada at Cheyenne, LLC</b>	<b>Giovanniello, Alexander F.,</b> <b>ESQ</b> <i>Retained</i> 702-784-7638(W)

**DATE****EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**














04/25/2016



Complaint

# CASE SUMMARY


CASE NO. A-16-735550-C

	Filed By: Plaintiff Myers, Jeffrey A. <i>[1] Complaint</i>
05/06/2016	 Proof of Service Filed by: Plaintiff Myers, Jeffrey A. <i>[3] Proof of Service</i>
05/06/2016	 Summons Filed by: Plaintiff Myers, Jeffrey A. <i>[4] Summons-Civil</i>
05/06/2016	 Amended Complaint Filed By: Plaintiff Myers, Jeffrey A. <i>[2] Amended Complaint</i>
05/17/2016	 Proof of Service Filed by: Plaintiff Myers, Jeffrey A. <i>[5] Proof of Service</i>
05/17/2016	 Amended Summons Filed By: Plaintiff Myers, Jeffrey A. <i>[6] Amended Summons - Civil</i>
05/19/2016	 Summons Filed by: Plaintiff Myers, Jeffrey A. <i>[7] Summons - Civil</i>
05/19/2016	 Proof of Service Filed by: Plaintiff Myers, Jeffrey A. <i>[8] Proof of Service</i>
05/19/2016	 Amended Summons Filed By: Plaintiff Myers, Jeffrey A. <i>[9] Amended Summons - Civil</i>
05/19/2016	 Proof of Service Filed by: Plaintiff Myers, Jeffrey A. <i>[10] Proof of Service</i>
05/19/2016	 Summons Filed by: Plaintiff Myers, Jeffrey A. <i>[11] Summons - Civil</i>
07/12/2016	 Notice of Intent to Take Default Party: Plaintiff Myers, Jeffrey A. <i>[12] Plaintiffs' Three Day Notice of Intent to Take Default</i>
07/12/2016	 Notice of Intent to Take Default Party: Plaintiff Myers, Jeffrey A. <i>[13] Plaintiffs' Three Day Notice of Intent to Take Default</i>
07/12/2016	 Notice of Intent to Take Default Party: Plaintiff Myers, Jeffrey A. <i>[14] Plaintiffs' Three Day Notice of Intent to Take Default</i>



**CASE SUMMARY**

**CASE NO. A-16-735550-C**

07/26/2016	 Initial Appearance Fee Disclosure Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC <i>[20] Initial Appearance Fee Disclosure of Thi of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center</i>
07/26/2016	 Answer Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC <i>[15] Answer and Third Party Complaint of Thi of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center</i>
07/26/2016	 Demand for Jury Trial Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC <i>[18] Jury Demand of Thi of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center</i>
07/26/2016	 Initial Appearance Fee Disclosure Filed By: Defendant Fundamental Administrative Services LLC <i>[21] Initial Appearance Fee Disclosure of Fundamental Administrative Service, LLC</i>
07/26/2016	 Demand for Jury Trial Filed By: Defendant Fundamental Administrative Services LLC <i>[19] Jury Demand of Fundamental Administrative Services, LLC</i>
07/26/2016	 Initial Appearance Fee Disclosure Filed By: Defendant Healthcare Realty of Cheyenne LLC <i>[22] Initial Appearance Fee Disclosure of Healthcare Realty of Cheyenne, LLC</i>
07/26/2016	 Answer Filed By: Defendant Healthcare Realty of Cheyenne LLC <i>[17] Answer of Healthcare Realty of Cheyenne, LLC</i>
07/26/2016	 Answer Filed By: Defendant Fundamental Administrative Services LLC <i>[16] Answer of Fundamental Administrative Services, LLC</i>
08/23/2016	 Commissioners Decision on Request for Exemption - Granted <i>[23] Commissioner's Decision on Request for Exemption - Granted</i>
09/06/2016	 Notice of Early Case Conference Filed By: Plaintiff Myers, Jeffrey A. <i>[24] Notice of Early Case Conference</i>
11/10/2016	 Individual Case Conference Report Filed By: Plaintiff Myers, Jeffrey A. <i>[25] Individual Case Conference Report</i>
12/21/2016	 Notice to Appear for Discovery Conference <i>[26] Notice to Appear for Discovery Conference</i>
02/10/2017	 Scheduling Order <i>[27] Scheduling Order</i>
02/13/2017	 Joinder to Case Conference Report

# CASE SUMMARY

CASE NO. A-16-735550-C

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC  
[28] Joinder in Joint Case Conference Report

02/15/2017



Order Setting Jury Trial

[29] Order Setting Civil Jury Trial and Calendar Call

03/17/2017



Association of Counsel

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC  
[30] Defendant THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center, Healthcare Realty of Cheyenne, LLC and Fundamental Administrative Services, LLC's Notice of Association of Counsel

03/27/2017



Disclosure Statement

Party: Third Party Plaintiff THI of Nevada at Cheyenne, LLC  
[31] Defendants' NRCP 7.1 Disclosure Statement

10/30/2017



Motion to Compel

Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  
[32] Plaintiffs' Motion to Compel Discovery Responses

12/04/2017



Notice of Taking Deposition

Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  
[33] Notice of Taking the videotaped Deposition of Defendant THI of Nevada at Cheyenne, LLC's Employee Roy Comstock

01/08/2018



Motion for Leave to File

Party: Third Party Plaintiff THI of Nevada at Cheyenne, LLC  
[34] Defendant THI of Nevada at Cheyenne, LLC's Motion for Leave to File Third-Party Complaint

01/31/2018



Stipulation and Order to Extend Discovery Deadlines

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
[35] Stipulation and Order to Extend Discovery Deadlines

02/01/2018



Notice of Entry of Stipulation and Order

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
[36] Notice of Entry of Stipulation and Order to Extend Discovery Deadlines (First Request)

02/09/2018



Order Granting Motion

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC  
[37] Order Granting Defendant THI of Nevada at Cheyenne, LLC's Motion for Leave to File Third-Party Complaint

02/14/2018



Notice of Entry of Order

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC  
[38] Notice of Entry of Order Granting Defendant THI of Nevada at Cheyenne, LLC's Motion for Leave to File Third-Party Complaint

02/20/2018
















Third Party Complaint

TPP: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
[39] Defendant/Third-Party Plaintiff THI of Nevada at Cheyenne, LLC's Third-Party Complaint Against SCI Construction, LTD, d/b/a SCI Construction, L.P.














# CASE SUMMARY

CASE NO. A-16-735550-C

03/01/2018	 Summons Filed by: Third Party Plaintiff THI of Nevada at Cheyenne, LLC <i>[40] Summons and Affidavit of Service (SCI Construction, Ltd.)</i>
03/19/2018	 Motion to Dismiss Filed By: Third Party Defendant SCI Construction Ltd <i>[41] Third-Party Defendant's Motion to Dismiss Third-Party Complaint</i>
03/19/2018	 Initial Appearance Fee Disclosure Filed By: Third Party Defendant SCI Construction Ltd <i>[42] Third-Party Defendant SCI Construction, LTD. d/b/a SCI Construction, L.P.'s Initial Appearance Fee Disclosure</i>
03/19/2018	 Answer to Third Party Complaint Filed By: Third Party Defendant SCI Construction Ltd <i>[43] Third-Party Defendant SCI Construction, Ltd.'s Answer to Third-Party Complaint</i>
04/05/2018	 Opposition to Motion to Dismiss Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC <i>[44] Defendant/Third-Party Plaintiff's Opposition to Third-Party Defendant's Motion to Dismiss Third-Party Complaint</i>
04/16/2018	 Reply in Support Filed By: Third Party Defendant SCI Construction Ltd <i>[45] Third-Party Defendant's Reply In Support Of Motion To Dismiss Third Party Complaint</i>
04/17/2018	 Errata Filed By: Third Party Defendant SCI Construction Ltd <i>[46] Errata To Third-Party Defendant's Reply In Support Of Motion To Dismiss Third Party Complaint</i>
05/30/2018	 Order Filed By: Third Party Defendant SCI Construction Ltd <i>[47] Order on Third-Party Defendant's Motion to Dismiss</i>
05/30/2018	 Notice of Entry of Order Filed By: Third Party Defendant SCI Construction Ltd <i>[48] Notice of Entry of Order</i>
06/04/2018	 Amended Order Setting Jury Trial <i>[49] Second Amended Order Setting Jury Trial and Calendar Call</i>
06/04/2018	 Stipulation to Extend Discovery Party: Third Party Plaintiff THI of Nevada at Cheyenne, LLC <i>[50] Stipulation and Order to Extend Discovery Deadlines</i>
06/06/2018	 Notice of Entry of Stipulation and Order Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC <i>[51] Notice of Entry of Stipulation and Order to Extend Discovery</i>
07/11/2018	 Stipulation and Order Filed by: Third Party Plaintiff THI of Nevada at Cheyenne, LLC <i>[52] Stipulation and Order to Extend Discovery Deadlines (Second Request)</i>

# CASE SUMMARY

CASE NO. A-16-735550-C

07/12/2018	 Notice of Entry of Stipulation and Order Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC <i>[53] Notice of Entry of Stipulation and Order to Extend Discovery Deadlines (Second Request)</i>
08/14/2018	 Motion to Withdraw As Counsel Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC <i>[54] Motion to Withdraw as Counsel</i>
09/28/2018	 Order Granting Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC <i>[55] Order Granting Counsel's Motion to Withdraw</i>
10/01/2018	 Notice of Entry of Order Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC <i>[56] Notice of Entry of Order Granting Counsel's Motion to Withdraw</i>
01/15/2019	 Stipulation and Order to Extend Discovery Deadlines Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC <i>[57] Stipulation and Order to Extend Discovery Dates</i>
01/17/2019	 Amended Order Setting Jury Trial <i>[58] Third Amended Order Setting Jury Trial and Calendar Call</i>
04/29/2019	Administrative Reassignment - Judicial Officer Change <i>To Judge Jacqueline M. Bluth</i>
09/09/2019	 Motion to Compel Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew <i>[59] Plaintiffs' Motion to Compel Discovery Responses</i>
09/09/2019	 Clerk's Notice of Hearing <i>[60] Notice of Hearing</i>
10/03/2019	 Motion to Compel Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew <i>[61] Plaintiffs' Amended Motion to Compel Discovery Responses</i>
10/03/2019	 Clerk's Notice of Hearing <i>[62] Notice of Hearing</i>
11/22/2019	 Stipulation and Order to Extend Discovery Deadlines Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew <i>[63] Stipulation and Order to Extend Discovery Deadlines and Continuance of Trial (Fourth Request)</i>
11/22/2019	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew <i>[64] Notice of Entry of Stipulation and Order</i>
01/23/2020	 Order Setting Civil Jury Trial <i>[65] Fourth Amended Order Setting Civil Jury Trial and Calendar Call</i>













# CASE SUMMARY

CASE NO. A-16-735550-C

01/30/2020	 Discovery Commissioners Report and Recommendations Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew <i>[66] Discovery Commissioner s Report and Recommendations -Originals</i>
02/20/2020	 Order Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew <i>[67] Order re: Discovery Commissioner's Report and Recommendations</i>
02/20/2020	 Notice of Entry of Order Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew <i>[68] Notice of Entry of Order</i>
02/24/2020	 Motion to Compel Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew <i>[69] Plaintiffs' Third Motion to Compel Discovery Responses</i>
02/25/2020	 Clerk's Notice of Hearing <i>[70] Notice of Hearing</i>
04/20/2020	 Discovery Commissioners Report and Recommendations <i>[71] Discovery Commissioner s Report and Recommendations -Originals</i>
04/27/2020	 Objection to Commissioner's Report and Recommendation Filed by: Third Party Plaintiff THI of Nevada at Cheyenne, LLC <i>[72] Objection to Report and Recommendations</i>
04/30/2020	 Opposition Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew <i>[73] Plaintiffs' Opposition to Defendants' Objection to Discovery Commissioner's Report and Recommendations</i>
04/30/2020	 Exhibits <i>[74] Exhibits (3-7) for Plaintiffs' Opposition to Defendants' Objection to Discovery Commissioner's Report and Recommendations</i>
05/15/2020	 Order <i>[75] Order re: Discovery Commissioner's Report and Recommendations</i>
05/15/2020	 Notice Filed By: Plaintiff Myers, Jeffrey A. <i>[76] Notice of Rescheduling of Hearing</i>
08/12/2020	 Order Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew <i>[77] Order</i>
08/13/2020	 Notice of Entry of Order Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew <i>[78] Notice of Entry of Order</i>
11/04/2020	 Order Setting Civil Jury Trial and Calendar Call <i>[79] Fifth Amended Order Setting Civil Jury Trial and Calendar Call</i>

# CASE SUMMARY

CASE NO. A-16-735550-C

03/03/2021	 Pre-Trial Disclosure Party: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew <i>[80] Plaintiffs' Pre-Trial Disclosures</i>
03/05/2021	 Notice of Rescheduling of Hearing <i>[81] Notice of Rescheduling of Hearing and Instruction for Bluejeans Videoconferencing</i>
03/09/2021	 Pre-trial Memorandum Filed by: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew <i>[82] Plaintiffs' Pre-Trial Disclosures</i>
03/11/2021	 Stipulation and Order Filed by: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew <i>[83] Stipulation and Order for Extension of the Five-Year Rule to Bring the Case to Trial</i>
03/12/2021	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew <i>[84] Notice of Entry of Stipulation and Order</i>
07/23/2021	 Notice of Appearance Party: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC <i>[85] NOTICE OF APPEARANCE AND ASSOCIATION</i>
08/16/2021	 Motion in Limine to Exclude Expert Witness Filed by: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew <i>[86] Motion in Limine to Exclude Any Experts from Testifying on Behalf of the Defendants</i>
08/16/2021	 Clerk's Notice of Hearing <i>[87] Notice of Hearing</i>
08/30/2021	 Opposition Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC <i>[88] Opposition to Plaintiffs' Motion in Limine to Exclude Any Experts from Testifying on Behalf of Defendants by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC</i>
08/30/2021	 Affidavit in Support Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC <i>[89] Affidavit of Eva E. Gonzalez in Support of Opposition to Plaintiffs' Motion in Limine to Exclude All Defense Experts</i>
08/30/2021	 Affidavit in Support Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC <i>[90] Affidavit of Christopher J. Giovanniello in Support of Opposition to Plaintiffs' Motion in Limine to Exclude All Defense Experts</i>
09/07/2021	Case Reassigned to Department 17 <i>From Judge Jacqueline Bluth to Judge Michael Villani</i>
09/07/2021	 Reply to Opposition

# CASE SUMMARY

CASE NO. A-16-735550-C

Filed by: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  
*[91] Plaintiff's Reply to Defendants' Opposition to Plaintiff's Motion in Limine to Exclude Any Experts from Testifying on Behalf of the Defendants*

09/09/2021



Motion to Continue Trial

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
*[92] Motion to Continue Trial on Order Shortening Time by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC and Fundamental Administrative Services, LLC*

09/09/2021



Affidavit in Support

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
*[93] Affidavit of Christopher J. Giovanniello in Support of Defendants' Motion to Continue Trial*

09/09/2021



Affidavit in Support

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
*[94] Affidavit of Eva E. Gonzalez in Support of Defendants' Motion to Continue Trial*

09/09/2021



Motion to Extend Discovery

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
*[95] Motion to Reopen Discovery on Order Shortening Time by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC and Fundamental Administrative Services, LLC*

09/09/2021



Affidavit in Support

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
*[96] Affidavit of Christopher J. Giovanniello in Support of Defendants' Motion to Reopen Discovery*

09/09/2021



Affidavit in Support

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
*[97] Affidavit of Eva E. Gonzalez in Support of Defendants' Motion to Reopen Discovery*

09/09/2021



Motion for Order Extending Time

Filed by: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
*[98] Motion for Order Extending Time to Amend Expert Disclosures on Order Shortening Time by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC and Fundamental Administrative Services, LLC*

09/09/2021



Affidavit in Support

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
*[99] Affidavit of Christopher J. Giovanniello in Support of Defendants' Motion for Order Extending Time to Amend Expert Disclosures*

09/09/2021













Affidavit in Support

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
*[100] Affidavit of Eva E. Gonzalez in Support of Defendants' Motion for Order Extending Time to Amend Expert Disclosures*



# CASE SUMMARY

CASE NO. A-16-735550-C

09/10/2021	 Clerk's Notice of Nonconforming Document <i>[101] Clerk's Notice of Nonconforming Document</i>
09/10/2021	 Clerk's Notice of Nonconforming Document <i>[102] Clerk's Notice of Nonconforming Document</i>
09/10/2021	 Clerk's Notice of Nonconforming Document <i>[103] Clerk's Notice of Nonconforming Document</i>
09/10/2021	 Motion to Continue Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC <i>[107] Motion to Continue Trial on Order Shortening Time by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC and Fundamental Administrative Services, LLC</i>
09/10/2021	 Motion Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC <i>[108] Motion to Reopen Discovery on Order Shortening Time by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC and Fundamental Administrative Services, LLC</i>
09/10/2021	 Motion for Order Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC <i>[109] Motion for Order Extending Time to Amend Expert Disclosures on Order Shortening Time by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC and Fundamental Administrative Services, LLC</i>
09/10/2021	 Motion to Continue Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC <i>[110] Motion to Continue Trial on Order Shortening Time by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC and Fundamental Administrative Services, LLC</i>
09/10/2021	 Motion Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC <i>[111] Motion to Reopen Discovery on Order Shortening Time by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC and Fundamental Administrative Services, LLC</i>
09/10/2021	 Motion for Order Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC <i>[112] Motion for Order Extending Time to Amend Expert Disclosures on Order Shortening Time by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC and Fundamental Administrative Services, LLC</i>
09/13/2021	 Motion for Order Extending Time Filed by: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC <i>[104] Motion for Order Extending Time to Amend Expert Disclosures on Order Shortening Time By Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation</i>

# CASE SUMMARY

CASE NO. A-16-735550-C

*Center; Healthcare Realty of Cheyenne, LLC and Fundamental Administrative Services, LLC*

09/13/2021



Motion to Extend Discovery

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
*[105] Motion to Reopen Discovery on Order Shortening Time By Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC and Fundamental Administrative Services, LLC*

09/13/2021



Motion to Continue Trial

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
*[106] Motion to Continue Trial on Order Shortening Time By Defendants THI of Nevada at Cheyenne, LLC, DBA College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC and Fundamental Administrative Services, LLC*

09/17/2021



Clerk's Notice of Nonconforming Document

*[113] Clerk's Notice of Nonconforming Documents*

09/17/2021



Notice of Rescheduling of Hearing

*[114] Notice of Rescheduling of Hearing*

09/17/2021



Pre-Trial Disclosure

Party: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  
*[115] Plaintiffs' Second Pre-Trial Disclosures*

09/20/2021



Opposition to Motion

Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  
*[116] Opposition to Motion to Reopen Discovery on Order Shortening Time by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC and Fundamental administrative Services LLC*

09/20/2021



Opposition to Motion

Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  
*[117] Opposition to Motion to Continue Trial on Order Shortening Time by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC and Fundamental Administrative Services, LLC*

09/22/2021



Opposition to Motion

Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  
*[118] Opposition to Defendants' Motion for Order Extending Time to Amend Expert Disclosures on Order Shortening Time by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC and Fundamental Administrative Services, LLC*

09/22/2021



Notice

Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  
*[119] Notice of 2.67 Conference*

09/30/2021



Pre-Trial Disclosure

Party: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  
*[120] Plaintiffs' First Supplement to Second Pre-Trial Disclosures*

10/06/2021



Order Granting Motion

Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  
*[121] Order Granting Plaintiffs' Motion in Limine*

# CASE SUMMARY

CASE NO. A-16-735550-C

10/08/2021



## Motion to Strike

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
*[122] Notice of Motion and Motion to Strike Plaintiffs' Non-Retained Experts Shanker Dixit, M.D., Steven Bonn, L.M.F.T. and Kevin Tsui, D.O., and to Preclude Them from Testifying at Trial Along with Recently Disclosed Medical Records by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC*

10/08/2021



## Declaration

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
*[123] Declaration of Christopher J. Giovannello in Support of the Motion to Strike Plaintiffs' Non-Retained Experts Shanker Dixit, M.D., Steven Bonn, L.M.F.T. and Kevin Tsui, D.O., and to Preclude them from Testifying at Trial along with Precluding Recently Disclosed Medical Records by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC*

10/11/2021



## Clerk's Notice of Hearing

*[124] Notice of Hearing*

10/14/2021



## Order Denying Motion

Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  
*[125] Order Denying Defendants' Motion for Prder Extending Tme to Amend Expert Disclosures*

10/14/2021



## Order Denying Motion

Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  
*[126] Order Denying Defendants' Motion to Continue Trial*

10/14/2021



## Order Denying Motion

Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  
*[127] Order Denying Defendant's Motion to Reopen Discovery*

10/14/2021



## Order Shortening Time

Filed By: Defendant Healthcare Realty of Cheyenne LLC  
*[128] Notice of Motion and Motion to Strike Plaintiffs' Non-Retained Experts Shanker Dixit MD, Steven Bonn, L.M.F.T. and Kevin Tsul, D.O. and to Preclude Them from Testifying at Trial Along With Recently Disclosed Medical Records by Defendants Thi of Nevada at Cheyenne LLC dba College Park Rehabilitation Center; Healthcare Reality of Cheyenne , LLC and Fundamental Administrative Services , LLC*

10/15/2021



## Pre-Trial Disclosure

*[129] Pre-Trial Disclosure by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC and Fundamental Administrative Services, LLC*

10/18/2021












## Opposition and Countermotion

Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  
*[130] Plaintiffs' Opposition to Motion to Strike Plaintiffs' Non Retained Experts Shanker Dixit, M.D., Steven Bonn, L.M.F.T. and Kevin Tsui, D.O., and to Preclude them from Testifying at Trial Along with Recently Disclosed Medical Records by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center, Healthcare Realty of Cheyenne, LLC, and Fundamental Administrative Services, LLC and Countermotion to Exclude Documents and Witnesses Not Previously Disclosed by Defendants*

10/18/2021

# CASE SUMMARY

CASE NO. A-16-735550-C

	 Pre-Trial Disclosure Party: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew <i>[131] Plaintiffs' Second Supplement to Second Pre-Trial disclosures</i>
10/19/2021	 Supplemental Filed by: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew <i>[132] Supplemental Counter-motion to Exclude Documents and Witnesses Not Previously Disclosed by the Defendants</i>
10/20/2021	 Supplemental Filed by: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC <i>[133] First Supplement to Pre-Trial Disclosures by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC</i>
10/20/2021	 Opposition Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC <i>[134] Reply to Plaintiffs' Opposition to Defendants' Motion to Strike and Opposition to Plaintiffs' Counter-motion and Supplemental Counter-motion to Exclude Documents and Witnesses by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC</i>
10/20/2021	 Reply to Opposition Filed by: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC <i>[135] Reply to Plaintiffs' Opposition to Defendants' Motion to Strike and Opposition to Plaintiffs' Counter-motion and Supplemental Counter-motion to Exclude Documents and Witnesses by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC</i>
10/20/2021	 Motion in Limine Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC <i>[136] Motion in Limine to Allow Evidence of Plaintiff Andrew James' Criminal History by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC</i>
10/20/2021	 Motion in Limine Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC <i>[137] Motion in Limine to Exclude Evidence Not Produced in Discovery, including Witnesses Not Previously Identified, by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC</i>
10/20/2021	 Motion in Limine Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC <i>[138] Motion in Limine to Exclude Plaintiffs' Expert Witness Testimony Amounting to Legal Conclusions, by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC</i>
10/20/2021	 Motion in Limine Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC

# CASE SUMMARY

CASE NO. A-16-735550-C

*[139] Motion in Limine to Exclude Any Golden Rule Argument Posited by Plaintiffs, by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC*

10/20/2021



Motion in Limine

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC

*[140] Motion in Limine to Limit Expert Opinion to Opinions Disclosed Prior to Trial by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC*

10/20/2021



Motion in Limine

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC

*[141] Motion in Limine to Exclude Medical Opinions from Lay and Non Retained Expert Witness Testimony by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC*

10/20/2021



Motion in Limine

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC

*[142] Motion in Limine to Exclude Any Reference to the Existence of Insurance by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC*

10/21/2021



Clerk's Notice of Hearing

*[143] Notice of Hearing*

10/21/2021



Supplement

Filed by: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew

*[144] Plaintiffs' Second Supplement to Their Countermotion to Exclude Documents and Witnesses Not Previously Disclosed by Defendants*

10/21/2021



Reply to Opposition

Filed by: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew

*[145] Plaintiffs' Reply to Defendants Opposition to Plaintiffs' Countermotion to Exclude Documents and Witnesses Not Previously Disclosed by the Defendants*

10/21/2021



Supplement

Filed by: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew

*[146] Plaintiffs' Second Supplement to Their Countermotion to Exclude Documents and Witnesses Not Previously Disclosed by Defendants*

10/22/2021



Supplement

Filed by: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew

*[147] Plaintiffs' Third Supplement to Second Pre-Trial Disclosures*

11/02/2021



Opposition to Motion in Limine

Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew

*[148] Plaintiffs' Opposition to Defendants' Motion in Limine to Allow Evidence of Plaintiff Andrew James' Criminal History*

11/02/2021
















Stipulation and Order

Filed by: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew

*[149] Second Stipulation and Order for Extension of the Five-Year Rule to Bring the Case to Trial*













# CASE SUMMARY

CASE NO. A-16-735550-C

11/04/2021	 Subpoena Duces Tecum Filed by: Third Party Plaintiff THI of Nevada at Cheyenne, LLC <i>[150] Subpoena Duces Tecum</i>
11/04/2021	 Subpoena Duces Tecum <i>[151] Subpoena Duces Tecum</i>
11/04/2021	 Subpoena Duces Tecum Filed by: Third Party Plaintiff THI of Nevada at Cheyenne, LLC <i>[152] Subpoena Duces Tecum</i>
11/04/2021	 Subpoena Duces Tecum <i>[153] Subpoena Duces Tecum</i>
11/04/2021	 Subpoena Duces Tecum Filed by: Third Party Plaintiff THI of Nevada at Cheyenne, LLC <i>[154] Subpoena Duces Tecum</i>
11/04/2021	 Subpoena Duces Tecum <i>[155] Subpoena Duces Tecum</i>
11/04/2021	 Subpoena Duces Tecum Filed by: Third Party Plaintiff THI of Nevada at Cheyenne, LLC <i>[156] Subpoena Duces Tecum</i>
11/04/2021	 Subpoena Duces Tecum Filed by: Third Party Plaintiff THI of Nevada at Cheyenne, LLC <i>[157] Subpoena Duces Tecum</i>
11/05/2021	 Order <i>[158] Order from Status Check Regarding Disputed Evidence</i>
11/09/2021	 Reply to Opposition Filed by: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC <i>[159] Reply to Plaintiffs' Opposition to Defendants' Motion in Limine to Allow Evidence of Plaintiff Andrew James' Criminal History by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC</i>
11/12/2021	 Motion in Limine Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew <i>[160] Motion in Limine to Preclude Tommy LaFronz from Testifying to as His Impressions of Plaintiff Andrew James During His Surveillance of Mr. James</i>
11/15/2021	 Clerk's Notice of Hearing <i>[161] Notice of Hearing</i>
11/16/2021	 Subpoena Duces Tecum Filed by: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Fundamental Administrative Services LLC <i>[162] Subpoena Duces Tecum</i>

# CASE SUMMARY

CASE NO. A-16-735550-C

11/16/2021	 Subpoena Duces Tecum <i>[163] Subpoena Duces Tecum</i>
11/16/2021	 Subpoena Duces Tecum <i>[164] Subpoena Duces Tecum</i>
11/16/2021	 Subpoena Duces Tecum Filed by: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Fundamental Administrative Services LLC <i>[165] Subpoena Duces Tecum</i>
11/16/2021	 Subpoena Duces Tecum Filed by: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Fundamental Administrative Services LLC <i>[166] Subpoena Duces Tecum</i>
11/16/2021	 Subpoena Duces Tecum Filed by: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Fundamental Administrative Services LLC <i>[167] Subpoena Duces Tecum</i>
11/16/2021	 Subpoena Duces Tecum Filed by: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Fundamental Administrative Services LLC <i>[168] Subpoena Duces Tecum</i>
11/16/2021	 Subpoena Duces Tecum Filed by: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Fundamental Administrative Services LLC <i>[169] Subpoena Duces Tecum</i>
11/22/2021	 Opposition to Motion in Limine Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC <i>[170] Opposition to Plaintiffs' Motion in Limine to Preclude Tommy Lafronz from Testifying as to his Impressions of Plaintiff Andrew James during his Surveillance of Mr. James</i>
11/24/2021	 Reply Filed by: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew <i>[171] Reply to Defendants' Opposition to Plaintiffs' Motion in Limine to Preclude Tommy Lafronz from Testifying as to His Impressions of Plaintiff Andrew James During His Surveillance of Mr. James</i>
11/24/2021	 Reply Filed by: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew <i>[172] Reply to Defendants' Opposition to Plaintiffs' Motion in Limine to Preclude Tommy Lafronz from Testifying as to His Impressions of Plaintiff Andrew James During His Surveillance of Mr. James</i>
11/30/2021	 Amended Order Setting Jury Trial <i>[173] Amended Order Setting Civil Jury Trial and Calendar Call</i>
12/06/2021	 Substitution of Attorney Filed by: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC <i>[174] Substitution of Attorney by Defendants THI of Nevada at Cheyenne, LLC dba College</i>



# CASE SUMMARY

CASE NO. A-16-735550-C

*Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC*

12/21/2021



## Notice

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
*[175] Notice of Petition for Writ of Mandamus by Petitioners THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC (Supreme Court Document)*

12/21/2021



## Petition for Writ of Mandamus

Filed by: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
*[176] Petition for Writ of Mandamus by Petitioners THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC (Supreme Court Document)*

12/21/2021



## Exhibits

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
*[177] Appendix of Exhibits in Support of Petition for Writ of Mandamus by Petitioners THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC*

01/05/2022



## Order

*[178] ORDER*

01/05/2022



## Notice of Entry of Order

Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  
*[179] Notice of Entry of Order*

01/14/2022



## Motion in Limine

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
*[180] Motion in Limine to Preclude Plaintiffs' Experts From Testifying on Cumulative Matters by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC*

01/14/2022



## Clerk's Notice of Hearing

*[181] Notice of Hearing*

01/27/2022



## Re-Notice

Filed by: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  
*[182] Re-Notice of 2.67 Conference*

01/28/2022



## Opposition to Motion in Limine

Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  
*[183] Opposition to Defendants' Motion in Limine to Preclude Plaintiffs' Experts from Testifying on Cumulative Matters by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC*

02/01/2022













## Amended Certificate of Service

Party: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  
*[184] Amended Certificate of Service*

02/07/2022

# CASE SUMMARY

CASE NO. A-16-735550-C

	 Order Shortening Time Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC <i>[185] Motion to Continue Trial on Order Shortening Time By Defendants THI of Nevada At Cheyenne, LLC DbA College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC And Fundamental Administrative Services, LLC</i>
02/10/2022	 Opposition to Motion Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew <i>[186] Opposition to Defendants' Motion to Continue Trial on Order Shortening Time</i>
02/23/2022	 Order Granting Motion Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC <i>[187] Order Regarding Motion to Continue Trial by Defendants THI of Nevada at Cheyenne LLC dbA Collegae Park Rehabilitation Center Hearlthcare Realty of Cheyenne LLC and Fundamental Adminstrative Services LLC</i>
03/09/2022	 Motion to Compel Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC <i>[188] Motion to Compel Independent Medical Examination of Plaintiff Andrew James on Order Shortening Time by Defendants THI of Nevada at Cheyenne, LLC dbA College Park Rehanilitation Center; Healthcare Realty of Cheyenne, LLC and Fundamental Administrative Service, LLC</i>
03/09/2022	 Declaration Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC <i>[189] Declaration of Christopher J. Giovanniello i Support of the Motion to Compel Independent Medical Examination of Plaintiff Andrew James on Order Shorteing Time by Defendants Thi of Nevada at Cheyenne, LLC dbA College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC and Fundamental Administrative Services, LLC</i>
03/10/2022	 Order Denying Motion Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew <i>[190] Order Denying Defendants' Motion in Limine</i>
03/10/2022	 Notice of Entry of Order Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew <i>[191] Notice of Entry of Order</i>
03/11/2022	 Order Shortening Time Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC <i>[192] Motion to Compel Independent Medical Examination of Plaintiff Andrew James on Order Shortening Time by Defendants THI of Nevada at Cheyenne, LLC DbA College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC and Fundamental Administrative Services, LLC</i>
03/15/2022	 Opposition to Motion to Compel Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew <i>[193] Plaintiffs' Opposition to Defendants' Motion to Compel "Independent" Medical Examination of Plaintiff Andrew James</i>
03/17/2022	 Clerk's Notice of Nonconforming Document <i>[194] Clerk's Notice of Nonconforming Document</i>
03/17/2022	 Objection to Discovery Commissioners Report and Recommend

# CASE SUMMARY

CASE NO. A-16-735550-C

	<p>Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  <i>[195] Notice of Objection and Objection to Discovery Commissioner's March 10, 2022 Report and Recommendation by Defendants Thi of Nevada at Cheyenne, LLC Dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; And Fundamental Administrative Services, LLC</i></p>
03/17/2022	<p> Declaration</p> <p>Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  <i>[196] Declaration of Christopher J. Giovanniello in Support of The Objection to Discovery Commissioner's March 10, 2022 Report and Recommendation by Defendants Thi of Nevada At Cheyenne, LLC Dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC and Fundamental Administrative Services, LLC</i></p>
03/17/2022	<p> Order Shortening Time</p> <p>Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  <i>[204] Motion to Compel Independent Medical Examination of Plaintiff Andrew James on Order Shortening Time by Defendants Thi of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC and Fundamental Administrative Services LLC</i></p>
03/18/2022	<p> Response</p> <p>Filed by: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  <i>[197] Plaintiffs' Response to Defendants' Notice of Objection and Objection to Discovery Commissioner's March 10, 2022 Report and Recommendation</i></p>
03/21/2022	<p> Discovery Commissioners Report and Recommendations</p> <p>Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  <i>[198] Discovery Commissioner s Report and Recommendations</i></p>
03/21/2022	<p> Reply to Opposition</p> <p>Filed by: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  <i>[199] Reply to Plaintiff's Opposition to the Motion to Compel Independent Medical Examination of Plaintiff Andrew James on Order Shortening Time by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC and Fundamental Administrative Services, LLC</i></p>
03/21/2022	<p> Declaration</p> <p>Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  <i>[200] Declaration of Christopher J. Giovanniello in Support of the Reply to Plaintiff's Opposition to Motion to Compel Independent Medical Examination of Plaintiff Andrew James on Order Shortening Time by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC and Fundamental Administrative Services, LLC</i></p>
03/22/2022	<p> Declaration</p> <p>Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  <i>[201] Declaration of Christopher J. Giovanniello in Support of the Reply to Plaintiffs' Opposition to the Motion to Compel Independent Medical Examination of Plaintiff Andrew James on Order Shortening Time by Defendants Thi of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC and Fundamental Administrative Services, LLC</i></p>
03/28/2022	<p> Notice</p>

# CASE SUMMARY

CASE NO. A-16-735550-C

	<p>Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  <i>[202] Notice of Nrcp Rule 35 Examination of Plaintiff Andrew James by Defendants Thi of Nevada at Cheyenne, LLC Dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, Llc; and Fundamental Administrative Services, LLC</i></p>
03/31/2022	<p> Objection to Discovery Commissioners Report and Recommend            Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  <i>[205] Plaintiffs Objection to Discovery Commissioners Report and Recommendation Arising Out of the March 25, 2022 Discovery Hearing on Defendants' Motion to Compel "Independent" Medical Examination of Plaintiff Andrew James on Order Shortening Time</i></p>
03/31/2022	<p> Order            Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  <i>[206] Order RE. Discovery Commissioner s Report and Recommendations</i></p>
03/31/2022	<p> Discovery Commissioners Report and Recommendations  <i>[207] Discovery Commissioner s Report and Recommendations -Originals</i></p>
04/04/2022	<p> Clerk's Notice of Nonconforming Document  <i>[208] Clerk s Notice of Nonconforming Document</i></p>
04/08/2022	<p> Request            Filed by: Plaintiff James, Andrew  <i>[209] Request for an Order on Objection to Commissioner's Decision</i></p>
04/12/2022	<p> Clerk's Notice of Nonconforming Document  <i>[210] Clerk's Notice of Nonconforming Document</i></p>
04/18/2022	<p> Miscellaneous Filing            Filed by: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  <i>[211] 04-18-22 LT PA IME Report</i></p>
04/20/2022	<p> Notice of Taking Deposition            Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  <i>[212] Notice of Taking Videoconference Deposition of Defendants' Expert Gregory P. Brown, M.D.</i></p>
04/21/2022	<p> Notice            Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  <i>[213] Notice of 2.47 Conference</i></p>
04/25/2022	<p> Motion in Limine  <i>[214] Motion in Limine to exclude Any Opinions Made by Dr. Brown Outside the Scope Allowed by the Court in its November 15, 2021 Order on Order Shortening Time</i></p>
04/26/2022	<p> Order Shortening Time  <i>[215] MOTION IN LIMINE TO EXCLUDE ANY OPINIONS MADE BY DR. BROWN OUTSIDE THE SCOPE ALLOWED BY THE COURT IN ITS NOVEMBER 15, 2021 ORDER ON ORDER SHORTENING TIME</i></p>
04/26/2022	<p> Notice of Entry of Order            Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  <i>[216] Notice of Entry of Order</i></p>

# CASE SUMMARY

CASE NO. A-16-735550-C

04/27/2022



## Supplement

Filed by: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  
[217] Plaintiffs' Fourth Supplement to Second Pre-Trial Disclosures

04/29/2022



## Notice of Entry of Decision and Order

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
[Proposed] Notice of Entry of Order

04/29/2022



## Notice of Entry of Decision and Order

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
[Proposed] Order Permitting a NRCP rule 35 Examination of Plaintiff Andrew James by Defendants Expert Gregory P. Brown, M.D.

05/03/2022



## Motion for Sanctions

Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  
[220] Motion for Sanctions on Order Shortening Time

05/03/2022



## Clerk's Notice of Hearing

[221] Notice of Hearing

05/04/2022



## Order Shortening Time

Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  
[222] Motion for Sanctions on Order Shortening Time (Hearing Requested)

05/04/2022



## Notice of Entry of Order

Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  
[223] Notice of Entry of Order

05/04/2022



## Clerk's Notice of Nonconforming Document

[224] Clerks Notice of Nonconforming Document

05/06/2022



## Opposition to Motion

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
[225] Opposition to Plaintiffs' Motion for Sanctions on Order Shortening Time by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC

05/06/2022



## Opposition to Motion in Limine

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
[226] Opposition to Plaintiffs' Motion in Limine to Exclude Any Opinions Made by Dr. Brown Outside the Scope Allowed by the Court in Its November 15, 2021 Order on Order Shortening Time by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC

05/06/2022



## Declaration

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
[227] Declaration of Christopher J. Giovanniello in Support of the Opposition to Plaintiffs' Motion in Limine to Exclude Any Opinions Made by Dr. Brown Outside the Scope Allowed by the Court in Its November 15, 2021 Order on Order Shortening Time by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of

# CASE SUMMARY

CASE NO. A-16-735550-C

*Cheyenne, LLC; and Fundamental Administrative Services, LLC*

05/10/2022



## Designation of Expert Witness

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
*[228] NRCP 16.1(a) (2) Disclosure of Expert Witness by Defendants Thi of Nevada at Cheyenne, LLC Dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC*

05/10/2022



## Reply to Opposition

Filed by: Plaintiff James, Andrew  
*[229] Reply to Defendants' Opposition to Plaintiffs' Motion in Limine to Exclude Any Opinions Made by Dr. Brown Outside the Scope Allowed by the Court in its November 15, 2021 Order on Order Shortening Time*

05/10/2022



## Reply to Opposition

Filed by: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  
*[230] Reply to Defendants' Opposition to Plaintiffs' Motion for Sanctions on Order Shortening Time*

05/10/2022



## Errata

Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  
*[231] Errata to Reply to Defendants' Opposition to Plaintiffs' Motion in Limine to Exclude Any Opinions Made by Dr. Brown Outside the Scope Allowed by the court in its November 15, 2021 Order on Order Shortening Time*

05/18/2022



## Joint Pre-Trial Memorandum

Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  
*[232] Joint Pre-Trial Memorandum*

05/19/2022



## Order

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
*[Proposed] Order Regarding Plaintiffs' Motion in Limine to Exclude Defendants' Expert Gregory P. Brown, M.D. and Motion for Sanctions*

05/19/2022



## Objection

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
*[234] Objection to Plaintiffs Proposed Entry of Order Regarding Courts May 18, 2022 Minute Order and Request for Sanctions on Order Shortening Time By Defendants Thi of Nevada at Cheyenne, LLC Dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC and Fundamental Administrative Services, LLC*

05/19/2022



## Declaration

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
*[235] Declaration of Christopher J. Giovannello in Support of the Objection to Plaintiffs' Proposed Entry of Order Regarding the Court's may 18, 2022 Minute Order and Request for Sanctions on Order Shortening Time by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Center of Cheyenne, LLC; and Fundamental Administrative Services, LLC (Exhibits 1-8)*

05/19/2022



## Declaration

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
*[236] Declaration of Christopher J. Giovannello in Support of the Objection to Plaintiffs' Proposed Entry of Order Regarding the Court's may 18, 2022 Minute Order and Request for*

# CASE SUMMARY

CASE NO. A-16-735550-C

*Sanctions on Order Shortening Time by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Center of Cheyenne, LLC; and Fundamental Administrative Services, LLC*

05/24/2022



Order

Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  
*[237] Order Granting Plaintiff's Motion in Limine to Exclude any Opinions Made by Dr Brown Outside the Scope Allowed by the Court in its November 15 2021 Order on Order Shortening Time and Granting in Part Plaintiffs' Motion for Sanctions Pertaining to the Motion in Limine and Deny the Remainder of the Motion for Sanction*

05/25/2022



Notice of Entry of Order

Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  
*[238] Notice of Entry of Order*

05/25/2022



Request for Judicial Notice

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
*[239] Request for Judicial Notice for 29 CFR 1910 by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC and Fundamental Administrative Services, LLC*

05/25/2022



Special Verdict Form

Party: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
*[240] Proposed Special Verdict by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC and Fundamental Administrative Services, LLC*

05/25/2022



Motion to Vacate

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
*[241] NOTICE OF MOTION AND MOTION TO VACATE THE OBJECTION TO PLAINTIFFS PROPOSED ENTRY OF ORDER REGARDING THE COURTS MAY 18, 2022, MINUTE ORDER AND REQUEST FOR SANCTIONS ON ORDER SHORTENING TIME AS COURTS ENTRY OF PROPOSED ORDER ACTS AS A DE FACTO DENIAL OF SAID OBJECTION BY DEFENDANTS THI OF NEVADA AT CHEYENNE, LLC dba COLLEGE PARK REHABILITATION CENTER; HEALTHCARE REALTY OF CHEYENNE, LLC AND FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC*

05/25/2022



Clerk's Notice of Nonconforming Document

*[242] Clerks Notice of Nonconforming Document*

05/26/2022



Petition for Writ of Mandamus

Filed by: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
*[243] Petition for Writ of Mandamus by Petitioners THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC and Fundamental Administrative Services, LLC*

05/26/2022



Appendix

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  
*[244] Appendix of Exhibits in Support of Petition for Writ of Mandamus by Petitioners THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare of Cheyenne, LLC and Fundamental Administrative Services, LLC*

05/27/2022














Notice
















# CASE SUMMARY

CASE NO. A-16-735550-C

	<p>Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  <i>[245] Notice of Petition for Writ of Mandamus by Petitioners THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC</i></p>
05/27/2022	<p> Petition for Writ of Mandamus            Filed by: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  <i>[246] Petition for Writ of Mandamus by Petitioners THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC</i></p>
05/27/2022	<p> Appendix            Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  <i>[247] Appendix of Exhibits in Support of Petition for Writ of Mandamus by Petitioners THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC</i></p>
05/31/2022	<p> Certificate of Mailing            Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC  <i>[248] Certificate of Mailing</i></p>
05/31/2022	<p> Jury List  <i>[250]</i></p>
06/01/2022	<p> Clerk's Notice of Nonconforming Document  <i>[249] Clerk's Notice of Nonconforming Document</i></p>
06/02/2022	<p> Clerk's Notice of Nonconforming Document  <i>[251] Clerk's Notice of Nonconforming Document</i></p>
06/06/2022	<p>Proposed Jury Instructions Not Used At Trial  <i>[252] Defendants Proposed Jury Instructions Not Used At Trial</i></p>
06/06/2022	<p> Jury List  <i>[253] Amended Jury List</i></p>
06/06/2022	<p> Jury Instructions  <i>[254]</i></p>
06/06/2022	<p> Special Jury Verdict  <i>[255]</i></p>
06/14/2022	<p> Order Granting Judgment  <i>[256] ORDER GRANTING JUDGMENT AS A MATTER OF LAW IN FAVOR OF DEFENDANTS HEALTHCARE REALTY OF CHEYENNE, LLC AND FUNDAMENTAL ADMINSTRATIVE SERVICES, LLC</i></p>
06/14/2022	<p> Judgment on Jury Verdict  <i>[257] JUDGMENT ON JURY VERDICT IN FAVOR OF DEFENDANT THI OF NEVADA AT CHEYENNE, LLC DBA COLLEGE PARK REHABILITATION CENTER</i></p>
06/15/2022	

# CASE SUMMARY

CASE NO. A-16-735550-C

	 Court Recorders Invoice for Transcript [258]
06/24/2022	 Notice of Entry of Order Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC [259] <i>Notice of Entry of Order of Judgment</i>
06/24/2022	 Notice of Entry of Order Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC [260] <i>Notice of Entry of Order of Judgment on Jury Verdict</i>
07/07/2022	 Recorders Transcript of Hearing [261] <i>Recorder's Partial Transcript of Jury Trial - Day 2 Testimony of Donald Gifford; Wednesday, June 1, 2022</i>
07/07/2022	 Recorders Transcript of Hearing [262] <i>Recorder's Partial Transcript of Jury Trial - Day 3 Testimony of Jeffrey Myers and Andrew James; Thursday, June 2, 2022</i>
07/07/2022	 Recorders Transcript of Hearing [263] <i>Recorder's Partial Transcript of Jury Trial - Day 4 Testimony of Leroy Comstock; Friday, June 3, 2022</i>
07/07/2022	 Recorders Transcript of Hearing [264] <i>Recorder's Partial Transcript of Jury Trial - Day 5 Testimony of Andrew James; Monday, June 6, 2022</i>
07/18/2022	Administrative Reassignment - Judicial Officer Change <i>Cases Reassigned from Judge Michael Villani to Vacant, DC 17</i>
07/18/2022	 Motion for New Trial Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew [265] <i>Motion for New Trial</i>
07/18/2022	 Errata Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew [266] <i>Errata to Motion for New Trial</i>
07/19/2022	 Clerk's Notice of Hearing [267] <i>Notice of Hearing</i>
07/20/2022	 Errata Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew [268] <i>Amended Errata to Motion for New Trial</i>
07/27/2022	 Motion to Continue Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC [269] <i>Motion to Continue Hearing on Plaintiffs' Motion for New Trial on Order Shortening Time by Defendant THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center</i>
07/27/2022	 Declaration Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC [270] <i>DECLARATION OF CHRISTOPHER J. GIOVANNIELLO IN SUPPORT OF THE</i>

# CASE SUMMARY

CASE NO. A-16-735550-C

*MOTION TO CONTINUE HEARING ON PLAINTIFFS MOTION FOR NEW TRIAL ON ORDER SHORTENING TIME BY DEFENDANT THI OF NEVADA AT CHEYENNE, LLC dba COLLEGE PARK REHABILITATION CENTER*

07/27/2022



Order Shortening Time

*[271] Motion to Continue Hearing on Plaintiff's Motion for New Trial on Order Shortening Time by Defendant THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center*

07/27/2022



Notice of Intent

Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew

*[272] Notice of Intent to Appear by Audiovisual Transmission Equipment*

07/27/2022



Opposition

Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew

*[273] Plaintiffs' Opposition to Defendants' Motion to Continue Hearing on Plaintiffs' Motion for New Trial on Order Shortening Time by Defendant THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center*

07/28/2022



Clerk's Notice of Nonconforming Document

*[274] Clerk's Notice of Nonconforming Document*

08/01/2022



Opposition to Motion

Filed By: Third Party Plaintiff THI of Nevada at Cheyenne, LLC; Defendant Healthcare Realty of Cheyenne LLC; Defendant Fundamental Administrative Services LLC

*[275] Opposition to Plaintiffs' Motion for New Trial By Defendant Thi of Nevada at Cheyenne, LLC DBA College Park Rehabilitation Center*

08/03/2022



Reply to Opposition

Filed by: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew

*[276] Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for a New Trial*

08/08/2022



Recorders Transcript of Hearing

*[277] Recorder's Transcript of Jury Trial: - Day 1; Tuesday, May 31, 2022*

08/08/2022



Recorders Transcript of Hearing

*[278] Recorder's Transcript of Jury Trial: - Day 2; Wednesday, June 1, 2022*

08/08/2022



Recorders Transcript of Hearing

*[279] Recorder's Transcript of Jury Trial: - Day 3; Thursday, June 2, 2022*

08/08/2022



Recorders Transcript of Hearing

*[280] Recorder's Transcript of Jury Trial: - Day 4; Friday, June 3, 2022*

08/08/2022



Recorders Transcript of Hearing

*[281] Recorder's Transcript of Jury Trial: - Day 5; Monday, June 6, 2022*

09/23/2022



Order Denying Motion

*[282] Order Denying Plaintiff's Motion For New Trial*

09/27/2022



Notice of Entry of Order

Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew

*[283] Notice of Entry of Order*

09/28/2022



Notice of Appeal

# CASE SUMMARY



CASE NO. A-16-735550-C

Filed By: Plaintiff Myers, Jeffrey A.; Plaintiff James, Andrew  
[284] Notice of Appeal

## DISPOSITIONS





- 05/30/2018 **Order of Dismissal** (Judicial Officer: Cadish, Elissa F.)  
Debtors: THI of Nevada at Cheyenne, LLC (Third Party Plaintiff)  
Creditors: SCI Construction Ltd (Third Party Defendant)  
Judgment: 05/30/2018, Docketed: 06/06/2018  
Comment: Certain Claims
- 05/24/2022 **Sanctions** (Judicial Officer: Villani, Michael)  
Debtors: Jeffrey A. Myers (Plaintiff), Andrew James (Plaintiff)  
Creditors: Christopher Giovanniello, ESQ. (Other), Alexander Giovanniello, ESQ. (Other)  
Judgment: 05/24/2022, Docketed: 05/25/2022  
Total Judgment: 6,256.36
- 06/14/2022 **Judgment** (Judicial Officer: Villani, Michael)  
Debtors: Jeffrey A. Myers (Plaintiff), Andrew James (Plaintiff)  
Creditors: Healthcare Realty of Cheyenne LLC (Defendant), Fundamental Administrative Services LLC (Defendant)  
Judgment: 06/14/2022, Docketed: 06/15/2022
- 06/14/2022 **Judgment Upon the Verdict** (Judicial Officer: Villani, Michael)  
Debtors: Jeffrey A. Myers (Plaintiff), Andrew James (Plaintiff)  
Creditors: THI of Nevada at Cheyenne, LLC (Defendant)  
Judgment: 06/14/2022, Docketed: 06/15/2022

## HEARINGS

- 01/24/2017  **Discovery Conference** (9:30 AM) (Judicial Officer: Bulla, Bonnie)  
Scheduling Order Will Issue;  
Journal Entry Details:  
*Mr. Rourke had numerous personal family issues, however, counsel will file the CCR shortly. COMMISSIONER RECOMMENDED, Mr. Rourke has up to and including 2/7/17 to file an ICCR or Joinder; Status Check SET; counsel can send a letter requesting Status Check come off calendar (copy opposing counsel). Colloquy re: deadlines. Mr. Rourke stated another party may come in the case (Contractor). Counsel anticipate 7 to 10 days for trial re: Personal injury / Negligence; no Settlement Conference requested. COMMISSIONER RECOMMENDED, discovery cutoff is 4/20/18; adding parties, amended pleadings, and initial expert disclosures DUE 1/19/18; rebuttal expert disclosures DUE 2/20/18; FILE dispositive motions by 5/21/18. Scheduling Order will issue. 2/14/17 9:00 a.m. Status Check: Defts' CCR;*
- 02/14/2017 **CANCELED Status Check** (9:00 AM) (Judicial Officer: Bulla, Bonnie)  
*Vacated - per Commissioner*  
*Status Check: Defts' CCR*
- 12/01/2017 **CANCELED Motion to Compel** (9:00 AM) (Judicial Officer: Bulla, Bonnie)  
*Vacated*  
*Plaintiffs' Motion to Compel Discovery Responses*
- 02/07/2018  **Minute Order** (3:00 AM) (Judicial Officer: Cadish, Elissa F.)  
*Minute Order Re: Defendant THI of Nevada at Cheyenne, LLC s Motion for Leave to File Third-Party Complaint*  
Minute Order - No Hearing Held;  
Journal Entry Details:  
*Pursuant to EDCR 2.20 and 2.23 and no opposition having been filed, Defendant THI of Nevada at Cheyenne, LLC's Motion for Leave to File Third-Party Complaint is hereby GRANTED. Proceedings scheduled for February 13, 2018 are hereby OFF CALENDAR. Counsel shall promptly submit a proposed order. CLERK'S NOTE: The above minute order has been distributed to: Erik K. Stryker (Wilson, E, M, E & D);*

# CASE SUMMARY




CASE NO. A-16-735550-C

02/13/2018	<b>CANCELED Motion for Leave</b> (3:00 AM) (Judicial Officer: Cadish, Elissa F.) <i>Vacated - per Law Clerk</i> <i>Defendant THI of Nevada at Cheyenne, LLC's Motion for Leave to File Third-Party Complaint</i>
04/24/2018	 <b>Motion to Dismiss</b> (8:30 AM) (Judicial Officer: Cadish, Elissa F.) <i>Third-Party Defendant's Motion to Dismiss Third-Party Complaint</i> Denied; Journal Entry Details: <i>Arguments by Mr. Kim and Ms. Arledge as to their respective position in regards the arbitration clause provisions, with Ms. Arledge requesting leave to amend the Third Complaint. Court stated findings, noting the arbitration provision governs the claims raised in the Third Party Complaint, and rather than dismissing ORDERED, the Third- Party complaint is STAYED for parties to proceed to address the claim through Arbitration as called for by the agreement of parties under the National Arbitration Form Code of Procedures, or other such associations; Mr. Kim to prepare the order, running it by opposing counsel prior to submission. 5-15-18 8:30 AM Status Check 7-24-18 9:30 AM Calendar Call 7-30-18 10:00 AM Jury Trial ;</i>
05/15/2018	 <b>Status Check</b> (8:30 AM) (Judicial Officer: Cadish, Elissa F.) Matter Heard; Journal Entry Details: <i>Ms. Arledge stated parties have spoken, more time is needed for discovery, and requested a continuance of the at least 7 day trial until the January or March stack. Mr. Kudler concurred. Colloquy regarding the continuation of the trial, time needed for the completion of discovery and expert disclosures. COURT ORDERED, trial CONTINUED; matter SET for status check; Discovery cut off is September 5th, Dispositive Motion Deadline October 15th, Motions in Limine are due October 25th; trial setting order to be issued. Colloquy regarding orders and briefing. 10-2-18 8:30 AM STATUS CHECK 12-11-18 9:30 AM CALENDAR CALL 1-2-19 10:00 AM JURY TRIAL;</i>
07/24/2018	<b>CANCELED Calendar Call</b> (9:30 AM) (Judicial Officer: Cadish, Elissa F.) <i>Vacated</i>
07/30/2018	<b>CANCELED Jury Trial</b> (10:00 AM) (Judicial Officer: Cadish, Elissa F.) <i>Vacated</i>
09/18/2018	 <b>Motion to Withdraw as Counsel</b> (3:00 AM) (Judicial Officer: Cadish, Elissa F.) <i>Eric K. Stryler, Esq. and Jennifer Willis Arledge, Esq.'s Motion to Withdraw as Counsel</i> Granted; Journal Entry Details: <i>The Court has read and considered the Motion to Withdraw as Counsel filed by Wilson Elser, to which there is no opposition. Good cause appearing, the Court hereby grants the motion and notes that defendants will continue to be represented by attorney Robert Rourke. The Court has signed the order submitted by Wilson Elser. CLERK'S NOTE: The above minute order has been distributed to: Erik K. Stryker (Wilson, E, M, E &amp; D);</i>
10/02/2018	<b>CANCELED Status Check</b> (8:30 AM) (Judicial Officer: Cadish, Elissa F.) <i>Vacated</i>
12/11/2018	 <b>Status Check</b> (8:30 AM) (Judicial Officer: Cadish, Elissa F.) Matter Heard; Journal Entry Details: <i>Court noted the stipulation for the extension of the discovery deadline. Mr. Kudler stated it's also to reschedule the trial. With a dispositive motion deadline of May 14th, Court stated the trial will be moved to the July stack and a order will be issued with the new trial date; the stipulation and order have been signed and counsel is to follow-up with the Court if the orders are not seen. ;</i>
12/11/2018	<b>CANCELED Calendar Call</b> (9:30 AM) (Judicial Officer: Cadish, Elissa F.) <i>Vacated</i>

EIGHTH JUDICIAL DISTRICT COURT




**CASE SUMMARY**

**CASE NO. A-16-735550-C**

01/02/2019	<b>CANCELED Jury Trial</b> (10:00 AM) (Judicial Officer: Cadish, Elissa F.) <i>Vacated</i>
03/05/2019	<b>CANCELED Calendar Call</b> (9:30 AM) (Judicial Officer: Bonaventure, Joseph T.) <i>Vacated - per Stipulation and Order</i>
03/11/2019	<b>CANCELED Jury Trial</b> (10:00 AM) (Judicial Officer: Vacant, DC 6) <i>Vacated - per Stipulation and Order</i>
05/14/2019	 <b>Status Check</b> (9:30 AM) (Judicial Officer: Bluth, Jacqueline M.) Matter Heard; Journal Entry Details: <i>Mr. Kudler stated more time is needed for discovery as they had to replace an expert and requested the trial be moved out a bit. Court noted the minutes of December 11, 2018. Mr. Rourke stated there's no opposition to moving the date requesting early March. Colloquy regarding trial setting. COURT ORDERED, trial CONTINUED. Mr. Rourke stated a stipulation will be submitted. 3-10-20 9:00 AM CALENDAR CALL 3-16-20 10:00 AM JURY TRIAL;</i>
07/23/2019	<b>CANCELED Calendar Call</b> (9:30 AM) (Judicial Officer: Vacant, DC 6) <i>Vacated</i>
07/29/2019	<b>CANCELED Jury Trial</b> (10:00 AM) (Judicial Officer: Bluth, Jacqueline M.) <i>Vacated</i>
10/11/2019	<b>CANCELED Motion to Compel</b> (9:00 AM) (Judicial Officer: Truman, Erin) <i>Vacated</i> <i>Plaintiff's Motion to Compel Discovery Responses</i>
11/06/2019	 <b>Motion to Compel</b> (9:00 AM) (Judicial Officer: Truman, Erin) <i>Plaintiffs' Amended Motion to Compel Discovery Responses</i> Granted; Plaintiffs' Amended Motion to Compel Discovery Responses Journal Entry Details: <i>Mr. Rourke had no opposition to the Motion, he will supplement by 11-20-19, and there was no request for attorney's fees. Mr. Rourke has encrypted information that he's having trouble accessing. Argument by Mr. Kudler. There was a letter identifying deficiencies in the Motion. Motion having been duly filed and served, no opposition having been filed, pursuant to EDCR 2.20(e) and for good cause shown, COMMISSIONER RECOMMENDED, motion GRANTED; documents in Defts' possession, custody, or control must be provided to Plaintiff; if Deft doesn't have any documents, indicate what efforts were taken to locate documents, or state if the documents never existed; also, identify if documents are in the possession, custody, or control of a Third Party, and Mr. Rourke will update Mr. Kudler on his efforts to obtain the documents. COMMISSIONER RECOMMENDED, all disclosures and supplements due by 11-20-19. Mr. Kudler to prepare the Report and Recommendations, and Mr. Rourke to approve as to form and content. A proper report must be timely submitted within 14 days of the hearing. Otherwise, counsel will pay a contribution.;</i>
12/12/2019	 <b>Status Check: Compliance</b> (3:00 AM) (Judicial Officer: Truman, Erin) <i>Status Check: Compliance / 11-6-19 DCRR</i> Matter Continued; Status Check: Compliance / 11-6-19 DCRR Complied Journal Entry Details: <i>The 11-6-19 Report and Recommendation remains outstanding. Mr. Kudler was given the responsibility to submit the Report and Recommendation from the 11-6-19 hearing. A proper report must be timely submitted within 14 days of the hearing. Otherwise, counsel will pay a sanction. COMMISSIONER RECOMMENDED, matter CONTINUED to an in chambers status check. CLERK S NOTE: This Minute Order was electronically served by Courtroom Clerk, Jennifer Lott, to all registered parties for Odyssey File &amp; Serve. jl ;</i>
03/10/2020	<b>CANCELED Calendar Call</b> (9:30 AM) (Judicial Officer: Bluth, Jacqueline M.)

# CASE SUMMARY


CASE NO. A-16-735550-C

	<i>Vacated - per Stipulation and Order</i>
03/16/2020	<b>CANCELED Jury Trial</b> (1:00 PM) (Judicial Officer: Bluth, Jacqueline M.) <i>Vacated - per Stipulation and Order</i>
03/31/2020	 <b>Motion to Compel</b> (9:00 AM) (Judicial Officer: Truman, Erin) <b>COURT CALL - Plaintiffs' Third Motion to Compel Discovery Responses</b> Granted; Plaintiffs' Third Motion to Compel Discovery Responses Journal Entry Details: <i>Mr. Kudler and Mr. Rourke participated telephonically via Court Call. Mr. Kudler stated the Commissioner had previously ordered, that Defense counsel provide what attempts and where information could be located; which have not been provided to Plaintiff. Mr. Rourke stated he provided supplement of all the written discovery in November 2019. COMMISSIONER NOTED, recommendation from January 2020, specifically stated any documents in Defendants possession, custody and control must be provided to Plaintiff. Further recommended if Defendant doesn't have documents, Defendant must indicate what efforts were taken to locate documents or state the documents never existed. Finally, recommended if Defendant identify any responsive documents are in possession, custody and control of a third party. Mr. Rourke stated he felt he complied with that in the November 2019 description; stating he provided that information on behalf of his client that he provided the information he had and what he didn't have. Following further argument of counsel. Commissioner stated this is the second Motion to Compel that has not been opposed. Further, the Commissioner stated there has been no request for additional relief. COMMISSIONER RECOMMENDED, pursuant to EDCR 2.20E, MOTION TO COMPEL GRANTED. ADVERSE INFERENCE, THAT DEFENDANT WAS RESPONSIBLE FOR SCREW THAT FELL. Mr. Kudler to prepare the DCCR. 5-19-20 9:30 AM STATUS CHECK: TRIAL READINESS (DEPT. VI) ;</i>
05/20/2020	<b>Status Check: Trial Readiness</b> (12:00 PM) (Judicial Officer: Bluth, Jacqueline M.) Matter Heard;
05/20/2020	<b>Further Proceedings</b> (12:00 PM) (Judicial Officer: Bluth, Jacqueline M.) <i>Discovery Commissioner's Report and Recommendations - 3/31/2020 Proceeding</i> Matter Heard;
05/20/2020	 <b>All Pending Motions</b> (12:00 PM) (Judicial Officer: Bluth, Jacqueline M.) Matter Heard; Journal Entry Details: <b>STATUS CHECK: TRIAL READINESS...DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS- 3/31/2020 PROCEEDING</b> Present via video, Attorneys Donald Kudler and Robert Rourke. Court inquired in regards to the Discovery Commissioner's Report. Arguments by Mr. Rourke and Mr. Kudler. <b>COURT ORDERED</b> , a decision will be issued by minute order; trial <b>VACATED</b> ; scheduling order to be issued. Colloquy regarding discovery, scheduling order, tolling of time due to COVID-19, and Settlement Conference.;
07/22/2020	 <b>Minute Order</b> (3:00 AM) (Judicial Officer: Bluth, Jacqueline M.) Minute Order - No Hearing Held; Journal Entry Details: <i>After reviewing the Discovery Commissioner's Report and Recommendations, Defendant's Objection thereto, Plaintiff's Opposition to the Objection, hearing argument thereon on May 20, 2020 and reviewing the JAVS from the hearing in front of the Discovery Commissioner on November 6, 2019, the Objection is denied and it is hereby ordered that the Discovery Commissioner's Report and Recommendations dated April 20, 2020 is affirmed and adopted. The Court considered the following in reaching its decision: At the November 6, 2019 hearing for the motion to compel filed on October 3, 2019, the Discovery Commissioner ruled that Defendant needed to comply with four conditions: 1. Counsel for Defense would supplement discovery by November 20, 2019 2. Documents in Defendant s possession, custody, or control would be provided to Plaintiff 3. If Defendant did not have any of the requested documents, Defendant would indicate what efforts were taken to located documents, or state if the documents never existed. 4. Defendant would identify if any responsive documents are in possession, custody, or control of a Third Party. While Defendant believed he answered some of these questions in written discovery, he never complied with recommendation number three. Furthermore, when Defendant did not comply, the matter came back in front of Discovery Commissioner Truman on March 31, 2020 for a hearing on a third Motion to Compel filed by</i>



# CASE SUMMARY

CASE NO. A-16-735550-C

	<p><i>Plaintiff, which Defendant did not oppose. Discovery Commissioner Truman found that Defendant did not comply with the recommendations, did not oppose the motion to compel, that this was the second motion to compel that had gone unopposed, and that Defendant did not request more time to comply with the previous order. Thus, Plaintiff's Motion to Compel and request for sanction in the form of an adverse inference was granted. Defendant's failure to comply with the discovery commissioner's report and recommendations, and failure to oppose two Motions to Compel, provided justification for the adverse inference ordered. CLERK'S NOTE: The above minute order has been distributed via e-mail to: ATTORNEYS Donald Kudler and Robert Rourke. kar 7/28/20;</i></p>
07/28/2020	<p><b>CANCELED Calendar Call</b> (9:30 AM) (Judicial Officer: Bluth, Jacqueline M.) <i>Vacated</i></p>
08/03/2020	<p><b>CANCELED Jury Trial</b> (10:15 AM) (Judicial Officer: Bluth, Jacqueline M.) <i>Vacated</i></p>
03/10/2021	<p> <b>Calendar Call</b> (9:30 AM) (Judicial Officer: Allf, Nancy)</p> <p>Matter Heard; Journal Entry Details: <i>All parties present via the BlueJeans Videoconferencing Application. Mr. Rourke stated he spoke with Mr. Kudler, they are trying to set up mediation, and they would like to set out the trial. Upon inquiry of Mr. Kudler as to the status of the stay on the five year rule, Court directed counsel they were to do the calculation of the five year rule based on the administrative orders. Mr. Rourke stated if the trial date is set out then parties can stipulate to extend the five year rule. Colloquy regarding availability for upcoming trial stacks. COURT ORDERED, trial dates VACATED and RESET to October trial stack. 10/5/2021 9:30 AM CALENDAR CALL 10/11/2021 10:00 AM JURY TRIAL (STACK) ;</i></p>
03/15/2021	<p><b>CANCELED Jury Trial</b> (10:00 AM) (Judicial Officer: Bluth, Jacqueline M.) <i>Vacated</i></p>
09/21/2021	<p> <b>Motion in Limine</b> (9:00 AM) (Judicial Officer: Villani, Michael)</p> <p><i>Plaintiff's Motion in Limine to Exclude Any Experts from Testifying on Behalf of the Defendants</i> Under Advisement; Journal Entry Details: <i>Arguments by counsel. Upon Court's inquiry, Mr. Kudler indicated he had tried to contact Mr. Rourke requesting a copy of the expert report. Mr. Kudler stated the Plaintiffs are ready to move forward with trial. Court noted the parties were before the Discovery Commissioner back in March 2020 one a second Motion to Compel. Mr. Giovanniello noted he had not received the file from Mr. Rourke, therefore he requested the Calendar Call be moved back to October 5th, to allow his Motions to be heard prior. Mr. Kudler had no objection the moving the Calendar Call. COURT ORDERED, Calendar Call CONTINUED and matter taken UNDER ADVISEMENT for the Court to review the history of this case, with a written decision to be issued either this afternoon or tomorrow. 9/28/2021 9:00 AM MOTION FOR ORDER EXTENDING TIME 9/28/2021 9:00 MOTION TO CONTINUE TRIAL 9/28/2021 9:00 AM MOTION TO REOPEN DISCOVERY 10/5/2021 9:00 AM CALENDAR CALL 10/11/2021 10:30 AM JURY TRIAL;</i></p>
09/22/2021	<p> <b>Minute Order</b> (3:00 AM) (Judicial Officer: Villani, Michael)</p> <p>Minute Order - No Hearing Held; Journal Entry Details:  <i>Plaintiffs Motion in Limine to Exclude Any Experts from Testifying on behalf of the Defendants came before this Court on September 21, 2021. The Court took the matter under advisement. After considering all pleadings and arguments, the Court renders its decision as follows: The initial Complaint in this matter was filed on April 25, 2016. An Amended Complaint was served on May 6, 2016 and Answers were filed on July 26, 2016. The Arbitration Commissioner exempted this case from Arbitration on August 23, 2016. On February 2, 2017, a Scheduling Order was issued an Order Setting Jury Trial was issued on February 15, 2017. Dates by those documents included the following: Initial Expert Disclosures: January 19, 2018; Rebuttal Expert Disclosures: February 20, 2018; Close of Discovery: April 20, 2018. On March 17, 2017, Defendants filed a Notice of Association including Wilson, Elser, Moskowitz, Edelman &amp;</i></p>

**CASE SUMMARY****CASE NO. A-16-735550-C**

Dicker LLP appearing on behalf of the Defendants to assist current Counsel at the Rouke Law Firm. On April 3, 2017, the Plaintiffs served Discovery (Requests for Admissions, Interrogatories and Requests for Production) on Defendants. Despite being granted multiple extensions, Defendants did not comply. On October 30, 2017, Plaintiffs filed their First Motion to Compel Discovery Responses to be heard by the Discovery Commissioner. Plaintiff withdrew the Motion to Compel based on the Defendants finally serving Discovery Responses on November 9, 2017. See Exhibits 4-12 of Plaintiff's Second Motion to Compel filed on September 9, 2019. On August 14, 2018, Wilson, Elser, Moskowitz, Edelman & Dicker LLP filed a Motion to Withdraw as Defendants Co-Counsel citing communication issues with the client and co-counsel have prevented Affiant's law firm from effectively representing the client, which constitutes good cause for withdrawal. The Motion was granted and the Notice of Entry of Order Granting Counsel's Motion to Withdraw was entered on October 1, 2018. Following the withdrawal and in an apparent effort to work with opposing counsel, Plaintiff agreed to stipulate to extend discovery deadlines. See Stipulation and Order to Extend Discovery Deadlines (Third Request) filed on January 15, 2019. However, upon reviewing Defendants Discovery responses, Plaintiff's Counsel submitted letters to Defense Counsel detailing how Defendants Discovery responses were deficient. Moreover, Plaintiff's Counsel noted Defendants served a supplement to their Early Case Conference Disclosures which did not have any of the disclosed records attached. See Exhibit 15 of Plaintiff's Second Motion to Compel filed on September 9, 2019. Despite representations by Defense Counsel that supplemental responses and records would be provided, those records were not produced, prompting Plaintiff to file a Second Motion to Compel Discovery Responses on September 9, 2019 (including an Amended Second Motion to Compel Discovery Responses) for the following: (1) Plaintiffs Request for Production Nos. 1, 2, 3, 4, 5, 6, 7, and 8; (2) Plaintiff Interrogatories Nos. 1, 2, 3 and 8; (3) Plaintiff's Requests for Admissions Nos. 2 and 3. On November 6, 2019, Plaintiff's Amended Second Motion to Compel was heard before the Discovery Commissioner. Having heard the arguments for Plaintiffs Amended Second Motion to Compel Responses and Defense Counsel Robert Rouke's representations that he had no opposition to the Motion, Plaintiff's Motion was granted. See Exhibit 14 to Plaintiff's Third Motion to Compel Discovery Responses filed on February 24, 2020. Defendants was ordered to supplement by November 19, 2019. Defendants were further ordered that the documents in Defendants possession, custody, or control must be provided to Plaintiff. Moreover, if Defendants did not have any documents, the Defendant were also ordered to indicate what efforts were taken to locate the documents, or state if the documents never existed. On February 13, 2020, Plaintiff's Counsel and Defense Counsel held a 2.34 meeting. Defense Counsel stated to Plaintiff's Counsel that there was nothing new and that Defendants have produced everything within their possession. Defense Counsel stated that subpoenas were issued for the documents, but Plaintiff's Counsel did not receive any copies of the subpoenas. Following Defendants failure to comply with the Discovery Commissioner's Recommendations and Court Order, Plaintiffs filed their Third Motion to Compel Discovery Responses on February 24, 2020. On March 13, 2020, Plaintiff's Third Motion to Compel was heard before the Discovery Commissioner. Following argument from Counsel, the Commissioner stated this is the second Motion to Compel that has not been opposed. Commissioner further stated that there has been no request for additional relief. Commissioner recommended pursuant to EDCR 2.20(e), Motion to Compel Granted. Furthermore, an Adverse Inference that Defendant was responsible for screw that fell was granted. See Discovery Commissioner's Report and Recommendations filed April 20, 2020. On July 31, 2021, Defendants filed a Notice of Association including Giovanniello Law Group appearing on behalf of the Defendants to assist current Counsel at the Rouke Law Firm. During the September 21, 2021 hearing regarding Plaintiffs Motion in Limine to Exclude any Experts from Testifying on behalf of the Defendants, this Court heard argument from Plaintiff Counsel and Defendant's Co-Counsel Alex Giovanniello regarding the issue of whether to impute the conduct and knowledge of Defense Counsel Robert Rouke on Defendants. Plaintiff cites three cases supporting their position that the conduct of Defense Counsel is imputed on Defendants: The first case mentioned was *Lange v. Hickman*, 92 Nev. 41 (1976). After additional review of *Lange*, this Court noted that in *Lange*, the case was dismissed for failure to have medical and tax record consents signed. *Id.* Further, in *Lange*, new counsel for the Plaintiff argued that Plaintiffs were never advised by their prior attorney of the requirement to sign the consent form. *Id.* at 43. Nevertheless, the Court ruled that the District Court did not abuse its discretion in ordering a dismissal of the case because Notice to an attorney is in legal contemplation, notice to his client the attorneys neglect is imputed to his client and the client is held responsible for it *Id.* Accordingly, this Court takes note that under *Lange* conduct of an attorney is imputed conduct upon the client. The second case mentioned was *Valente v. First Western Sav. and Loan Ass'n*, 90 Nev. 377 (1974). In *Valente*, the case was dismissed for failure to prosecute action pursuant to NRCP 41(e); lead counsel was told by an associate attorney that they were working on the case. *Id.* at 379. The Nevada Supreme Court again, upheld imputing knowledge and conduct of the attorney on the client. *Id.* Notably, the Court ruled In this case apparently, the client was

**CASE SUMMARY****CASE NO. A-16-735550-C**

pacified into believing that his case was being worked on the weight of authority holds the client responsible for the inactivity of his counsel and leaves him to the recourse of malpractice. *Id.* Here, in the instant case, former Co-Counsel Wilson, Elser, Moskowitz, Edelman & Dicker LLP was retained to assist Defense Counsel Robert Rouke, but later withdrew due to a lack of cooperation of lead Defense counsel, but more importantly, by Defendants. See Motion to Withdraw entered on October 1, 2018. The third case mentioned was *Huckabay Props v. NC Auto Parts*, 130 Nev. 196 (2014). Although this case concerns applying rules of Appellate Procedure, it would seem that the Nevada Supreme Court would uphold the rationale that at the district court level the attorney's conduct is imputed to the client. See Footnote 4. Although, courts should hear cases on their merits, under the facts of the instant case, the Plaintiffs after six years are entitled to have their day in court without further delay. This case was delayed by the Plaintiffs having to file three Motions to Compel Discovery Responses as result of Defendants and Defense Counsel's conduct (not including newly retained co-Counsel Giovanniello Law Group) warranting adverse inference. See Discovery Commissioner's Report and Recommendations filed April 20, 2020. Moreover, this case can still be heard on its merits. The Plaintiff must still prove negligence and medical causation. Therefore, weighing the competing interests of the parties and the respective conduct of the Defendants, COURT ORDERED Plaintiffs Motion in Limine to Exclude Any Experts from Testifying on behalf of the Defendants GRANTED. Counsel for Plaintiffs is directed to submit a proposed order consistent with the foregoing within ten (10) days after counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing and be approved as to form and content by all parties. Status Check for the Order will be set for October 7, 2021 (Chambers). Status Check will be vacated if the Order is filed before the hearing date. CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve/ SA 9/22/2021;

09/28/2021

**Motion to Continue Trial** (9:00 AM) (Judicial Officer: Villani, Michael)

[106] Motion to Continue Trial on Order Shortening Time By Defendants THI of Nevada at Cheyenne, LLC, DBA College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC and Fundamental Administrative Services, LLC  
Denied;

09/28/2021

**Motion to Extend Discovery** (9:00 AM) (Judicial Officer: Villani, Michael)

[105] Motion to Reopen Discovery on Order Shortening Time By Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC and Fundamental Administrative Services, LLC  
Denied;

09/28/2021

**Motion for Order** (9:00 AM) (Judicial Officer: Villani, Michael)

[104] Motion for Order Extending Time to Amend Expert Disclosures on Order Shortening Time By Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC and Fundamental Administrative Services, LLC  
Reset to Motion Calendar  
Denied;

09/28/2021

**All Pending Motions** (9:00 AM) (Judicial Officer: Villani, Michael)

Matter Heard;

Journal Entry Details:

MOTION TO CONTINUE TRIAL ON ORDER SHORTENING TIME BY DEFENDANTS THI OF NEVADA AT CHEYENNE, LLC, DBA COLLEGE PARK REHABILITATION CENTER; HEALTHCARE REALTY OF CHEYENNE, LLC AND FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC...MOTION TO REOPEN DISCOVERY ON ORDER SHORTENING TIME BY DEFENDANTS THI OF NEVADA AT CHEYENNE, LLC DBA COLLEGE PARK REHABILITATION CENTER; HEALTHCARE REALTY OF CHEYENNE, LLC AND FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC...MOTION FOR ORDER EXTENDING TIME TO AMEND EXPERT DISCLOSURES ON ORDER SHORTENING TIME BY DEFENDANTS THI OF NEVADA AT CHEYENNE, LLC DBA COLLEGE PARK REHABILITATION CENTER; HEALTHCARE REALTY OF CHEYENNE, LLC AND FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC Arguments by counsel regarding the Motions. Upon Court's inquiry, Mr. Kudler estimated 8 to 10 days for trial. Court reviewed the attorney history on this case. COURT ORDERED, Motions DENIED, based upon the ruling on the Motion from one to two weeks ago, which is incorporated by reference. Court advised the trial would begin on October 25th and directed counsel to submit proposed jury instructions, voir dire and pre-trial memorandums by noon on October 20th. COURT FURTHER

EIGHTH JUDICIAL DISTRICT COURT

**CASE SUMMARY**

**CASE NO. A-16-735550-C**

*ORDERED, Calendar Call VACATED. Mr. Kudler to prepare the order for the Motions. 10/25/2021 10:30 AM JURY TRIAL;*

10/05/2021	<b>CANCELED Calendar Call</b> (9:00 AM) (Judicial Officer: Villani, Michael) <i>Vacated - per Judge</i>
10/07/2021	<b>CANCELED Status Check: Status of Case</b> (3:00 AM) (Judicial Officer: Villani, Michael) <i>Vacated - per Law Clerk</i> <i>Status Check: Order</i>
10/11/2021	<b>CANCELED Jury Trial</b> (10:30 AM) (Judicial Officer: Bluth, Jacqueline M.) <i>Vacated</i>
10/19/2021	 <b>Minute Order</b> (3:00 AM) (Judicial Officer: Villani, Michael) Minute Order - No Hearing Held; Journal Entry Details: <i>By stipulation and agreement by the Parties via email communications with Dept. 17 Law Clerk, COURT ORDERS, matter SET for October 26, 2021 9:00 A.M. is VACATED and ADVANCED to October 22, 2021 at 10:00 A.M. CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File &amp; Serve/ SA 10/19/2021;</i>
10/22/2021	 <b>Motion to Strike</b> (10:00 AM) (Judicial Officer: Villani, Michael) <b>10/22/2021, 10/28/2021</b> Events: 10/08/2021 Motion to Strike <i>Defendants' Notice of Motion and Motion to Strike Plaintiffs' Non-Retained Experts Shanker Dixit, M.D., Steven Bonn, L.M.F.T. and Kevin Tsui, D.O., and to Preclude Them from Testifying at Trial Along with Recently Disclosed Medical Records by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC</i> Stip/Agreement by parties - See MO dated 10/19/2021 Continued; Matter Heard; Journal Entry Details:  <i>Court noted it had met with counsel prior to the hearing and wanted to place some rulings and agreements by the parties on the record. Court stated there was an objection by the defense to exclude Dr. Dixit, Dr. Bonn and Kevin Tsui's treatment or their ability to testify in this case. Court further stated Mr. Kudler's client was continuing to treat and that surgery may be required in the future. COURT ORDERED, Dr. Dixit, Dr. Bonn and Dr. Tsui are allowed to testify and within two weeks from today, Plaintiff shall turn over a medical release authorization to defense counsel, with any medical records being turned over to each side within 30 days of receipt. Court advised Plaintiff wished to exclude the testimony of Darren Cook. Mr. Kudler stated there was no objection to Mr. Cook testifying as to the facts and circumstances of the evidence in this case. Court noted there was also a dispute as to Mr. Tabler, as he was identified as someone who could testify as to the facts and circumstances of the incident. Argument by Alexander Giovanniello and Mr. Kudler. COURT FURTHER ORDERED, Mr. Cook and Mr. Tabler can testify to the facts and circumstances, the injury and the occurrence itself, however nothing beyond that as the Court FINDS their designation to be incomplete. As to the social medial photographs of Andrew James, COURT FURTHER ORDERED, the three photographs are allowed with proper foundation to the jury provided by the defense and additionally, there was a claim of social media photographs of Jeffrey Myers, which do not exist, therefore COURT FURTHER ORDERED, that matter is MOOT. COURT FURTHER ORDERED, criminal history and civil case history of Jeffrey Myers are EXCLUDED and the 2003/2004 criminal conviction for Andrew James is EXCLUDED, however counsel are to provide more information regarding his 2007 conviction. Court noted there were some photographs and video that defense counsel had taken depicting the building and the junction boxes, which Plaintiff's counsel objected to as their may be certain items that did not exist or may have changed since the incident. COURT FURTHER ORDERED, defense counsel to number the photographs and provide them to Plaintiff's counsel. COURT FURTHER ORDERED, Status Check SET regarding further information on Plaintiff's treatment and resetting the trial date. Court directed counsel to file their supplemental briefs regarding the photographs and video on 11/9/2021 by noon. Court noted it had been provided a copy of the video to review as well. COURT FURTHER ORDERED, defense counsel is free to depose Dixit, Bonn and Tsui and can obtain a medical expert for the treatment that these individuals</i>

# CASE SUMMARY

CASE NO. A-16-735550-C

are providing to the Plaintiff. Upon Alexander Giovannello's inquiry, Court stated it would allow an IME to take place for these three individuals. Mr. Kudler objected and argued against an IME. Argument by Alexander Giovannello. Court noted it had provided counsel with the Court's trial calendar for 2022 and within the next three weeks counsel would be speaking to their experts and witnesses regarding a trial date. Court further noted it would try to give counsel a firm trial setting for a full two weeks. Colloquy regarding scheduling conflicts. Court directed defense counsel to prepare the order. Mr. Kudler stated he would get the stipulation to extend the 5 year rule filed, which was signed in OPEN COURT. Mr. Kudler stated the parties had agreed on a few of the Motions in Limine that were filed by defense counsel. Mr. Kudler confirmed the parties had stipulated to the Motion in Limine to Exclude Evidence, Motion in Limine to Exclude Plaintiff's Expert Witness Testimony, Motion in Limine to Exclude Any Golden Rule, Motion in Limine to Limit Expert Opinion, Motion in Limine to Exclude Medical Opinions, and the Motion in Limine to Exclude Any Reference to the Existence of Insurance. Defense counsel agreed. COURT FURTHER ORDERED, it would allow discovery to be re-opened only on the items that were discussed today and all previous deadlines STAND. Court advised having a Settlement Conference set was not a reason to continue trial. 11/18/2021 8:30 AM STATUS CHECK: RESET TRIAL DATE;

Stip/Agreement by parties - See MO dated 10/19/2021


Continued;


Matter Heard;

Journal Entry Details:

Mr. Giovannello gave summary of the last hearing and argued plaintiff should not be able to name new experts. If the plaintiff is still treating then they are not ready for trial. Mr. Giovannello further argued as to the photographs taken. Statements by the Court. Mr. Kudler argued there was no way for them to know these doctors would be treating in 2020. Court STATED if the plaintiff want to present new doctors the will have to be continued as defendant is entitled to know what they are going to say and have the chance to depose them. Court has concerns of reopening old discovery that was previously closed. COURT ORDERED, TRIAL CONTINUED, Trial date VACATED. COURT FURTHER ORDERED, criminal records and criminal history of the two witnesses are EXCLUDED as they are to remote in nature. The Court will need more information as to the remaining items. Court STATED it would like to meet with counsel and go over the issues so the Court has an understanding of the timing of these issues and what they are including. Court inquired if either counsel had an issue of coming to the Courthouse and meeting in person. Counsel advised they do not have an issue coming to the Courthouse. COURT ORDERED, Defendants' Notice of Motion and Motion to Strike Plaintiffs' Non-Retained Experts Shanker Dixit, M.D., Steven Bonn, L.M.F.T. and Kevin Tsui, D.O., and to Preclude Them from Testifying at Trial Along with Recently Disclosed Medical Records by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC CONTINUED. CONTINUED TO: 10/28/21 9:00 AM;


11/01/2021 CANCELED Jury Trial (10:30 AM) (Judicial Officer: Villani, Michael)  
Vacated

11/16/2021  Minute Order (3:00 AM) (Judicial Officer: Villani, Michael)  
Minute Order - No Hearing Held;  
Journal Entry Details:  
COURT ORDERED, Status Check of Case currently set for November 18, 2021 is continued to November 23, 2021, 9:00 A.M. CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve/ SA 11/16/2021;

11/16/2021  Minute Order (3:00 AM) (Judicial Officer: Villani, Michael)  
Minute Order - No Hearing Held;  
Journal Entry Details:  
Pursuant to the Order filed on November 5, 2021, and by stipulation of the parties via communications with the Dept. 17 Law Clerk, COURT ORDERED, all matters currently set for November 23, 2021 are VACATED, EXCEPT: (1) Status Check: Reset Trial Date and (2) Defendant s Motion in Limine to Allow Evidence of Plaintiff Andrew James Prior Criminal History. Further, by stipulation of the parties, Plaintiffs Motion in Limine to Preclude Tommy Lafronz from Testifying as to his impressions of Plaintiff Andrew James During his surveillance of Mr. James , currently set for December 21, 2021, 9:00 A.M., is CONTINUED to December 28, 2021, 9:00 A.M. CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve/ SA 11/16/2021;

# CASE SUMMARY

CASE NO. A-16-735550-C

11/23/2021	<p><b>Motion in Limine</b> (9:00 AM) (Judicial Officer: Villani, Michael)</p> <p><i>Defendant's Motion in Limine to Allow Evidence of Plaintiff Andrew James' Criminal History by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC</i></p> <p>Denied;</p>
11/23/2021	<p><b>CANCELED Motion in Limine</b> (9:00 AM) (Judicial Officer: Villani, Michael)</p> <p><i>Vacated - per Law Clerk</i></p> <p><i>Defendant's Motion in Limine to Exclude Evidence Not Produced in Discovery, including Witnesses Not Previously Identified, by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC</i></p>
11/23/2021	<p><b>CANCELED Motion in Limine</b> (9:00 AM) (Judicial Officer: Villani, Michael)</p> <p><i>Vacated - per Law Clerk</i></p> <p><i>Defendant's Motion in Limine to Exclude Plaintiffs' Expert Witness Testimony Amounting to Legal Conclusions, by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC</i></p>
11/23/2021	<p><b>CANCELED Motion in Limine</b> (9:00 AM) (Judicial Officer: Villani, Michael)</p> <p><i>Vacated - per Law Clerk</i></p> <p><i>Motion in Limine to Exclude Any Golden Rule Argument Posited by Plaintiffs, by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC</i></p>
11/23/2021	<p><b>CANCELED Motion in Limine</b> (9:00 AM) (Judicial Officer: Villani, Michael)</p> <p><i>Vacated - per Law Clerk</i></p> <p><i>Motion in Limine to Limit Expert Opinion to Opinions Disclosed Prior to Trial by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC</i></p>
11/23/2021	<p><b>CANCELED Motion in Limine</b> (9:00 AM) (Judicial Officer: Villani, Michael)</p> <p><i>Vacated - per Law Clerk</i></p> <p><i>Motion in Limine to Exclude Medical Opinions from Lay and Non Retained Expert Witness Testimony by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC</i></p>
11/23/2021	<p><b>CANCELED Motion in Limine</b> (9:00 AM) (Judicial Officer: Villani, Michael)</p> <p><i>Vacated - per Law Clerk</i></p> <p><i>Motion in Limine to Exclude Any Reference to the Existence of Insurance by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC</i></p>
11/23/2021	<p><b>Status Check: Status of Case</b> (9:00 AM) (Judicial Officer: Villani, Michael)</p> <p><i>Status Check: Reset Trial Date</i></p> <p>Trial Date Set;</p>
11/23/2021	<p> <b>All Pending Motions</b> (9:00 AM) (Judicial Officer: Villani, Michael)</p> <p>Matter Heard;</p> <p>Journal Entry Details:</p> <p><i>DEFENDANT'S MOTION IN LIMINE TO ALLOW EVIDENCE OF PLAINTIFF ANDREW JAMES' CRIMINAL HISTORY BY DEFENDANTS THI OF NEVADA AT CHEYENNE, LLC DBA COLLEGE PARK REHABILITATION CENTER; HEALTHCARE REALTY OF CHEYENNE, LLC; AND FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC...STATUS CHECK: RESET TRIAL DATE</i> Arguments by Mr. Alexander Giovanniello and Mr. Kudler. Court noted there was no subterfuge on behalf of the Plaintiff, however he does identify the filing of false documents, wire fraud and the California court system where this took place, therefore COURT ORDERED, Motion DENIED. Court noted it had met with counsel in chambers for clarification on the issues and had put everything on the record after the meeting. Colloquy regarding setting the trial date. Court noted this case would have priority over most of the cases, if not all of them on the stack. Upon Court's inquiry, counsel estimated over a week for trial. Mr. Alexander Giovanniello stated he had just found the three experts,</p>

THE  
SEALED/CONFIDENTIAL  
PORTION OF THE  
CASE SUMMARY  
WILL FOLLOW VIA  
U.S. MAIL

# CASE SUMMARY

CASE NO. A-16-735550-C

03/29/2022



**Status Check: Trial Readiness** (9:00 AM) (Judicial Officer: Villani, Michael)

Matter Heard;

Journal Entry Details:

*Mr. Kudler advised they had resolved the issues with the Discovery Commissioner, however they had issues with the order. Upon Court's inquiry, Mr. Kudler confirmed they were ready for trial and had set the Rule 35 Exam for April 11th with the report due April 18th. Upon Court's inquiry, Mr. Kudler further confirmed they had not discussed any other issues with the case and noted the Court still needed to make a decision on the objection to the last Discovery Commissioner's ruling on March 10th in regards to depositions and subpoenas. Court advised it would be ruled upon forthwith. Mr. Kudler requested to extend the Motion in Limine date by a week. No objection by Mr. Giovanniello. COURT ORDERED, Motion in Limine deadline EXTENDED to April 25, 2022. Upon Court's inquiry, Mr. Kudler estimated 7 to 8 days for trial.;*

04/15/2022



**Minute Order** (3:00 AM) (Judicial Officer: Villani, Michael)

Minute Order - No Hearing Held;

Journal Entry Details:

*Discovery Commissioners Report and Recommendations was filed on March 31, 2022. Due to the fact that time is of the essence in having a NRCP Rule 35 examination taking place the Court is incorporating by reference the prior Orders entered by the Court regarding the deposition and Rule 35 examination for doctors Dixit, Bonn and Tsui. On October 28, 2021, the Court ordered among other items that Defendant was allowed to depose doctors Dixit, Bonn and Tsui. Further, Defendants were entitled to have conducted a Rule 35 examination [s]pecifically regarding the information and opinions provided by these experts. See Order dated November 15, 2021. Over 3 months later, this matter was once again before the Court at which time the Court allowed Defense counsel 30 days to conduct the depositions of the aforementioned doctors. The present dispute revolves around the Discovery Commissioner's Report and Recommendation dated March 31, 2022. Although, Dr. Brown's present area of practice relates to psychiatry, he was recently recertified by the American Board of Psychiatry and Neurology in 2017. Accordingly, he is allowed to perform a rule 35 examination addressing the information and opinions provided by Dr. Dixit. See previous Order dated November 15, 2021. If Plaintiff's counsel believes that any portion of Dr. Brown's examination and report exceed the Court's directive, then an OST for a Motion In Limine will be entertained. Plaintiff is required to fill out the examination questionnaire prior to attending the Rule 35 examination, excluding the following items: (1) what is the purpose of your evaluation? ; (2) why now? ; (3) Please list all previous psychiatric hospitalizations with dates and reasons for admission ; (4) Describe your formal religious affiliation ; (5) describe any personal spiritual practices; (6) describe any past or current legal history. Further, the following items are to be modified as follows: (7) Have you ever attempted suicide? If so, describe the number of times and circumstances is modified to Have you attempted suicide anytime between the present day and 5-years prior to the accident? If so, describe the number of times and circumstances and (8) Have you ever attempted to physically harm another person? If so, describe the number of times and circumstances is modified to Have you attempted to physically harm another person between the present day and 5-years prior to the accident? If so, describe the number of times and circumstance. The Rule 35 examination is to take place on or before May 6, 2022 at 5:00pm. Plaintiff is to make himself available within the time frame stated and at the direction of the doctor's schedule. The report regarding the Rule 35 examination is to be provided within 7 days of the examination. All other Recommendations by the Discovery Commissioner are adopted. The Court is aware of scheduling issues but said time constraints are do the prior lack of diligence in the discovery process by prior counsel and present counsel waiting so long to designate his expert subsequent to the October 28, 2022 hearing. If Dr. Brown is unavailable, Defendant may select another qualified doctor within the aforementioned time restrictions of this Order. Counsel for Defendant is directed to submit a proposed order consistent with the foregoing within fourteen (14) days after counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. Status Check for the Order will be set for May 5, 2022 (Chambers). Status Check will be vacated if the Order is filed before the hearing date. CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve/og (04/15/22) ;*

04/22/2022

**CANCELED Status Check: Compliance** (10:00 AM) (Judicial Officer: Young, Jay)





Vacated

Status Check: Compliance / 3-25-2022 DCRR



# CASE SUMMARY

CASE NO. A-16-735550-C

05/02/2022	 <b>Minute Order</b> (3:00 AM) (Judicial Officer: Villani, Michael) Minute Order - No Hearing Held; Journal Entry Details: <i>Status Check: Order set to come before the Court on the May 5, 2022 (Chambers) Calendar. COURT NOTES, Order was received on April 29, 2022. COURT ORDERED, matter VACATED. CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File &amp; Serve/ OG (05/03/22);</i>
05/05/2022	<b>CANCELED Status Check</b> (3:00 AM) (Judicial Officer: Villani, Michael) Vacated <i>Status Check: Order</i>
05/10/2022	 <b>Calendar Call</b> (9:00 AM) (Judicial Officer: Bixler, James) Matter Heard; Journal Entry Details: <i>Upon Court's inquiry, counsel announced ready for trial and estimated more than one week for trial.;</i>
05/17/2022	<b>Motion in Limine</b> (9:00 AM) (Judicial Officer: Villani, Michael) <i>Motion in Limine to Exclude Any Opinions Made by Dr Brown Outside the Scope Allowed by the Court in its November 15,2021 Order on Order Shortening Time</i> Granted;
05/17/2022	<b>Motion for Sanctions</b> (9:00 AM) (Judicial Officer: Villani, Michael) <i>Plaintiffs' Motion for Sanctions on Order Shortening Time</i> Filed 5-4-22 Granted in Part;
05/17/2022	 <b>All Pending Motions</b> (9:00 AM) (Judicial Officer: Villani, Michael) Matter Heard; Journal Entry Details: <i>MOTION IN LIMINE TO EXCLUDE ANY OPINIONS MADE BY DR BROWN OUTSIDE THE SCOPE ALLOWED BY THE COURT IN ITS November 15,2021 ORDER ON ORDER SHORTENING TIME...PLAINTIFFS' MOTION FOR SANCTIONS ON ORDER SHORTENING TIME</i> Arguments by counsel regarding the Motion in Limine. Court stated it was under the assumption that Dr. Brown was a neurologist and a psychiatrist, however Dr. Brown was stating he was not a neurologist. Mr. Giovanniello advised they assumed he was a neurologist as well. Mr. Kudler argued that the Defendants were attempting to violate the Court Order by going with a psychiatrist. Court noted the tortured history of this case. Court noted it was incorporating the testimony of Dr. Brown provided by Mr. Kudler on pages 5-7 of the Reply Brief. COURT ORDERED, Motion in Limine GRANTED and attorney's fees/sanctions GRANTED as to the Motion in Limine. Court noted it would advise counsel of the date when those sanctions/attorney's fees commenced. COURT FURTHER ORDERED, Pre-Trial Memorandum, proposed Jury Instructions and proposed Voir Dire due to the Court by May 25, 2022 at 3:00 pm. Mr. Kudler to prepare the order. MATTER RECALLED. Christopher Giovanniello, Esq. not present. Court stated it was not inclined to impose any other sanctions, only the sanctions related to the Motion in Limine. COURT FURTHER ORDERED, Motion for Sanctions DENIED as it related to the other matters, not as it relates to the Motion in Limine or the Independent Medical Examination (IME). ;
05/18/2022	 <b>Minute Order</b> (3:00 AM) (Judicial Officer: Villani, Michael) Minute Order - No Hearing Held; Journal Entry Details: <i>Plaintiffs Motion for Sanctions and Motion in Limine came before the Court on the May 17, 2022 Calendar at 9:00 A.M. COURT NOTES, Motion in Limine was granted and the Motion for Sanctions was granted in part pertaining to the Motion in Limine, and denied in part as to the rest of Plaintiffs claims. The COURT FINDS that on October 28, 2021, the Court limited the scope of Rule 35 experts who the Defendants could retain to those that would rebut opinions of the three experts that were allowed to testify. Specifically at issue in this matter is that the Court ordered that defense counsel was free to depose Dr. Dixit, a neurologist, and</i>

# CASE SUMMARY

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could obtain an expert for the treatment that Dr. Dixit provided to the Plaintiff. Court further allowed an IME to take place for Dr. Dixit, as well as the other identified experts. Almost 2 months after the Court's Order (December 20, 2021), Defendant's counsel notified Plaintiff's counsel that they wanted to conduct a Rule 35 examination of the Plaintiff in February 2022. Plaintiff's counsel responded on December 21, 2021, requesting that Defendant's counsel provide the name of the provider conducting the examination, the conditions of the examination and the scope of the examination in compliance with NRCP 35. Plaintiff's counsel resent this request on January 10, 2022. On January 11, 2022, Defendant's counsel responded, stating that [t]he examination will be conducted by psychiatrist and neurologist Gregory P. Brown, M.D. (emphasis added). On February 8, 2022, Plaintiff's counsel notified Defense that Plaintiff would not be attending the IME, as Dr. Brown is a psychiatrist and not a neurologist. On March 9, 2022, Defendants filed a Motion to Compel Rule 35 Examination by Dr. Brown. On March 25, 2022, the motion to compel was heard by Discovery Commissioner Young, and an objection thereto was heard by the Court on April 15, 2022. In the April 15 minute order, the Court allowed Dr. Brown to conduct the IME as he had recently been recertified by the American Board of Psychiatry and Neurology in 2017 and that he was qualified to perform a neurological evaluation. The Court reminded that the Rule 35 examination was to address the information and opinions provided by Dr. Dixit. On April 11, 2022, Plaintiff appeared for a Rule 35 Examination with Dr. Brown, and his report was prepared on April 18, 2022. The report, titled Forensic Psychiatric Report is not limited to the scope set by the Court, and in fact contains minimal references to the opinions by Dr. Dixit. In the first paragraph of Dr. Brown's report, he states, I was contacted by Christopher Giovanniello, Esq., and asked to perform a psychiatric evaluation of Mr. Andrew James to determine whether or not he suffered from a psychiatric condition, including but not limited to potential traumatic brain injury, as a result of the incident from June 6, 2014, in which he was burned by an arc of electric current at a job site. In addition, I was asked to provide opinions regarding necessary treatment for said condition. On April 25, 2022, Plaintiff's counsel conducted a deposition of Dr. Brown, where Dr. Brown represented that he has never held himself out to be a neurologist because he is in fact not a neurologist. See Dr. Brown's deposition testimony relating to this issue at pages 8-10, 12-13. Based on the above findings, the Court finds that the representations made relating to the Rule 35 examination were misrepresented. It is incumbent upon an attorney retaining an expert to perform a Rule 35 exam that the expert is qualified and knows the perimeters of the examination. Therefore, COURT ORDERED that Defendant's Counsel to pay attorney's fees and costs related to the issue of the Rule 35 exam incurred by Plaintiff's counsel from October 28, 2021 to the present day. Counsel for Plaintiff is to prepare the Order identifying the fees and costs associated with this matter and submit it to the Court. A Status Check: Order will be set for May 31, 2022 at 9:00 A.M. Status Check will be vacated if the Order is received prior to the hearing date. CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve/ SA 5/18/2022;

05/25/2022



**Minute Order (3:00 AM)** (Judicial Officer: Villani, Michael)

Minute Order - No Hearing Held;

Journal Entry Details:

Status Check: Order set to come before the Court on the May 31, 2022 Calendar at 9:00 A.M. COURT NOTES, Order was filed on May 24, 2022. COURT ORDERED, matter VACATED. CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve/ SA 5/25/2022;

05/31/2022



**Jury Trial - FIRM (9:00 AM)** (Judicial Officer: Barker, David)

05/31/2022-06/03/2022, 06/06/2022

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for the Defendant;

Journal Entry Details:

JURY PANEL PRESENT: Defense RESTS. CONFERENCE AT BENCH. OUTSIDE THE PRESENCE OF THE JURY PANEL: Alexander Giovanniello orally requested a Motion pursuant to NRCP 50(A) as to Fundamental Administrative Services LLC and Healthcare Realty of Cheyenne LLC, as there had been no evidence presented by the Plaintiff regarding those two entities. Mr. Kudler stated they were never able to obtain this information while the case was pending and noted the jury instruction included all Defendants. COURT ORDERED, oral Motion GRANTED as to Fundamental Administrative Services LLC and Healthcare Realty of Cheyenne LLC. Upon Alexander Giovanniello's inquiry, Court stated it would not

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advise the Jury that the two entities were dismissed, however defense counsel could in their closing argument. Jury Instructions SETTLED. Alexander Giovanniello offered Special Jury Instructions #1-4 and believed they were relevant to the law of the case. Mr. Kudler argued they should not be allowed. Court stated it could not find any case law related to OSHA to be reduced to a jury instruction, therefore Defendant's proposed Special Jury Instructions #1-4 shall not be given to the Jury. JURY PANEL PRESENT: Jury INSTRUCTED. Closing Argument by Mr. Kudler and Alexander Giovanniello; Rebuttal by Mr. Kudler. At the hour of 2:19 pm, the Jury RETIRED to deliberate. OUTSIDE THE PRESENCE OF THE JURY PANEL: Court noted Mr. Kudler's objections to Alexander Giovanniello's closing argument. At the hour of 4:38 pm, the Jury RETURNED with a verdict for Defendant. Jury POLLED. Court thanked and excused the jury. COURT FURTHER ORDERED, unused exhibits RETURNED to counsel.;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for the Defendant;

Journal Entry Details:

OUTSIDE THE PRESENCE OF THE JURY PANEL: Colloquy regarding exhibits, scheduling and Jury Instructions. JURY PANEL PRESENT: Testimony PRESENTED, Exhibits ADMITTED (see worksheets). Plaintiff RESTS. CONFERENCE AT BENCH. COURT ORDERED, trial CONTINUED. CONTINUED TO: 6/6/2022 11:00 AM;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for the Defendant;

Journal Entry Details:

OUTSIDE THE PRESENCE OF THE JURY PANEL: Court clarified the identification of Exhibits 3A and 31A, that were admitted yesterday. JURY PANEL PRESENT: Testimony PRESENTED, Exhibits ADMITTED. (see worksheets). CONFERENCE AT BENCH.

OUTSIDE THE PRESENCE OF THE JURY PANEL: Court noted the parties had approached regarding some concerns with disclosure of certain records that the witness was being cross-examined on. Alexander Giovanniello advised the witness testified as to records from January 18, 2021 onward, which were never disclosed. Upon Court's inquiry, Alexander Giovanniello confirmed the witness was never deposed due to her never being disclosed. Alexander Giovanniello further advised he had records starting in 2018, not 2016, which were also never provided. Mr. Kudler read from Exhibit #12 and Court noted that related back to 2019, however there was mention of the treatment by Nurse Cipollini from January 18, 2021 through today, which were never disclosed and were subject to a Motion to Strike. COURT ORDERED, Motion to Strike GRANTED as to January 18, 2021 forward and DENIED as to the earlier treatment. Colloquy regarding Jury Instructions. JURY PANEL PRESENT: Alexander Giovanniello objected and requested the testimony be stricken from January 18, 2021 forward. COURT ORDERED, the Jury to disregard any testimony from January 18, 2021 forward and directed witness, Sheryl Cipollini to appear in person tomorrow at 9:00 am to continue her testimony. COURT ORDERED, trial CONTINUED. CONTINUED TO:

6/3/2022 9:00 AM;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for the Defendant;

Journal Entry Details:

JURY PANEL PRESENT: Opening Statements by Mr. Kudler and Alexander Giovanniello. CONFERENCE AT BENCH. Testimony PRESENTED, Exhibits ADMITTED (see worksheets). OUTSIDE THE PRESENCE OF THE JURY PANEL: Colloquy regarding defense counsel's medical condition, witnesses, and exhibits. JURY PANEL PRESENT: COURT ORDERED, trial CONTINUED. CONTINUED TO: 6/2/2022 9:00 AM;

Trial Continues;

Trial Continues;

Trial Continues;

Trial Continues;

Verdict for the Defendant;



Journal Entry Details:

Court noted it had reviewed the Pre-Trial Memorandum. Colloquy regarding trial procedures.

EIGHTH JUDICIAL DISTRICT COURT

**CASE SUMMARY**

**CASE NO. A-16-735550-C**

	<p><i>Court further noted no stay had been granted on the Writ. PROSPECTIVE JURY PANEL PRESENT: Roll Call CONDUCTED, Prospective Jury Panel SWORN IN. Voir Dire begins. OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL: Colloquy regarding voir dire and scheduling. PROSPECTIVE JURY PANEL PRESENT: Voir dire continues. Peremptory challenges EXECUTED, Jury SELECTED. Court thanked and DISMISSED the additional jurors. Jury Panel SWORN. OUTSIDE THE PRESENCE OF THE JURY PANEL: Colloquy regarding scheduling, exhibits and OSHA statutes. COURT ORDERED, matter CONTINUED. CONTINUED TO: 6/1/2022 10:00 AM;</i></p>
05/31/2022	<p><b>CANCELED Status Check: Status of Case (9:00 AM)</b> (Judicial Officer: Barker, David)  <i>Vacated  Status Check: Order</i></p>
08/02/2022	<p> <b>Motion to Continue (9:00 AM)</b> (Judicial Officer: Gibbons, Mark)  <i>Motion to Continue Hearing on Plaintiff's Motion for New Trial on Order Shortening Time by Defendant THI of Nevada at Cheyenne, LLC dba College  Granted;  Journal Entry Details:  COURT ORDERED, Motion GRANTED and Motion for New Trial RESET. Mr. Kudler noted an Opposition had been filed yesterday. 8/16/2022 9:00 AM PLAINTIFFS' MOTION FOR NEW TRIAL;</i></p>
08/16/2022	<p> <b>Motion for New Trial (9:00 AM)</b> (Judicial Officer: Gibbons, Mark)  <i>Plaintiffs' Motion for New Trial  Denied;  Journal Entry Details:  Arguments by Mr. Kudler and Alexander Giovanniello. Upon Court's inquiry, Mr. Kudler stated he did not make a Motion under NRCp 50(A) at the end of the submission of evidence. Court STATED ITS FINDINGS and ORDERED, Motion DENIED. Court noted the denial of the Motion for New Trial was an appealable order and directed Mr. Kudler to request the appeal, if filed, be kept in the Supreme Court. Mr. Giovanniello to prepare the order.;</i></p>

**DATE**

**FINANCIAL INFORMATION**

<b>Defendant</b> Fundamental Administrative Services LLC	
Total Charges	223.00
Total Payments and Credits	223.00
<b>Balance Due as of 9/30/2022</b>	<b>0.00</b>
<b>Defendant</b> Healthcare Realty of Cheyenne LLC	
Total Charges	223.00
Total Payments and Credits	223.00
<b>Balance Due as of 9/30/2022</b>	<b>0.00</b>
<b>Third Party Plaintiff</b> THI of Nevada at Cheyenne, LLC	
Total Charges	1,682.00
Total Payments and Credits	1,682.00
<b>Balance Due as of 9/30/2022</b>	<b>0.00</b>
<b>Plaintiff</b> James, Andrew	
Total Charges	54.00
Total Payments and Credits	54.00
<b>Balance Due as of 9/30/2022</b>	<b>0.00</b>
<b>Plaintiff</b> Myers, Jeffrey A.	
Total Charges	270.00
Total Payments and Credits	270.00
<b>Balance Due as of 9/30/2022</b>	<b>0.00</b>
<b>Third Party Defendant</b> SCI Construction Ltd	
Total Charges	223.00
Total Payments and Credits	223.00
<b>Balance Due as of 9/30/2022</b>	<b>0.00</b>

**CASE SUMMARY**

**CASE NO. A-16-735550-C**

**Plaintiff** Myers, Jeffrey A.  
Appeal Bond Balance as of 9/30/2022

**500.00**

## DISTRICT COURT CIVIL COVER SHEET

VI

CLARK County, Nevada  
 Case No. \_\_\_\_\_  
 (Assigned by Clerk's Office)

**I. Party Information** (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): JEFFREY A. MYERS and ANDREW JAMES	Defendant(s) (name/address/phone): THI OF NEVADA AT CHEYENNE, LLC
Attorney (name/address/phone): DONALD C. KUDLER, ESQ. (#5041) CAP & KUDLER 3202 W. CHARLESTON BLVD. LAS VEGAS, NV (702) 878-8778	Attorney (name/address/phone):

**II. Nature of Controversy** (please select the one most applicable filing type below)**Civil Case Filing Types**

<b>Real Property</b> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Negligence</b> <input type="checkbox"/> Auto <input checked="" type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Torts</b> <b>Other Torts</b> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
<b>Probate</b> <b>Probate</b> (select one type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <b>Estate Value</b> <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<b>Judicial Review/Appeal</b> <b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b> <b>Civil Writ</b> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		<b>Other Civil Filing</b> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

4/25/16  
 Date

[Signature]  
 Signature of initiating party or representative

See other side for family-related case filings.

*Heather S. Smith*  
CLERK OF THE COURT

**ORDR**  
**CAP & KUDLER**  
Donald C. Kudler, Esq.  
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3202 W. Charleston Blvd  
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Tel. (702)878-8778  
Fax (702)878-9350  
Attorneys for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

JEFFREY A. MYERS and ANDREW JAMES,  
individually,

Plaintiff,

vs.

THI OF NEVADA AT CHEYENNE, LLC a Foreign  
Corporation d/b/a COLLEGE PARK  
REHABILITATION CENTER; HEALTHCARE  
REALTY OF CHEYENNE, LLC a Delaware  
Corporation; FUNDAMENTAL ADMINISTRATIVE  
SERVICES, LLC a Delaware Corporation; DOES I-  
XXX; and ROE CORPORATIONS I-XXX, inclusive,

Defendants.

CASE NO. : A-16-735550-C

DEPT. NO.: XVII

CAP & KUDLER  
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**ORDER DENYING PLAINTIFFS' MOTION FOR NEW TRIAL**

This matter having come before the above-entitled Court on August 16, 2022, at the hour of 9:00 a.m. on Plaintiffs' Motion for New Trial, DONALD C. KUDLER, ESQ, appearing on behalf of Plaintiffs ,JEFFREY MYERS and ANDREW JAMES and ALEXANDER F. GIOVANNIELLO, ESQ. appearing on behalf of Defendants THI OF NEVADA AT CHEYENNE, LLC; HEALTHCARE REALTY OF CHEYENNE, LLC; and FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC, the Court having considered the pleadings and papers on file, and the arguments of Counsel at the hearing, after which the Court took the after under advisement. After considering all pleadings and arguments, the Court renders its decision as follows:

## FINDINGS OF FACT

### 1. Jury Instructions At Issue

The Court read the following Jury Instructions to the Jury:

#### Instruction 22

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

Negligence is the failure to exercise that degree of care which an ordinarily careful and prudent person would exercise under the same or similar circumstances. Ordinary care is that care which persons of ordinary prudence exercise in the management of their own affairs in order to avoid injury to themselves or to others.

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

#### Instruction 27

Plaintiffs claim that they were harmed because of the way Defendants managed their property. To establish this claim Plaintiffs must provide all of the following:

1. That Defendants controlled the property;
2. That Defendants were negligent in the inspection, use or maintenance of the property;
3. That Plaintiffs were harmed; and
4. That Defendants' negligence was a substantial factor in causing the Plaintiffs' harm.

#### Instruction 28

The owner or occupier of land has a duty to inspect the premises for latent or concealed dangerous conditions not known to them. If reasonable inspection would have revealed a dangerous condition, the owner or occupier of land is charged with constructive notice of it.

Constructive knowledge of a latent defect may be established by circumstantial evidence.

#### Instruction 29

An owner or occupant of land must exercise ordinary care and prudence to render the premises reasonably safe for the visit of a person invited on their premises for business purposes. An owner or occupant of land who knows, or in the exercise of reasonable care should know, of their dangerous and unsafe condition, and who invites others to enter upon the property, owes to such invitees



1 a duty to warn them of the danger, where the peril is hidden, latent, or concealed,  
2 or the invitees are without knowledge thereof.

3 **2. The Defendants Had a Duty to Maintain Their Breakers**

4 The Plaintiffs retained Don Gifford as an expert in this case who testified that Defendants  
5 had a duty to maintain the equipment including te breakers at Page 16, line 17 to page 17, line  
6 18:

7 Q Do you have any other opinions in regards to this case?

8 A Well, yes. College Park has an obligation, just like any operator of a -- of a  
9 commercial facility, in any jurisdiction where they adopt, and therefore enforce  
10 the national -- National Electrical Code. And where we have Nevada statutes,  
11 College Park is required to maintain the electrical gear to provide for a surf -- a  
12 safe working environment for their own employees, and therefore for other people  
13 who may be in the property. And they failed to do that.

14 And I am also critical, based on it is my understanding, and certainly it was my  
15 understanding on the date of my inspection of the property at least two years ago,  
16 that the circuit breaker that had tripped had never been replaced and the MSA had  
17 never been replaced. I'm critical of that.

18 Q Okay. Do you have any evidence that prior to this incident, let's say in the seven  
19 years, that anybody had ever done any maintenance on this equipment?

20 A Well, I don't know exactly. Based on Mr. Comstock's deposition, he had  
21 indicated that, no, nobody had been in there at least for four years. There's a little  
22 question about his deposition. It may be four, it may be seven or more years. But  
23 based on the fact that there were parts sitting on top of that material, the parts that  
24 actually fell, those are not something that are part of the original installation of the  
25 equipment.

26 Furthermore, in the event where College Park was doing the appropriate job of  
27 inspecting and maintaining their equipment, that sort of thing could have, would  
28 have in all likelihood been discovered prior to having somebody go into the gear  
live.

Mr. Gifford went on to testify that the Defendants were required to maintain the breakers  
pursuant to law at Page 66 line 22 - page 68, line 5:

On the other hand, the OSHA -- the OSHA violations by College Park was the  
fact that the requirement under 1926 is that the employer, in this particular case,  
College Park, had an obligation to provide a safe working environment. They had  
an old electrical panel that had been -- had been opened and something had been  
done inside of it and people had left materials inside of it that they shouldn't have  
left. And as time went on, because under the -- under the rules of the National  
Electrical Safety Code and under the National Electrical Code, the owner of the  
facility has to maintain and inspect their equipment. Those things were not done.  
And that comprises an OSHA violation.

1 The requirement to maintain the breakers pursuant to law was reiterated by Plaintiff  
2 Andrew James testified about the requirements to test and maintain breakers at Page 88, line 23 -  
3 page 89, line 10:

4 Q Okay. Did you assume that this -- these breakers were tested?

5 A Yes.

6 Q Why?

7 A Well, it's required, again, under several federal, state agencies. NFPA requires  
8 maintenance and inspection, and all maintenance and inspection shall be  
9 documented. The NEC requires the exact same thing. OSHA requires the exact  
10 same thing. And because it's a health facility, Center for Medicaid and Medicare  
11 Services requires the exact same thing. So going into a medical facility, you  
12 assume that since people live there and people's lives are a stake, that they're  
13 doing what they're supposed to be doing. And in this case, it's my firm opinion as  
14 well as our electrical experts, that they were not doing now.

12 **3. The Defendants Failed to Maintain Electrical Equipment Including the Main**  
13 **Breaker**

14 Roy Comstock has worked as the director of the maintenance department for the  
15 Defendant since 2007. See, Comstock Trial testimony at Page 6, Lines 17 - 25. The testimony  
16 cited below demonstrates that the Defendant has not, and does not, conduct regular inspections of  
17 the electrical system or conduct any maintenance on it unless something goes wrong.

18 At Trial, Mr. Comstock testified that his responsibilities are to fix things that are broken  
19 at Page 11, Lines 1 - 7:

20 Q Okay. What is your job responsibilities?

21 A Well if somebody has say a controller for their bed and it doesn't work, then my  
22 job is to determine that it doesn't work and replace it. And I'm to make sure that  
23 the facility has lightbulbs, caps that go over the lights. Just about all of the  
24 materials in the building. I order those materials. I set up the contracts with the  
25 various vendors for jobs that need to be done. That type of thing.

26 Mr. Comstock went on to state that his electrical work is limited to minor repairs at Page  
27 16, Lines 1 - 9:

28 Q Do you do any electrical work in the facility?

A Small stuff, switches, some receptacles, and light bulbs.

Q Okay. Do you do any electrical work -- first of all, does the facility have  
electrical panels?

1 A They have main electrical panels. Yes, sir.

2 Q Right. And you also have a big generator?

3 A Yeah. We have a 10 kilowatt generator. Yes, sir.

4 Q Okay. Do you do any work on those panels?

5 A No, sir.

6 Mr. Comstock further testified that in the SEVEN years before his incident, no one had  
7 been in the panels for any reason at Page 21, lines 10 - 16

8 Q From 2007 to 2014, did anybody that you were aware of go into that panel?

9 A No. Just these gentlemen when they started to work.

10 Q Okay. Before these gentlemen -- before they started to work in that panel, was  
11 there any other person in that panel that you were aware of?

12 A No, sir.

13 Mr. Comstock testified that things had been left as they were when originally installed  
14 and that no regular inspection by licensed electricians at Page 25, lines 1 - 8:

15 Q Okay. Were they -- were any of the panels labeled beforehand?

16 A I don't believe so. No. That's why they said it was all convoluted. It was all just  
17 mish mashed. That was from the original installation of the -- from the building  
when it was built.

18 Q Do you know whether or not there were any regular inspection of those panels  
by a licensed electrician?

19 A No. Just a licensed electrician if there's a problem.

20 Mr. Comstock admitted that they don't keep any log books that would support any claim  
21 that they conducted regular inspections and maintenance of the breakers (a claim they did not  
22 make to date) at Page 26, Lines 18 - 21:

23 Q I forgot where I was. I was on the log. Let me ask you this. A regular inspection  
24 and those panels where a log is kept, how about that?

25 A No. No, sir.

26 Mr. Comstock, again, confirmed that there were no regular inspections of the electrical  
27 panel at Page 33, line 12 - page 34, line 5:

28 Q Now I just want to make clear. The entire time that you've been there, no  
regular maintenance had been done on that panel, correct?



1 A No. the only maintenance that's done is when there's a problem. That's correct.  
2 Q No regular inspections had been done on that panel ever?  
3 A Well I can't say ever. I don't know. There was people there before me.  
4 Q The entire time that you've been there?  
5 A No. It's only if there's a problem. It isn't like somebody comes out and does the  
6 inspection.  
7 Q Let me ask the question again.  
8 A The people who inspected it when it was --  
9 Q Let me ask the question again.  
10 A Yes, sir.  
11 Q You do not do regular inspections on that electrical panel or have somebody do  
12 them, do you?  
13 MR. A. GIOVANNIELLO: Objection. Asked and answered.  
14 THE WITNESS: Yes. I don't. That's correct.  
15 The failure to maintain the equipment continued even after the arc flash that injured the  
16 Plaintiffs as confirmed by Mr. Comstock at Page 38, lines 17 - 22  
17 THE COURT: Was any work done on the electrical panel between ILP [Andrew  
18 James] finished? Was there -- was any work done on the electrical panel between  
19 when ILP finished their work, and when Helix discovered the screw placed  
20 through the electrical wires?  
21 THE WITNESS: No. No work was done by any other electrical company. It was  
22 James, and then Helix  
23 The Court asked Plaintiff Jeffrey Myers about maintenance log books which lead to him  
24 testifying that he would expect the Defendants to have fulfilled their duty and maintained the  
25 equipment at Page 57, line 25 - page  
26 THE COURT: Is it part of your process to check maintenance logs before you  
27 perform work on a breaker? Were those logs checked?  
28 THE WITNESS: No logs were made available for me to check.  
THE COURT: You mentioned the breaker had not been properly maintained. Are  
you required to continue working on equipment if it hasn't been properly  
maintained?  
THE WITNESS: Well, I can only say that I believe that it wasn't maintained after  
that incident. Before that incident, all you can do is assume that it had been.

Mr. James again discussed the requirement to maintain the equipment at Page 120, line 17 - page 121 line 4:

Q Okay. If there's no labeling why would you do the work on that panel?

A Because it's a general assumption -- well, first of all, NFPA says anything under 240 volts, there's a specified level of PPE. We were wearing that level of PPE. Plus, as you know, there are requirements under CMS, NFPA, NEC, OSHA for this facility to be testing and inspecting this equipment, and they did not do that,

Q But you don't really know that they did not do that, right? You have no evidence that they didn't do that at all, right?

A Evidence in this case, yes.

Q But what's that?

A They couldn't produce any log books. Roy Comstock's deposition says that they didn't do it. Yes. There's absolutely evidence.

Mr. James again discussed the requirement to maintain the breaker and the failure to do so at Page 148, line 23 - page:

THE COURT: How do you test a circuit breaker without a test slash reset button?

THE WITNESS: So the only real way to test a breaker is to do a manual reset. So, Eaton Manufacturing, who now owns the subsequent companies that bought Westinghouse that manufactured that breaker, they have maintenance requirements that are required, you know, under Medicaid, Medicare, under the NFPA, under the NEC, under OSHA -- it all refers to manufacturer-recommended maintenance intervals. Eaton, who now owns the company that built that breaker, their manufacturer's inspection intervals are every three years, that breaker is supposed to be manually tripped, manually turned off, manually turned back on.

My belief is that breaker was never tested like that. There's no inspection reports of it, because also Eaton says inspections shall be documented. NFPA, NEC, OSHA, and CMS all say all inspection -- all inspection and maintenance activities shall be documented. Shall is the operative word there. It's not an option. They're required to actually document every time that breaker was tested, per the manufacturer's specifications. They could produce none of that evidence, which tells me it was never tested. Ever. It was never inspected, it was never tested, and there was no log book ever made. So the only way to really test that breaker is to manually turn it off and turn it back on.

#### **4. The Main Breaker Failed**

Plaintiff's expert Don Gifford testified that the main breaker should have tripped nearly immediately which would have prevented the arc flash from occurring but that it did not trip as it should have at Pg. 14 lines 10 - 22

....

1 And when that happened, two things are supposed to happen. One is just a natural  
2 outgrowth of the laws of physics; there is going to be some kind of an arcing  
3 event, and it may be a large explosion or a small explosion. The second thing that  
4 can happen in the event where the circuit breaker protecting that particular layout  
is not functioning properly, it's really important -- just like the brakes on your car,  
when you're going 70 and somebody pulls in front of you going 30 and you hit the  
brakes, you want to be able to stop immediately.

5 Just like that, a circuit breaker controlling the electrical wiring in this panel, when  
6 that arc occurred, the circuit breaker is supposed to trip almost instantaneously. It  
7 should trip within just a very tiny fraction of a second. In this particular instance,  
that circuit breaker did that trip for  
several seconds.

8 Mr. Gifford offered further proof that the main breaker failed at Page 67, Line 7 to page  
9 68, Line 5:

10 THE COURT: How does the witness determine the length of time the circuit  
11 breaker was delayed?

12 THE WITNESS: That's a good question. Because of the description of this arc  
13 flash and what happened, let me see if I can get technical but make it simple at the  
14 same time. Not that you're -- can't deal with technical issues.

15 A circuit breaker can and should trip in about 25 milliseconds. Let me break that  
16 down in different ways. You probably heard that with electricity in alternating  
17 current, it kind of wave -- it goes along in a wave called the sign wave. And every  
60 seconds the sign wave goes from the top to the bottom through center point 60  
times in one second. If the circuit breaker were to trip in one cycle, that would be  
about .017 of a second. That would be extremely fast. The circuit  
breaker probably should have tripped maybe ten times faster than that.

18 So when the arc flash -- when the -- when the event that --let's say that this is the  
19 bus location between -- this is an insulator, and this is phase B and phase C. So  
20 when the screw gets on those, 20 -- 25 milliseconds is so fast that immediately the  
circuit breaker would trip. And that prevents the arc flash from going into a big  
ball. In this particular instance, it took many cycles for it to develop into a big  
ball. And, quite frankly, the other part is I've not seen any evidence that the  
circuit breaker ever did trip. But with an arc flash of that nature tells me that the  
circuit breaker was not maintained and was not functioning properly.

21  
22  
23 Lastly, Mr. Gifford again noted that the breaker failed to trip at any time during the event  
24 at Page 69, lines 13 - 25:

25 THE COURT: What was the instantaneous setting of the breaker -- question  
26 mark. How was the breaker trip time known or estimated -- open parens -- several  
27 seconds was testified -- closed  
28 paren -- with no arc flash study, how would the proper instantaneous setting be  
known?

THE WITNESS: That's an excellent question. We don't know. I haven't seen the  
arc study on that particular breaker. I'm just telling you that it never tripped.  
Therefore, no matter what the study showed or the what curve for the electrical



1 current, with respect to time and voltage with respect to time, would be -- it would  
2 not be of value to me in determining, why didn't the breaker trip. It didn't trip  
3 because it was faulty. There was enough -- there was enough electrical energy that  
4 there's no question it should have tripped.

5 Mr. Myers noted that at no time did the main breaker trip during the event that injured the  
6 Plaintiffs at Page 20, lines 2 - 18

7 Q Okay. And at that point, everything went to hell?

8 A All I really remember was it just got really bright and believe I must have put  
9 my arm up like this, and I -- just as hard as I could close my eyes it just kept  
10 getting brighter and brighter. And I didn't understand why it wouldn't end.  
11 Typically, that should have -- could have been an explosion, a bang. That main  
12 breaker should have tripped that thing off right away.

13 Q Speaking of the main breaker, after this incident you went into the lobby?

14 A Yeah, after -- well, I was blinded for a minute or so temporarily because it was  
15 so bright. And then -- yeah, then I walked out of the room, and they were looking  
16 at me. I saw my arm, I go, well, you know, maybe somebody ought to call 911.

17 Q Were the lights on?

18 A The lights never went off.

19 Q Okay. So the light in the room didn't go off?

20 A The breaker never tripped.

21 **5. Jury Verdict**

22 The Jury was presented with a Verdict Form whose first question was "Were the  
23 Defendants Negligent?" The Jury responded "No." to that query and went no farther. The Jury  
24 could only have reached this decision had they found that the Defendants owed no duty to the  
25 Plaintiffs or that they did not breach any duty owed to the Plaintiffs. No other issues ruled on by  
26 the Defendants.

27 . . . .  
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1 **CONCLUSIONS OF LAW**

2 The Court finds that there was insufficient evidence to support a claim under NRCP Rule  
3 59 that the Jury manifestly disregarded the Jury Instructions

4 THEREFORE, it is ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion  
5 for a New Trial pursuant to NRCP Rule 59 is DENIED.

6 DATED this \_\_\_\_ day of September, 2022. Dated this 23rd day of September, 2022

7 

8 DISTRICT COURT JUDGE

9 Submitted by:

**F29 10D 6D3A EC93**  
**Mark Gibbons**  
**District Court Judge**

10  
11 Donald C. Kudler, Esq.  
12 Cap & Kudler  
13 3202 W. Charleston Blvd.  
14 Las Vegas, NV 89102  
15 *Attorney for Plaintiffs*



1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Jeffrey Myers, Plaintiff(s)

CASE NO: A-16-735550-C

7 vs.

DEPT. NO. Department 17

8 THI of Nevada at Cheyenne,  
9 LLC, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Order Denying Motion was served via the court's electronic eFile  
system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 9/23/2022

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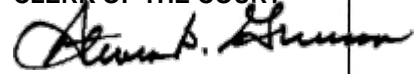
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DISTRICT COURT  
CLARK COUNTY, NEVADA

JEFFREY A. MYERS and ANDREW JAMES,  
individually,

Plaintiff,

vs.

THI OF NEVADA AT CHEYENNE, LLC a  
Foreign Corporation d/b/a COLLEGE PARK  
REHABILITATION CENTER; HEALTHCARE  
REALTY OF CHEYENNE, LLC a Delaware  
Corporation; FUNDAMENTAL  
ADMINISTRATIVE SERVICES, LLC a  
Delaware Corporation; DOES I-XXX; and ROE  
CORPORATIONS I-XXX, inclusive,

Defendants.

CASE NO. : A-16-735550-C

DEPT. NO.: XVII

**NOTICE OF ENTRY OF ORDER**


TO: ALL INTERESTED PARTIES TO THIS ACTION; and

TO: THEIR ATTORNEY'S OF RECORD:


YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that an Order was entered  
in the above-entitled matter on the 23<sup>rd</sup> day of September, 2022 and filed on the 23<sup>rd</sup> day of  
September, 2022, a copy of which is attached hereto.

DATED this 27<sup>th</sup> day of September, 2022.

CAP & KUDLER

  
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Personal Injury Experts

**CERTIFICATE OF SERVICE**

I hereby certify that on the 27<sup>th</sup> day of September, 2022, pursuant to Administrative Order 14-2, I electronically served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER**, addressed as follows:

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*THI of Nevada at Cheyenne, LLC;*  
*Healthcare Realty of Cheyenne, LLC; and*  
*Fundamental Administrative Services, LLC*

  
An Employee of CAP & KUDLER

*Heather S. Smith*  
CLERK OF THE COURT

**ORDR**  
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Attorneys for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

JEFFREY A. MYERS and ANDREW JAMES,  
individually,

Plaintiff,

vs.

THI OF NEVADA AT CHEYENNE, LLC a Foreign  
Corporation d/b/a COLLEGE PARK  
REHABILITATION CENTER; HEALTHCARE  
REALTY OF CHEYENNE, LLC a Delaware  
Corporation; FUNDAMENTAL ADMINISTRATIVE  
SERVICES, LLC a Delaware Corporation; DOES I-  
XXX; and ROE CORPORATIONS I-XXX, inclusive,

Defendants.

CASE NO. : A-16-735550-C

DEPT. NO.: XVII

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**ORDER DENYING PLAINTIFFS' MOTION FOR NEW TRIAL**

This matter having come before the above-entitled Court on August 16, 2022, at the hour of 9:00 a.m. on Plaintiffs' Motion for New Trial, DONALD C. KUDLER, ESQ, appearing on behalf of Plaintiffs ,JEFFREY MYERS and ANDREW JAMES and ALEXANDER F. GIOVANNIELLO, ESQ. appearing on behalf of Defendants THI OF NEVADA AT CHEYENNE, LLC; HEALTHCARE REALTY OF CHEYENNE, LLC; and FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC, the Court having considered the pleadings and papers on file, and the arguments of Counsel at the hearing, after which the Court took the after under advisement. After considering all pleadings and arguments, the Court renders its decision as follows:

## FINDINGS OF FACT

### 1. Jury Instructions At Issue

The Court read the following Jury Instructions to the Jury:

#### Instruction 22

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

Negligence is the failure to exercise that degree of care which an ordinarily careful and prudent person would exercise under the same or similar circumstances. Ordinary care is that care which persons of ordinary prudence exercise in the management of their own affairs in order to avoid injury to themselves or to others.

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

#### Instruction 27

Plaintiffs claim that they were harmed because of the way Defendants managed their property. To establish this claim Plaintiffs must provide all of the following:

1. That Defendants controlled the property;
2. That Defendants were negligent in the inspection, use or maintenance of the property;
3. That Plaintiffs were harmed; and
4. That Defendants' negligence was a substantial factor in causing the Plaintiffs' harm.

#### Instruction 28

The owner or occupier of land has a duty to inspect the premises for latent or concealed dangerous conditions not known to them. If reasonable inspection would have revealed a dangerous condition, the owner or occupier of land is charged with constructive notice of it.

Constructive knowledge of a latent defect may be established by circumstantial evidence.

#### Instruction 29

An owner or occupant of land must exercise ordinary care and prudence to render the premises reasonably safe for the visit of a person invited on their premises for business purposes. An owner or occupant of land who knows, or in the exercise of reasonable care should know, of their dangerous and unsafe condition, and who invites others to enter upon the property, owes to such invitees

1 a duty to warn them of the danger, where the peril is hidden, latent, or concealed,  
2 or the invitees are without knowledge thereof.

3 **2. The Defendants Had a Duty to Maintain Their Breakers**

4 The Plaintiffs retained Don Gifford as an expert in this case who testified that Defendants  
5 had a duty to maintain the equipment including te breakers at Page 16, line 17 to page 17, line  
6 18:

7 Q Do you have any other opinions in regards to this case?

8 A Well, yes. College Park has an obligation, just like any operator of a -- of a  
9 commercial facility, in any jurisdiction where they adopt, and therefore enforce  
10 the national -- National Electrical Code. And where we have Nevada statutes,  
11 College Park is required to maintain the electrical gear to provide for a surf -- a  
12 safe working environment for their own employees, and therefore for other people  
13 who may be in the property. And they failed to do that.

14 And I am also critical, based on it is my understanding, and certainly it was my  
15 understanding on the date of my inspection of the property at least two years ago,  
16 that the circuit breaker that had tripped had never been replaced and the MSA had  
17 never been replaced. I'm critical of that.

18 Q Okay. Do you have any evidence that prior to this incident, let's say in the seven  
19 years, that anybody had ever done any maintenance on this equipment?

20 A Well, I don't know exactly. Based on Mr. Comstock's deposition, he had  
21 indicated that, no, nobody had been in there at least for four years. There's a little  
22 question about his deposition. It may be four, it may be seven or more years. But  
23 based on the fact that there were parts sitting on top of that material, the parts that  
24 actually fell, those are not something that are part of the original installation of the  
25 equipment.

26 Furthermore, in the event where College Park was doing the appropriate job of  
27 inspecting and maintaining their equipment, that sort of thing could have, would  
28 have in all likelihood been discovered prior to having somebody go into the gear  
live.

Mr. Gifford went on to testify that the Defendants were required to maintain the breakers  
pursuant to law at Page 66 line 22 - page 68, line 5:

On the other hand, the OSHA -- the OSHA violations by College Park was the  
fact that the requirement under 1926 is that the employer, in this particular case,  
College Park, had an obligation to provide a safe working environment. They had  
an old electrical panel that had been -- had been opened and something had been  
done inside of it and people had left materials inside of it that they shouldn't have  
left. And as time went on, because under the -- under the rules of the National  
Electrical Safety Code and under the National Electrical Code, the owner of the  
facility has to maintain and inspect their equipment. Those things were not done.  
And that comprises an OSHA violation.



1 The requirement to maintain the breakers pursuant to law was reiterated by Plaintiff  
2 Andrew James testified about the requirements to test and maintain breakers at Page 88, line 23 -  
3 page 89, line 10:

4 Q Okay. Did you assume that this -- these breakers were tested?

5 A Yes.

6 Q Why?

7 A Well, it's required, again, under several federal, state agencies. NFPA requires  
8 maintenance and inspection, and all maintenance and inspection shall be  
9 documented. The NEC requires the exact same thing. OSHA requires the exact  
10 same thing. And because it's a health facility, Center for Medicaid and Medicare  
11 Services requires the exact same thing. So going into a medical facility, you  
12 assume that since people live there and people's lives are a stake, that they're  
13 doing what they're supposed to be doing. And in this case, it's my firm opinion as  
14 well as our electrical experts, that they were not doing now.

12 **3. The Defendants Failed to Maintain Electrical Equipment Including the Main**  
13 **Breaker**

14 Roy Comstock has worked as the director of the maintenance department for the  
15 Defendant since 2007. See, Comstock Trial testimony at Page 6, Lines 17 - 25. The testimony  
16 cited below demonstrates that the Defendant has not, and does not, conduct regular inspections of  
17 the electrical system or conduct any maintenance on it unless something goes wrong.

18 At Trial, Mr. Comstock testified that his responsibilities are to fix things that are broken  
19 at Page 11, Lines 1 - 7:

20 Q Okay. What is your job responsibilities?

21 A Well if somebody has say a controller for their bed and it doesn't work, then my  
22 job is to determine that it doesn't work and replace it. And I'm to make sure that  
23 the facility has lightbulbs, caps that go over the lights. Just about all of the  
24 materials in the building. I order those materials. I set up the contracts with the  
25 various vendors for jobs that need to be done. That type of thing.

26 Mr. Comstock went on to state that his electrical work is limited to minor repairs at Page  
27 16, Lines 1 - 9:

28 Q Do you do any electrical work in the facility?

A Small stuff, switches, some receptacles, and light bulbs.

Q Okay. Do you do any electrical work -- first of all, does the facility have  
electrical panels?



1 A They have main electrical panels. Yes, sir.

2 Q Right. And you also have a big generator?

3 A Yeah. We have a 10 kilowatt generator. Yes, sir.

4 Q Okay. Do you do any work on those panels?

5 A No, sir.

6 Mr. Comstock further testified that in the SEVEN years before his incident, no one had  
7 been in the panels for any reason at Page 21, lines 10 - 16

8 Q From 2007 to 2014, did anybody that you were aware of go into that panel?

9 A No. Just these gentlemen when they started to work.

10 Q Okay. Before these gentlemen -- before they started to work in that panel, was  
11 there any other person in that panel that you were aware of?

12 A No, sir.

13 Mr. Comstock testified that things had been left as they were when originally installed  
14 and that no regular inspection by licensed electricians at Page 25, lines 1 - 8:

15 Q Okay. Were they -- were any of the panels labeled beforehand?

16 A I don't believe so. No. That's why they said it was all convoluted. It was all just  
17 mish mashed. That was from the original installation of the -- from the building  
when it was built.

18 Q Do you know whether or not there were any regular inspection of those panels  
by a licensed electrician?

19 A No. Just a licensed electrician if there's a problem.

20 Mr. Comstock admitted that they don't keep any log books that would support any claim  
21 that they conducted regular inspections and maintenance of the breakers (a claim they did not  
22 make to date) at Page 26, Lines 18 - 21:

23 Q I forgot where I was. I was on the log. Let me ask you this. A regular inspection  
24 and those panels where a log is kept, how about that?

25 A No. No, sir.

26 Mr. Comstock, again, confirmed that there were no regular inspections of the electrical  
27 panel at Page 33, line 12 - page 34, line 5:

28 Q Now I just want to make clear. The entire time that you've been there, no  
regular maintenance had been done on that panel, correct?



1 A No. the only maintenance that's done is when there's a problem. That's correct.  
2 Q No regular inspections had been done on that panel ever?  
3 A Well I can't say ever. I don't know. There was people there before me.  
4 Q The entire time that you've been there?  
5 A No. It's only if there's a problem. It isn't like somebody comes out and does the  
6 inspection.  
7 Q Let me ask the question again.  
8 A The people who inspected it when it was --  
9 Q Let me ask the question again.  
10 A Yes, sir.  
11 Q You do not do regular inspections on that electrical panel or have somebody do  
12 them, do you?  
13 MR. A. GIOVANNIELLO: Objection. Asked and answered.  
14 THE WITNESS: Yes. I don't. That's correct.  
15 The failure to maintain the equipment continued even after the arc flash that injured the  
16 Plaintiffs as confirmed by Mr. Comstock at Page 38, lines 17 - 22  
17 THE COURT: Was any work done on the electrical panel between ILP [Andrew  
18 James] finished? Was there -- was any work done on the electrical panel between  
19 when ILP finished their work, and when Helix discovered the screw placed  
20 through the electrical wires?  
21 THE WITNESS: No. No work was done by any other electrical company. It was  
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23 The Court asked Plaintiff Jeffrey Myers about maintenance log books which lead to him  
24 testifying that he would expect the Defendants to have fulfilled their duty and maintained the  
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28 THE WITNESS: No logs were made available for me to check.  
THE COURT: You mentioned the breaker had not been properly maintained. Are  
you required to continue working on equipment if it hasn't been properly  
maintained?  
THE WITNESS: Well, I can only say that I believe that it wasn't maintained after  
that incident. Before that incident, all you can do is assume that it had been.

Mr. James again discussed the requirement to maintain the equipment at Page 120, line 17 - page 121 line 4:

Q Okay. If there's no labeling why would you do the work on that panel?

A Because it's a general assumption -- well, first of all, NFPA says anything under 240 volts, there's a specified level of PPE. We were wearing that level of PPE. Plus, as you know, there are requirements under CMS, NFPA, NEC, OSHA for this facility to be testing and inspecting this equipment, and they did not do that,

Q But you don't really know that they did not do that, right? You have no evidence that they didn't do that at all, right?

A Evidence in this case, yes.

Q But what's that?

A They couldn't produce any log books. Roy Comstock's deposition says that they didn't do it. Yes. There's absolutely evidence.

Mr. James again discussed the requirement to maintain the breaker and the failure to do so at Page 148, line 23 - page:

THE COURT: How do you test a circuit breaker without a test slash reset button?

THE WITNESS: So the only real way to test a breaker is to do a manual reset. So, Eaton Manufacturing, who now owns the subsequent companies that bought Westinghouse that manufactured that breaker, they have maintenance requirements that are required, you know, under Medicaid, Medicare, under the NFPA, under the NEC, under OSHA -- it all refers to manufacturer-recommended maintenance intervals. Eaton, who now owns the company that built that breaker, their manufacturer's inspection intervals are every three years, that breaker is supposed to be manually tripped, manually turned off, manually turned back on.

My belief is that breaker was never tested like that. There's no inspection reports of it, because also Eaton says inspections shall be documented. NFPA, NEC, OSHA, and CMS all say all inspection -- all inspection and maintenance activities shall be documented. Shall is the operative word there. It's not an option. They're required to actually document every time that breaker was tested, per the manufacturer's specifications. They could produce none of that evidence, which tells me it was never tested. Ever. It was never inspected, it was never tested, and there was no log book ever made. So the only way to really test that breaker is to manually turn it off and turn it back on.

#### **4. The Main Breaker Failed**

Plaintiff's expert Don Gifford testified that the main breaker should have tripped nearly immediately which would have prevented the arc flash from occurring but that it did not trip as it should have at Pg. 14 lines 10 - 22

....

1 And when that happened, two things are supposed to happen. One is just a natural  
2 outgrowth of the laws of physics; there is going to be some kind of an arcing  
3 event, and it may be a large explosion or a small explosion. The second thing that  
4 can happen in the event where the circuit breaker protecting that particular layout  
is not functioning properly, it's really important -- just like the brakes on your car,  
when you're going 70 and somebody pulls in front of you going 30 and you hit the  
brakes, you want to be able to stop immediately.

5 Just like that, a circuit breaker controlling the electrical wiring in this panel, when  
6 that arc occurred, the circuit breaker is supposed to trip almost instantaneously. It  
7 should trip within just a very tiny fraction of a second. In this particular instance,  
that circuit breaker did that trip for  
several seconds.

8 Mr. Gifford offered further proof that the main breaker failed at Page 67, Line 7 to page  
9 68, Line 5:

10 THE COURT: How does the witness determine the length of time the circuit  
11 breaker was delayed?

12 THE WITNESS: That's a good question. Because of the description of this arc  
13 flash and what happened, let me see if I can get technical but make it simple at the  
14 same time. Not that you're -- can't deal with technical issues.

15 A circuit breaker can and should trip in about 25 milliseconds. Let me break that  
16 down in different ways. You probably heard that with electricity in alternating  
17 current, it kind of wave -- it goes along in a wave called the sign wave. And every  
60 seconds the sign wave goes from the top to the bottom through center point 60  
times in one second. If the circuit breaker were to trip in one cycle, that would be  
about .017 of a second. That would be extremely fast. The circuit  
breaker probably should have tripped maybe ten times faster than that.

18 So when the arc flash -- when the -- when the event that --let's say that this is the  
19 bus location between -- this is an insulator, and this is phase B and phase C. So  
20 when the screw gets on those, 20 -- 25 milliseconds is so fast that immediately the  
circuit breaker would trip. And that prevents the arc flash from going into a big  
ball. In this particular instance, it took many cycles for it to develop into a big  
ball. And, quite frankly, the other part is I've not seen any evidence that the  
circuit breaker ever did trip. But with an arc flash of that nature tells me that the  
circuit breaker was not maintained and was not functioning properly.

21  
22  
23 Lastly, Mr. Gifford again noted that the breaker failed to trip at any time during the event  
24 at Page 69, lines 13 - 25:

25 THE COURT: What was the instantaneous setting of the breaker -- question  
26 mark. How was the breaker trip time known or estimated -- open parens -- several  
27 seconds was testified -- closed  
28 paren -- with no arc flash study, how would the proper instantaneous setting be  
known?

THE WITNESS: That's an excellent question. We don't know. I haven't seen the  
arc study on that particular breaker. I'm just telling you that it never tripped.  
Therefore, no matter what the study showed or the what curve for the electrical



1 current, with respect to time and voltage with respect to time, would be -- it would  
2 not be of value to me in determining, why didn't the breaker trip. It didn't trip  
3 because it was faulty. There was enough -- there was enough electrical energy that  
4 there's no question it should have tripped.

5 Mr. Myers noted that at no time did the main breaker trip during the event that injured the  
6 Plaintiffs at Page 20, lines 2 - 18

7 Q Okay. And at that point, everything went to hell?

8 A All I really remember was it just got really bright and believe I must have put  
9 my arm up like this, and I -- just as hard as I could close my eyes it just kept  
10 getting brighter and brighter. And I didn't understand why it wouldn't end.  
11 Typically, that should have -- could have been an explosion, a bang. That main  
12 breaker should have tripped that thing off right away.

13 Q Speaking of the main breaker, after this incident you went into the lobby?

14 A Yeah, after -- well, I was blinded for a minute or so temporarily because it was  
15 so bright. And then -- yeah, then I walked out of the room, and they were looking  
16 at me. I saw my arm, I go, well, you know, maybe somebody ought to call 911.

17 Q Were the lights on?

18 A The lights never went off.

19 Q Okay. So the light in the room didn't go off?

20 A The breaker never tripped.

21 **5. Jury Verdict**

22 The Jury was presented with a Verdict Form whose first question was "Were the  
23 Defendants Negligent?" The Jury responded "No." to that query and went no farther. The Jury  
24 could only have reached this decision had they found that the Defendants owed no duty to the  
25 Plaintiffs or that they did not breach any duty owed to the Plaintiffs. No other issues ruled on by  
26 the Defendants.

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28 . . . .

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. . . .

CAP & KUDLER  
3202 W. CHARLESTON BLVD.  
LAS VEGAS, NEVADA 89102  
PHONE: (702) 878-8778  
FACSIMILE: (702) 878-9350  
HTTP://WWW.CAPANDKUDLER.COM



1 **CONCLUSIONS OF LAW**

2 The Court finds that there was insufficient evidence to support a claim under NRCP Rule  
3 59 that the Jury manifestly disregarded the Jury Instructions

4 THEREFORE, it is ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion  
5 for a New Trial pursuant to NRCP Rule 59 is DENIED.

6 DATED this \_\_\_\_ day of September, 2022.

Dated this 23rd day of September, 2022

7 

8 DISTRICT COURT JUDGE

9 Submitted by:

**F29 10D 6D3A EC93**  
**Mark Gibbons**  
**District Court Judge**

10  
11 Donald C. Kudler, Esq.  
12 Cap & Kudler  
13 3202 W. Charleston Blvd.  
14 Las Vegas, NV 89102  
15 *Attorney for Plaintiffs*

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Jeffrey Myers, Plaintiff(s)

CASE NO: A-16-735550-C

7 vs.

DEPT. NO. Department 17

8 THI of Nevada at Cheyenne,  
9 LLC, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Order Denying Motion was served via the court's electronic eFile  
system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 9/23/2022

15 "Donald C. Kudler, Esq." .

donaldkudler@capandkudler.com

16 "Robert D. Rourke, Esq." .

rourkelaw@embarqmail.com

17 Liz Carrion .

lizcarrion@capandkudler.com

18 Lori Proctor .

Lori.Proctor@wilsonelser.com

19 Brandon Smith

bsmith@ocgas.com

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5	Melanie Thomas	melanie@rourkelawfirm.com
6	Antoinette Watkins	awatkins@ocgas.com
7	Liz Carrion	lizcarrion@capandkudler.com
8	Donald Kudler	donaldkudler@capandkudler.com
9	Cindie McCulloch	cmcculloch@ocgas.com
10	Robert Rourke	robert@rourkelawfirm.com
11	Eighth Judicial District Court	dept17lc@clarkcountycourts.us
12	Carolina Olmos	cio@giolawgroup.com
13	Carolina Olmos	cio@giolawgroup.com
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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**January 24, 2017**

---

A-16-735550-C	Jeffrey Myers, Plaintiff(s)
	vs.
	THI of Nevada at Cheyenne, LLC, Defendant(s)

---

**January 24, 2017      9:30 AM      Discovery Conference**

**HEARD BY:** Bulla, Bonnie

**COURTROOM:** RJC Level 5 Hearing Room

**COURT CLERK:** Jennifer Lott

**RECORDER:** Francesca Haak

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Kudler, Donald   C	Attorney
	Rourke, Robert   D	Attorney

**JOURNAL ENTRIES**

- Mr. Rourke had numerous personal family issues, however, counsel will file the CCR shortly. COMMISSIONER RECOMMENDED, Mr. Rourke has up to and including 2/7/17 to file an ICCR or Joinder; Status Check SET; counsel can send a letter requesting Status Check come off calendar (copy opposing counsel).

Colloquy re: deadlines. Mr. Rourke stated another party may come in the case (Contractor). Counsel anticipate 7 to 10 days for trial re: Personal injury / Negligence; no Settlement Conference requested. COMMISSIONER RECOMMENDED, discovery cutoff is 4/20/18; adding parties, amended pleadings, and initial expert disclosures DUE 1/19/18; rebuttal expert disclosures DUE 2/20/18; FILE dispositive motions by 5/21/18. Scheduling Order will issue.

2/14/17 9:00 a.m. Status Check: Defts' CCR

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**February 07, 2018**

---

A-16-735550-C      Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

---

**February 07, 2018      3:00 AM      Minute Order**

**HEARD BY:** Cadish, Elissa F.      **COURTROOM:** RJC Courtroom 15B

**COURT CLERK:** Keith Reed

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Pursuant to EDCR 2.20 and 2.23 and no opposition having been filed, Defendant THI of Nevada at Cheyenne, LLC's Motion for Leave to File Third-Party Complaint is hereby GRANTED. Proceedings scheduled for February 13, 2018 are hereby OFF CALENDAR. Counsel shall promptly submit a proposed order.

CLERK'S NOTE: The above minute order has been distributed to: Erik K. Stryker (Wilson, E, M, E & D)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Negligence - Premises Liability

# COURT MINUTES

**April 24, 2018**

A-16-735550-C            Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

**April 24, 2018                      8:30 AM                      Motion to Dismiss**

**HEARD BY:** Cadish, Elissa F. **COURTROOM:** RJC Courtroom 15B

**COURT CLERK:** Keith Reed

**RECORDER:** De'Awna Takas

**REPORTER:**

## PARTIES

**PRESENT:** Arledge, Jennifer Willis Attorney  
Kim, II, Henry H. Attorney  
Stoberski, Michael E Attorney

## JOURNAL ENTRIES

- Arguments by Mr. Kim and Ms. Arledge as to their respective position in regards the arbitration clause provisions, with Ms. Arledge requesting leave to amend the Third Complaint. Court stated findings, noting the arbitration provision governs the claims raised in the Third Party Complaint, and rather than dismissing ORDERED, the Third- Party complaint is STAYED for parties to proceed to address the claim through Arbitration as called for by the agreement of parties under the National Arbitration Form Code of Procedures, or other such associations; Mr. Kim to prepare the order, running it by opposing counsel prior to submission.

5-15-18 8:30 AM Status Check

7-24-18 9:30 AM Calendar Call

7-30-18 10:00 AM Jury Trial

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability****COURT MINUTES****May 15, 2018**

A-16-735550-C      Jeffrey Myers, Plaintiff(s)  
                                  vs.  
                                  THI of Nevada at Cheyenne, LLC, Defendant(s)

**May 15, 2018      8:30 AM      Status Check**

**HEARD BY:** Cadish, Elissa F.      **COURTROOM:** RJC Courtroom 15B

**COURT CLERK:** Keith Reed

**RECORDER:** De'Awna Takas

**REPORTER:**

**PARTIES**

**PRESENT:**      Arledge, Jennifer Willis      Attorney  
                          Kudler, Donald C      Attorney

**JOURNAL ENTRIES**

- Ms. Arledge stated parties have spoken, more time is needed for discovery, and requested a continuance of the at least 7 day trial until the January or March stack. Mr. Kudler concurred. Colloquy regarding the continuation of the trial, time needed for the completion of discovery and expert disclosures. COURT ORDERED, trial CONTINUED; matter SET for status check; Discovery cut off is September 5th, Dispositive Motion Deadline October 15th, Motions in Limine are due October 25th; trial setting order to be issued. Colloquy regarding orders and briefing.

10-2-18    8:30 AM    STATUS CHECK

12-11-18   9:30 AM   CALENDAR CALL

1-2-19    10:00 AM   JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**September 18, 2018**

---

A-16-735550-C      Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

---

**September 18, 2018      3:00 AM      Motion to Withdraw as  
Counsel**

**HEARD BY:** Cadish, Elissa F.

**COURTROOM:** RJC Courtroom 15B

**COURT CLERK:** Keith Reed

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- The Court has read and considered the Motion to Withdraw as Counsel filed by Wilson Elser, to which there is no opposition. Good cause appearing, the Court hereby grants the motion and notes that defendants will continue to be represented by attorney Robert Rourke. The Court has signed the order submitted by Wilson Elser.

CLERK'S NOTE: The above minute order has been distributed to: Erik K. Stryker (Wilson, E, M, E & D)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**December 11, 2018**

---

A-16-735550-C      Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

---

**December 11, 2018      8:30 AM      Status Check**

**HEARD BY:** Cadish, Elissa F.      **COURTROOM:** RJC Courtroom 15B

**COURT CLERK:** Keith Reed

**RECORDER:** De'Awna Takas

**REPORTER:**

**PARTIES**

**PRESENT:**      Kudler, Donald    C      Attorney  
                 Rourke, Robert   D      Attorney  
                 Stoberski, Michael   E      Attorney

**JOURNAL ENTRIES**

- Court noted the stipulation for the extension of the discovery deadline. Mr. Kudler stated it's also to reschedule the trial. With a dispositive motion deadline of May 14th, Court stated the trial will be moved to the July stack and a order will be issued with the new trial date; the stipulation and order have been signed and counsel is to follow-up with the Court if the orders are not seen.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**May 14, 2019**

---

A-16-735550-C      Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

---

**May 14, 2019      9:30 AM      Status Check**

**HEARD BY:** Bluth, Jacqueline M.      **COURTROOM:** RJC Courtroom 10C

**COURT CLERK:** Keith Reed

**RECORDER:** De'Awna Takas

**REPORTER:**

**PARTIES**

**PRESENT:**      Kudler, Donald   C      Attorney  
                 Rourke, Robert   D      Attorney

**JOURNAL ENTRIES**

- Mr. Kudler stated more time is needed for discovery as they had to replace an expert and requested the trial be moved out a bit. Court noted the minutes of December 11, 2018. Mr. Rourke stated there's no opposition to moving the date requesting early March. Colloquy regarding trial setting. COURT ORDERED, trial CONTINUED. Mr. Rourke stated a stipulation will be submitted.

3-10-20 9:00 AM CALENDAR CALL

3-16-20 10:00 AM JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability****COURT MINUTES****November 06, 2019**

A-16-735550-C      Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

**November 06, 2019      9:00 AM      Motion to Compel      Plaintiffs' Amended  
Motion to Compel  
Discovery Responses**

**HEARD BY:** Truman, Erin**COURTROOM:** RJC Level 5 Hearing Room**COURT CLERK:** Jennifer Lott**RECORDER:** Francesca Haak**REPORTER:****PARTIES**

**PRESENT:**      Kudler, Donald   C      Attorney  
                         Rourke, Robert   D      Attorney

**JOURNAL ENTRIES**

- Mr. Rourke had no opposition to the Motion, he will supplement by 11-20-19, and there was no request for attorney's fees. Mr. Rourke has encrypted information that he's having trouble accessing. Argument by Mr. Kudler. There was a letter identifying deficiencies in the Motion.

Motion having been duly filed and served, no opposition having been filed, pursuant to EDCR 2.20(e) and for good cause shown, COMMISSIONER RECOMMENDED, motion GRANTED; documents in Defts' possession, custody, or control must be provided to Plaintiff; if Deft doesn't have any documents, indicate what efforts were taken to locate documents, or state if the documents never existed; also, identify if documents are in the possession, custody, or control of a Third Party, and Mr. Rourke will update Mr. Kudler on his efforts to obtain the documents. COMMISSIONER RECOMMENDED, all disclosures and supplements due by 11-20-19. Mr. Kudler to prepare the Report and Recommendations, and Mr. Rourke to approve as to form and content. A proper report must be timely submitted within 14 days of the hearing. Otherwise, counsel will pay a contribution.



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**December 12, 2019**

---

A-16-735550-C      Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

---

**December 12, 2019      3:00 AM      Status Check: Compliance      Status Check:  
Compliance / 11-6-19  
DCRR**

**HEARD BY:** Truman, Erin

**COURTROOM:** No Location

**COURT CLERK:** Jennifer Lott

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- The 11-6-19 Report and Recommendation remains outstanding. Mr. Kudler was given the responsibility to submit the Report and Recommendation from the 11-6-19 hearing. A proper report must be timely submitted within 14 days of the hearing. Otherwise, counsel will pay a sanction. COMMISSIONER RECOMMENDED, matter CONTINUED to an in chambers status check.

CLERK S NOTE: This Minute Order was electronically served by Courtroom Clerk, Jennifer Lott, to all registered parties for Odyssey File & Serve. jl

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability****COURT MINUTES****March 31, 2020**

A-16-735550-C      Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

<b>March 31, 2020</b>	<b>9:00 AM</b>	<b>Motion to Compel</b>	<b>Plaintiffs' Third Motion to Compel Discovery Responses</b>
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**HEARD BY:** Truman, Erin**COURTROOM:** RJC Level 5 Hearing Room**COURT CLERK:** Phyllis Irby**RECORDER:** Francesca Haak**REPORTER:****PARTIES**

<b>PRESENT:</b>	Kudler, Donald   C	Attorney
	Rourke, Robert   D	Attorney

**JOURNAL ENTRIES**

- Mr. Kudler and Mr. Rourke participated telephonically via Court Call.

Mr. Kudler stated the Commissioner had previously ordered, that Defense counsel provide what attempts and where information could be located; which have not been provided to Plaintiff.

Mr. Rourke stated he provided supplement of all the written discovery in November 2019.

COMMISSIONER NOTED, recommendation from January 2020, specifically stated any documents in Defendants possession, custody and control must be provided to Plaintiff. Further recommended if Defendant doesn't have documents, Defendant must indicate what efforts were taken to locate documents or state the documents never existed. Finally, recommended if Defendant identify any responsive documents are in possession, custody and control of a third party.

Mr. Rourke stated he felt he complied with that in the November 2019 description; stating he provided that information on behalf of his client that he provided the information he had and what he didn't have.

Following further argument of counsel. Commissioner stated this is the second Motion to Compel that has not been opposed. Further, the Commissioner stated there has been no request for

additional relief. COMMISSIONER RECOMMENDED, pursuant to EDCR 2.20E, MOTION TO COMPEL GRANTED. ADVERSE INFERENCE, THAT DEFENDANT WAS RESPONSIBLE FOR SCREW THAT FELL. Mr. Kudler to prepare the DCCR.

5-19-20 9:30 AM STATUS CHECK: TRIAL READINESS (DEPT. VI)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**May 20, 2020**

---

A-16-735550-C      Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

---

**May 20, 2020**

**12:00 AM**

**All Pending Motions**

**HEARD BY:** Bluth, Jacqueline M.

**COURTROOM:** RJC Courtroom 10C

**COURT CLERK:** Keith Reed

**RECORDER:** De'Awna Takas

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- STATUS CHECK: TRIAL READINESS...DISCOVERY COMMISSIONER'S REPORT AND  
RECOMMENDATIONS- 3/31/2020 PROCEEDING

Present via video, Attorneys Donald Kudler and Robert Rourke. Court inquired in regards to the Discovery Commissioner's Report. Arguments by Mr. Rourke and Mr. Kudler. COURT ORDERED, a decision will be issued by minute order; trial VACATED; scheduling order to be issued. Colloquy regarding discovery, scheduling order, tolling of time due to COVID-19, and Settlement Conference.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**July 22, 2020**

---

A-16-735550-C	Jeffrey Myers, Plaintiff(s)
	vs.
	THI of Nevada at Cheyenne, LLC, Defendant(s)

---

<b>July 22, 2020</b>	<b>3:00 AM</b>	<b>Minute Order</b>
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**HEARD BY:** Bluth, Jacqueline M.

**COURTROOM:** RJC Courtroom 10C

**COURT CLERK:** Keith Reed

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- After reviewing the Discovery Commissioner's Report and Recommendations, Defendant's Objection thereto, Plaintiff's Opposition to the Objection, hearing argument thereon on May 20, 2020 and reviewing the JAVS from the hearing in front of the Discovery Commissioner on November 6, 2019, the Objection is denied and it is hereby ordered that the Discovery Commissioner's Report and Recommendations dated April 20, 2020 is affirmed and adopted.

The Court considered the following in reaching its decision:

At the November 6, 2019 hearing for the motion to compel filed on October 3, 2019, the Discovery Commissioner ruled that Defendant needed to comply with four conditions:

1. Counsel for Defense would supplement discovery by November 20, 2019
2. Documents in Defendant's possession, custody, or control would be provided to Plaintiff
3. If Defendant did not have any of the requested documents, Defendant would indicate what efforts were taken to locate documents, or state if the documents never existed.
4. Defendant would identify if any responsive documents are in possession, custody, or control of a Third Party.

While Defendant believed he answered some of these questions in written discovery, he never complied with recommendation number three. Furthermore, when Defendant did not comply, the matter came back in front of Discovery Commissioner Truman on March 31, 2020 for a hearing on a third Motion to Compel filed by Plaintiff, which Defendant did not oppose. Discovery Commissioner Truman found that Defendant did not comply with the recommendations, did not oppose the motion to compel, that this was the second motion to compel that had gone unopposed, and that Defendant did not request more time to comply with the previous order. Thus, Plaintiff's Motion to Compel and request for sanction in the form of an adverse inference was granted. Defendant's failure to comply with the discovery commissioner's report and recommendations, and failure to oppose two Motions to Compel, provided justification for the adverse inference ordered.

CLERK'S NOTE: The above minute order has been distributed via e-mail to: ATTORNEYS Donald Kudler and Robert Rourke. kar 7/28/20

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**March 10, 2021**

---

A-16-735550-C      Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

---

**March 10, 2021      9:30 AM      Calendar Call**

**HEARD BY:** Allf, Nancy      **COURTROOM:** RJC Courtroom 03A

**COURT CLERK:** Nicole McDevitt

**RECORDER:** Brynn White

**REPORTER:**

**PARTIES**

**PRESENT:**      Kudler, Donald   C      Attorney  
                 Rourke, Robert   D      Attorney

**JOURNAL ENTRIES**

- All parties present via the BlueJeans Videoconferencing Application.

Mr. Rourke stated he spoke with Mr. Kudler, they are trying to set up mediation, and they would like to set out the trial. Upon inquiry of Mr. Kudler as to the status of the stay on the five year rule, Court directed counsel they were to do the calculation of the five year rule based on the administrative orders. Mr. Rourke stated if the trial date is set out then parties can stipulate to extend the five year rule. Colloquy regarding availability for upcoming trial stacks. COURT ORDERED, trial dates VACATED and RESET to October trial stack.

10/5/2021 9:30 AM CALENDAR CALL  
10/11/2021 10:00 AM JURY TRIAL (STACK)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**September 21, 2021**

---

A-16-735550-C      Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

---

**September 21, 2021      9:00 AM      Motion in Limine**

**HEARD BY:** Villani, Michael      **COURTROOM:** RJC Courtroom 11A

**COURT CLERK:** Samantha Albrecht

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

**PRESENT:**      Giovanniello, Alexander F., ESQ      Attorney  
                 Kudler, Donald C      Attorney

**JOURNAL ENTRIES**

- Arguments by counsel. Upon Court's inquiry, Mr. Kudler indicated he had tried to contact Mr. Rourke requesting a copy of the expert report. Mr. Kudler stated the Plaintiffs are ready to move forward with trial. Court noted the parties were before the Discovery Commissioner back in March 2020 on a second Motion to Compel. Mr. Giovanniello noted he had not received the file from Mr. Rourke, therefore he requested the Calendar Call be moved back to October 5th, to allow his Motions to be heard prior. Mr. Kudler had no objection to moving the Calendar Call. COURT ORDERED, Calendar Call CONTINUED and matter taken UNDER ADVISEMENT for the Court to review the history of this case, with a written decision to be issued either this afternoon or tomorrow.

9/28/2021 9:00 AM MOTION FOR ORDER EXTENDING TIME

9/28/2021 9:00 MOTION TO CONTINUE TRIAL

9/28/2021 9:00 AM MOTION TO REOPEN DISCOVERY

10/5/2021 9:00 AM CALENDAR CALL



10/11/2021 10:30 AM JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Negligence - Premises Liability

# COURT MINUTES

September 22, 2021

A-16-735550-C            Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

**September 22, 2021      3:00 AM      Minute Order**

**HEARD BY:** Villani, Michael

**COURTROOM:** Chambers

**COURT CLERK:** Samantha Albrecht

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

## JOURNAL ENTRIES

- Plaintiffs Motion in Limine to Exclude Any Experts from Testifying on behalf of the Defendants came before this Court on September 21, 2021. The Court took the matter under advisement. After considering all pleadings and arguments, the Court renders its decision as follows:

The initial Complaint in this matter was filed on April 25, 2016. An Amended Complaint was served on May 6, 2016 and Answers were filed on July 26, 2016. The Arbitration Commissioner exempted this case from Arbitration on August 23, 2016. On February 2, 2017, a Scheduling Order was issued and an Order Setting Jury Trial was issued on February 15, 2017. Dates by those documents included the following: Initial Expert Disclosures: January 19, 2018; Rebuttal Expert Disclosures: February 20, 2018; Close of Discovery: April 20, 2018. On March 17, 2017, Defendants filed a Notice of Association including Wilson, Elser, Moskowitz, Edelman & Dicker LLP appearing on behalf of the Defendants to assist current Counsel at the Rouke Law Firm.

On April 3, 2017, the Plaintiffs served Discovery (Requests for Admissions, Interrogatories and Requests for Production) on Defendants. Despite being granted multiple extensions, Defendants did not comply. On October 30, 2017, Plaintiffs filed their First Motion to Compel Discovery Responses to be heard by the Discovery Commissioner. Plaintiff withdrew the Motion to Compel based on the Defendants finally serving Discovery Responses on November 9, 2017. See Exhibits 4-12 of Plaintiff's

Second Motion to Compel filed on September 9, 2019.

On August 14, 2018, Wilson, Elser, Moskowitz, Edelman & Dicker LLP filed a Motion to Withdraw as Defendants Co-Counsel citing communication issues with the client and co-counsel have prevented Affiant's law firm from effectively representing the client, which constitutes good cause for withdrawal. The Motion was granted and the Notice of Entry of Order Granting Counsel's Motion to Withdraw was entered on October 1, 2018. Following the withdrawal and in an apparent effort to work with opposing counsel, Plaintiff agreed to stipulate to extend discovery deadlines. See Stipulation and Order to Extend Discovery Deadlines (Third Request) filed on January 15, 2019.

However, upon reviewing Defendants' Discovery responses, Plaintiff's Counsel submitted letters to Defense Counsel detailing how Defendants' Discovery responses were deficient. Moreover, Plaintiff's Counsel noted Defendants served a supplement to their Early Case Conference Disclosures which did not have any of the disclosed records attached. See Exhibit 15 of Plaintiff's Second Motion to Compel filed on September 9, 2019. Despite representations by Defense Counsel that supplemental responses and records would be provided, those records were not produced, prompting Plaintiff to file a Second Motion to Compel Discovery Responses on September 9, 2019 (including an Amended Second Motion to Compel Discovery Responses) for the following: (1) Plaintiff's Request for Production Nos. 1, 2, 3, 4, 5, 6, 7, and 8; (2) Plaintiff Interrogatories Nos. 1, 2, 3 and 8; (3) Plaintiff's Requests for Admissions Nos. 2 and 3.

On November 6, 2019, Plaintiff's Amended Second Motion to Compel was heard before the Discovery Commissioner. Having heard the arguments for Plaintiff's Amended Second Motion to Compel Responses and Defense Counsel Robert Rouke's representations that he had no opposition to the Motion, Plaintiff's Motion was granted. See Exhibit 14 to Plaintiff's Third Motion to Compel Discovery Responses filed on February 24, 2020. Defendants was ordered to supplement by November 19, 2019. Defendants were further ordered that the documents in Defendants' possession, custody, or control must be provided to Plaintiff. Moreover, if Defendants did not have any documents, the Defendant were also ordered to indicate what efforts were taken to locate the documents, or state if the documents never existed.

On February 13, 2020, Plaintiff's Counsel and Defense Counsel held a 2.34 meeting. Defense Counsel stated to Plaintiff's Counsel that there was nothing new and that Defendants have produced everything within their possession. Defense Counsel stated that subpoenas were issued for the documents, but Plaintiff's Counsel did not receive any copies of the subpoenas. Following Defendants' failure to comply with the Discovery Commissioner's Recommendations and Court Order, Plaintiff's filed their Third Motion to Compel Discovery Responses on February 24, 2020.

On March 13, 2020, Plaintiff's Third Motion to Compel was heard before the Discovery Commissioner. Following argument from Counsel, the Commissioner stated this is the second Motion to Compel that has not been opposed. Commissioner further stated that there has been no request for additional relief. Commissioner recommended pursuant to EDCR 2.20(e), Motion to Compel Granted. Furthermore, an Adverse Inference that Defendant was responsible for screw that

fell was granted. See Discovery Commissioner's Report and Recommendations filed April 20, 2020.

On July 31, 2021, Defendants filed a Notice of Association including Giovanniello Law Group appearing on behalf of the Defendants to assist current Counsel at the Rouke Law Firm. During the September 21, 2021 hearing regarding Plaintiffs' Motion in Limine to Exclude any Experts from Testifying on behalf of the Defendants, this Court heard argument from Plaintiff Counsel and Defendant's Co-Counsel Alex Giovanniello regarding the issue of whether to impute the conduct and knowledge of Defense Counsel Robert Rouke on Defendants.

Plaintiff cites three cases supporting their position that the conduct of Defense Counsel is imputed on Defendants:

The first case mentioned was *Lange v. Hickman*, 92 Nev. 41 (1976). After additional review of *Lange*, this Court noted that in *Lange*, the case was dismissed for failure to have medical and tax record consents signed. *Id.* Further, in *Lange*, new counsel for the Plaintiff argued that Plaintiffs were never advised by their prior attorney of the requirement to sign the consent form. *Id.* at 43. Nevertheless, the Court ruled that the District Court did not abuse its discretion in ordering a dismissal of the case because "Notice to an attorney is in legal contemplation, notice to his client the attorney's neglect is imputed to his client and the client is held responsible for it." *Id.* Accordingly, this Court takes note that under *Lange* conduct of an attorney is imputed conduct upon the client.

The second case mentioned was *Valente v. First Western Sav. and Loan Ass'n*, 90 Nev. 377(1974). In *Valente*, the case was dismissed for failure to prosecute action pursuant to NRCp 41(e); lead counsel was told by an associate attorney that they were working on the case. *Id.* at 379. The Nevada Supreme Court again, upheld imputing knowledge and conduct of the attorney on the client. *Id.* Notably, the Court ruled "In this case apparently, the client was pacified into believing that his case was being worked on the weight of authority holds the client responsible for the inactivity of his counsel and leaves him to the recourse of malpractice." *Id.* Here, in the instant case, former Co-Counsel Wilson, Elser, Moskowitz, Edelman & Dicker LLP was retained to assist Defense Counsel Robert Rouke, but later withdrew due to a lack of cooperation of lead Defense counsel, but more importantly, by Defendants. See Motion to Withdraw entered on entered on October 1, 2018.

The third case mentioned was *Huckabay Props v. NC Auto Parts*, 130 Nev. 196 (2014). Although this case concerns applying rules of Appellate Procedure, it would seem that the Nevada Supreme Court would uphold the rationale that at the district court level the attorney's conduct is imputed to the client. See Footnote 4. Although, courts should hear cases on their merits, under the facts of the instant case, the Plaintiffs after six years are entitled to have their day in court without further delay. This case was delayed by the Plaintiffs having to file three Motions to Compel Discovery Responses as result of Defendants and Defense Counsel's conduct (not including newly retained co-Counsel Giovanniello Law Group) warranting adverse inference. See Discovery Commissioner's Report and Recommendations filed April 20, 2020. Moreover, this case can still be heard on its merits. The Plaintiff must still prove negligence and medical causation.

Therefore, weighing the competing interests of the parties and the respective conduct of the Defendants, COURT ORDERED Plaintiffs Motion in Limine to Exclude Any Experts from Testifying on behalf of the Defendants GRANTED. Counsel for Plaintiffs is directed to submit a proposed order consistent with the foregoing within ten (10) days after counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. Such Order should set forth a synopsis of the supporting reasons proffered to the Court in briefing and be approved as to form and content by all parties. Status Check for the Order will be set for October 7, 2021 (Chambers). Status Check will be vacated if the Order is filed before the hearing date.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve/ SA 9/22/2021

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**September 28, 2021**

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A-16-735550-C      Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

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**September 28, 2021      9:00 AM      All Pending Motions**

**HEARD BY:** Villani, Michael      **COURTROOM:** RJC Courtroom 11A

**COURT CLERK:** Samantha Albrecht

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

**PRESENT:**      Giovanniello, Alexander F., ESQ      Attorney  
                 Kudler, Donald C      Attorney

**JOURNAL ENTRIES**

- MOTION TO CONTINUE TRIAL ON ORDER SHORTENING TIME BY DEFENDANTS THI OF NEVADA AT CHEYENNE, LLC, DBA COLLEGE PARK REHABILITATION CENTER; HEALTHCARE REALTY OF CHEYENNE, LLC AND FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC...MOTION TO REOPEN DISCOVERY ON ORDER SHORTENING TIME BY DEFENDANTS THI OF NEVADA AT CHEYENNE, LLC DBA COLLEGE PARK REHABILITATION CENTER; HEALTHCARE REALTY OF CHEYENNE, LLC AND FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC...MOTION FOR ORDER EXTENDING TIME TO AMEND EXPERT DISCLOSURES ON ORDER SHORTENING TIME BY DEFENDANTS THI OF NEVADA AT CHEYENNE, LLC DBA COLLEGE PARK REHABILITATION CENTER; HEALTHCARE REALTY OF CHEYENNE, LLC AND FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC

Arguments by counsel regarding the Motions. Upon Court's inquiry, Mr. Kudler estimated 8 to 10 days for trial. Court reviewed the attorney history on this case. COURT ORDERED, Motions DENIED, based upon the ruling on the Motion from one to two weeks ago, which is incorporated by reference. Court advised the trial would begin on October 25th and directed counsel to submit proposed jury instructions, voir dire and pre-trial memorandums by noon on October 20th. COURT FURTHER ORDERED, Calendar Call VACATED. Mr. Kudler to prepare the order for the Motions.

10/25/2021 10:30 AM JURY TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**October 19, 2021**

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A-16-735550-C      Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

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**October 19, 2021      3:00 AM      Minute Order**

**HEARD BY:** Villani, Michael

**COURTROOM:** Chambers

**COURT CLERK:** Samantha Albrecht

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- By stipulation and agreement by the Parties via email communications with Dept. 17 Law Clerk, COURT ORDERS, matter SET for October 26, 2021 9:00 A.M. is VACATED and ADVANCED to October 22, 2021 at 10:00 A.M.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve/ SA 10/19/2021



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**October 22, 2021**

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A-16-735550-C      Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

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**October 22, 2021      10:00 AM      Motion to Strike**

**HEARD BY:** Villani, Michael      **COURTROOM:** RJC Courtroom 12C

**COURT CLERK:** Michele Tucker

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

**PRESENT:**      Giovanniello, Alexander F., ESQ      Attorney  
                 Kudler, Donald C      Attorney

**JOURNAL ENTRIES**

- Mr. Giovanniello gave summary of the last hearing and argued plaintiff should not be able to name new experts. If the plaintiff is still treating then they are not ready for trial. Mr. Giovanniello further argued as to the photographs taken. Statements by the Court. Mr. Kudler argued there was no way for them to know these doctors would be treating in 2020. Court STATED if the plaintiff want to present new doctors the will have to be continued as defendant is entitled to know what they are going to say and have the chance to depose them. Court has concerns of reopening old discovery that was previously closed. COURT ORDERED, TRIAL CONTINUED, Trial date VACATED. COURT FURTHER ORDERED, criminal records and criminal history of the two witnesses are EXCLUDED as they are to remote in nature. The Court will need more information as to the remaining items.

Court STATED it would like to meet with counsel and go over the issues so the Court has an understanding of the timing of these issues and what they are including. Court inquired if either counsel had an issue of coming to the Courthouse and meeting in person. Counsel advised they do not have an issue coming to the Courthouse.

COURT ORDERED, Defendants' Notice of Motion and Motion to Strike Plaintiffs' Non-Retained Experts Shanker Dixit, M.D., Steven Bonn, L.M.F.T. and Kevin Tsui, D.O., and to Preclude Them from

Testifying at Trial Along with Recently Disclosed Medical Records by Defendants THI of Nevada at Cheyenne, LLC dba College Park Rehabilitation Center; Healthcare Realty of Cheyenne, LLC; and Fundamental Administrative Services, LLC CONTINUED.

CONTINUED TO: 10/28/21 9:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**October 28, 2021**

---

A-16-735550-C      Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

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**October 28, 2021      9:00 AM      Motion to Strike**

**HEARD BY:** Villani, Michael      **COURTROOM:** RJC Courtroom 11A

**COURT CLERK:** Samantha Albrecht

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

**PRESENT:**      Giovanniello, Alexander F., ESQ      Attorney  
                 Giovanniello, Christopher Joseph      Attorney  
                 Kudler, Donald C      Attorney

**JOURNAL ENTRIES**

- Court noted it had met with counsel prior to the hearing and wanted to place some rulings and agreements by the parties on the record. Court stated there was an objection by the defense to exclude Dr. Dixit, Dr. Bonn and Kevin Tsui's treatment or their ability to testify in this case. Court further stated Mr. Kudler's client was continuing to treat and that surgery may be required in the future. COURT ORDERED, Dr. Dixit, Dr. Bonn and Dr. Tsui are allowed to testify and within two weeks from today, Plaintiff shall turn over a medical release authorization to defense counsel, with any medical records being turned over to each side within 30 days of receipt. Court advised Plaintiff wished to exclude the testimony of Darren Cook. Mr. Kudler stated there was no objection to Mr. Cook testifying as to the facts and circumstances of the evidence in this case. Court noted there was also a dispute as to Mr. Tabler, as he was identified as someone who could testify as to the facts and circumstances of the incident. Argument by Alexander Giovanniello and Mr. Kudler. COURT FURTHER ORDERED, Mr. Cook and Mr. Tabler can testify to the facts and circumstances, the injury and the occurrence itself, however nothing beyond that as the Court FINDS their designation to be incomplete. As to the social medial photographs of Andrew James, COURT FURTHER ORDERED, the three photographs are allowed with proper foundation to the jury provided by the defense and additionally, there was a claim of social media photographs of Jeffrey Myers, which do not exist,

therefore COURT FURTHER ORDERED, that matter is MOOT. COURT FURTHER ORDERED, criminal history and civil case history of Jeffrey Myers are EXCLUDED and the 2003/2004 criminal conviction for Andrew James is EXCLUDED, however counsel are to provide more information regarding his 2007 conviction. Court noted there were some photographs and video that defense counsel had taken depicting the building and the junction boxes, which Plaintiff's counsel objected to as their may be certain items that did not exist or may have changed since the incident. COURT FURTHER ORDERED, defense counsel to number the photographs and provide them to Plaintiff's counsel. COURT FURTHER ORDERED, Status Check SET regarding further information on Plaintiff's treatment and resetting the trial date. Court directed counsel to file their supplemental briefs regarding the photographs and video on 11/9/2021 by noon. Court noted it had been provided a copy of the video to review as well.

COURT FURTHER ORDERED, defense counsel is free to depose Dixit, Bonn and Tsui and can obtain a medical expert for the treatment that these individuals are providing to the Plaintiff. Upon Alexander Giovanniello's inquiry, Court stated it would allow an IME to take place for these three individuals. Mr. Kudler objected and argued against an IME. Argument by Alexander Giovanniello.

Court noted it had provided counsel with the Court's trial calendar for 2022 and within the next three weeks counsel would be speaking to their experts and witnesses regarding a trial date. Court further noted it would try to give counsel a firm trial setting for a full two weeks. Colloquy regarding scheduling conflicts. Court directed defense counsel to prepare the order.

Mr. Kudler stated he would get the stipulation to extend the 5 year rule filed, which was signed in OPEN COURT. Mr. Kudler stated the parties had agreed on a few of the Motions in Limine that were filed by defense counsel. Mr. Kudler confirmed the parties had stipulated to the Motion in Limine to Exclude Evidence, Motion in Limine to Exclude Plaintiff's Expert Witness Testimony, Motion in Limine to Exclude Any Golden Rule, Motion in Limine to Limit Expert Opinion, Motion in Limine to Exclude Medical Opinions, and the Motion in Limine to Exclude Any Reference to the Existence of Insurance. Defense counsel agreed. COURT FURTHER ORDERED, it would allow discovery to be re-opened only on the items that were discussed today and all previous deadlines STAND. Court advised having a Settlement Conference set was not a reason to continue trial.

11/18/2021 8:30 AM STATUS CHECK: RESET TRIAL DATE

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**November 16, 2021**

---

A-16-735550-C      Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

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**November 16, 2021      3:00 AM      Minute Order**

**HEARD BY:** Villani, Michael

**COURTROOM:** Chambers

**COURT CLERK:** Samantha Albrecht

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- COURT ORDERED, Status Check of Case currently set for November 18, 2021 is continued to November 23, 2021, 9:00 A.M.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve/ SA 11/16/2021

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**November 16, 2021**

---

A-16-735550-C      Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

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**November 16, 2021      3:00 AM      Minute Order**

**HEARD BY:** Villani, Michael

**COURTROOM:** Chambers

**COURT CLERK:** Samantha Albrecht

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Pursuant to the Order filed on November 5, 2021, and by stipulation of the parties via communications with the Dept. 17 Law Clerk, COURT ORDERED, all matters currently set for November 23, 2021 are VACATED, EXCEPT: (1) Status Check: Reset Trial Date and (2) Defendant s Motion in Limine to Allow Evidence of Plaintiff Andrew James Prior Criminal History. Further, by stipulation of the parties, Plaintiffs Motion in Limine to Preclude Tommy Lafronz from Testifying as to his impressions of Plaintiff Andrew James During his surveillance of Mr. James , currently set for December 21, 2021, 9:00 A.M., is CONTINUED to December 28, 2021, 9:00 A.M.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve/ SA 11/16/2021

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**November 23, 2021**

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A-16-735550-C      Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

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**November 23, 2021      9:00 AM      All Pending Motions**

**HEARD BY:** Villani, Michael      **COURTROOM:** RJC Courtroom 11A

**COURT CLERK:** Samantha Albrecht

**RECORDER:** Angelica Michaux

**REPORTER:**

**PARTIES**

**PRESENT:**      Giovanniello, Alexander F., ESQ      Attorney  
                 Giovanniello, Christopher Joseph      Attorney  
                 Kudler, Donald C      Attorney

**JOURNAL ENTRIES**

- DEFENDANT'S MOTION IN LIMINE TO ALLOW EVIDENCE OF PLAINTIFF ANDREW JAMES' CRIMINAL HISTORY BY DEFENDANTS THI OF NEVADA AT CHEYENNE, LLC DBA COLLEGE PARK REHABILITATION CENTER; HEALTHCARE REALTY OF CHEYENNE, LLC; AND FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC...STATUS CHECK: RESET TRIAL DATE

Arguments by Mr. Alexander Giovanniello and Mr. Kudler. Court noted there was no subterfuge on behalf of the Plaintiff, however he does identify the filing of false documents, wire fraud and the California court system where this took place, therefore COURT ORDERED, Motion DENIED.

Court noted it had met with counsel in chambers for clarification on the issues and had put everything on the record after the meeting. Colloquy regarding setting the trial date. Court noted this case would have priority over most of the cases, if not all of them on the stack. Upon Court's inquiry, counsel estimated over a week for trial. Mr. Alexander Giovanniello stated he had just found the three experts, they were still waiting on the medical records and he still had to depose the Plaintiff's experts. Court stated it was endeavoring to start jury selection on Wednesday, April 6th, 2022. COURT ORDERED, trial date SET. Court noted it had received recent photographs of the location

and had tried to review the zip drive and if it needed further information it would set a hearing, otherwise it would issue a ruling with the provided documents. Court advised no other discovery deadlines had been extended. Mr. Alexander Giovanniello advised the substitution of attorney would be filed soon.

1/18/2022 9:00 AM STATUS CHECK: TRIAL READINESS

3/1/2022 9:00 AM CALENDAR CALL

3/14/2022 10:30 AM JURY TRIAL



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**December 28, 2021**

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A-16-735550-C      Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

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**December 28, 2021      9:00 AM      Motion in Limine**

**HEARD BY:** Villani, Michael      **COURTROOM:** RJC Courtroom 11A

**COURT CLERK:** Samantha Albrecht

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

**PRESENT:**      Giovanniello, Alexander F., ESQ      Attorney  
                 Kudler, Donald C      Attorney

**JOURNAL ENTRIES**

- Arguments by counsel regarding the Motion. COURT ORDERED, Motion GRANTED IN PART, as the video can be shown with the proper foundation, however the Investigator can not testify as to his impressions as to how he interprets the video. Court directed Mr. Kudler to prepare the order and submit to opposing counsel counsel to sign off on as to form and content.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**January 18, 2022**

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A-16-735550-C      Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

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**January 18, 2022      9:00 AM      Status Check: Trial  
Readiness**

**HEARD BY:** Villani, Michael      **COURTROOM:** RJC Courtroom 11A

**COURT CLERK:** Samantha Albrecht

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

**PRESENT:**      Giovanniello, Christopher Joseph      Attorney  
                 Kudler, Donald C      Attorney

**JOURNAL ENTRIES**

- Upon Court's inquiry, counsel confirmed they were ready for trial as scheduled and requested trial be set at the end of the trial stack. Mr. Giovanniello estimated 7 to 10 days for trial or 4 to 7 days depending on the outcome of the Motion in Limine. Mr. Kudler concurred. Trial date STANDS.

THE SEALED PORTION  
OF THESE MINUTES  
WILL FOLLOW VIA  
U.S. MAIL.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**March 16, 2022**

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A-16-735550-C      Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

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**March 16, 2022      2:55 PM      Minute Order**

**HEARD BY:** Young, Jay      **COURTROOM:** No Location

**COURT CLERK:** Jennifer Lott

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- COMMISSIONER RECOMMENDED, Defts' Motion to Compel Independent Medical Examination of Plaintiff Andrew James on OST is SET 3-25-2022 at 9:30 a.m.

3-25-2022 9:30 a.m.

Defts' Motion to Compel Independent Medical Examination of Plaintiff Andrew James on OST  
(Set in Discovery before Commissioner Young)

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Jennifer Lott, to all registered parties for Odyssey File & Serve. jl

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability****COURT MINUTES****March 25, 2022**

A-16-735550-C      Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

<b>March 25, 2022</b>	<b>9:30 AM</b>	<b>Motion to Compel</b>	<b>Defts' Motion to Compel Independent Medical Examination of Plaintiff Andrew James on OST</b>
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**HEARD BY:** Young, Jay**COURTROOM:** RJC Level 5 Hearing Room**COURT CLERK:** Jennifer Lott**RECORDER:** Francesca Haak**REPORTER:****PARTIES**

**PRESENT:**      Giovanniello, Christopher Joseph      Attorney  
                         Kudler, Donald C                                      Attorney

**JOURNAL ENTRIES**

- Commissioner reviewed the February 23rd Order regarding the October 2021 Minute Order. Commissioner stated Judge Villani already heard this issue in October 2021. Arguments by counsel. COMMISSIONER RECOMMENDED, motion for a Rule 35 examination is GRANTED on the basis that it was Ordered by Judge Villani; both parties' request for fees are DENIED; Commissioner will not limit the Rule 35 examination. Plaintiff lives in Pahrump. COMMISSIONER RECOMMENDED, complete the Rule 35 examination within 14 days, and the expert needs to provide a Report within 7 days after the examination. If the observer is a family member or friend, Commissioner stated an observer is allowed under Rule 35. Mr. Kudler stated the Forms go to psychiatric issues, not neurological issues. Commissioner stated the District Court Judge can handle the issues at trial, or in Pre-trial Motions.

Court Directed counsel when submitting a DCRR, all parties/counsel must be given an opportunity to approve the DCRR as to form and content. The court set a status hearing for 4-22-2022 to

determine if Mr. Giovanniello submitted a timely proposed Discovery Commissioner s Report and Recommendation ( DCRR ). If the DCRR is timely submitted, the matter will be taken off calendar. If the DCRR is not timely submitted, Mr. Giovanniello was given notice in the hearing, pursuant to EDCR 7.60, that Mr. Giovanniello will be given an opportunity to be heard at that status hearing why sanctions should not issue for failure to comply with the order to submit a timely DCRR.

4-22-2022 10:00 a.m. Status Check: Compliance / 3-25-2022 DCRR



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**April 15, 2022**

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A-16-735550-C	Jeffrey Myers, Plaintiff(s)
	vs.
	THI of Nevada at Cheyenne, LLC, Defendant(s)

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<b>April 15, 2022</b>	<b>3:00 AM</b>	<b>Minute Order</b>
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<b>HEARD BY:</b> Villani, Michael	<b>COURTROOM:</b> Chambers
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**COURT CLERK:** Odalys Garcia

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Discovery Commissioners Report and Recommendations was filed on March 31, 2022. Due to the fact that time is of the essence in having a NRCP Rule 35 examination taking place the Court is incorporating by reference the prior Orders entered by the Court regarding the deposition and Rule 35 examination for doctors Dixit, Bonn and Tsui.

On October 28, 2021, the Court ordered among other items that Defendant was allowed to depose doctors Dixit, Bonn and Tsui. Further, Defendants were entitled to have conducted a Rule 35 examination [s]pecifically regarding the information and opinions provided by these experts . See Order dated November 15, 2021. Over 3 months later, this matter was once again before the Court at which time the Court allowed Defense counsel 30 days to conduct the depositions of the aforementioned doctors.

The present dispute revolves around the Discovery Commissioner s Report and Recommendation dated March 31, 2022. Although, Dr. Brown s present area of practice relates to psychiatry, he was recently recertified by the American Board of Psychiatry and Neurology in 2017. Accordingly, he is allowed to perform a rule 35 examination addressing the information and opinions provided by Dr. Dixit. See previous Order dated November 15, 2021. If Plaintiff s counsel believes that any portion of Dr. Brown s examination and report exceed the Court s directive, then an OST for a Motion In Limine



will be entertained.

Plaintiff is required to fill out the examination questionnaire prior to attending the Rule 35 examination, excluding the following items: (1) what is the purpose of your evaluation? ; (2) why now? ; (3) Please list all previous psychiatric hospitalizations with dates and reasons for admission ; (4) Describe your formal religious affiliation ; (5) describe any personal spiritual practices; (6) describe any past or current legal history. Further, the following items are to be modified as follows: (7) Have you ever attempted suicide? If so, describe the number of times and circumstances is modified to Have you attempted suicide anytime between the present day and 5-years prior to the accident? If so, describe the number of times and circumstances and (8) Have you ever attempted to physically harm another person? If so, describe the number of times and circumstances is modified to Have you attempted to physically harm another person between the present day and 5-years prior to the accident? If so, describe the number of times and circumstance.

The Rule 35 examination is to take place on or before May 6, 2022 at 5:00pm. Plaintiff is to make himself available within the time frame stated and at the direction of the doctor s schedule. The report regarding the Rule 35 examination is to be provided within 7 days of the examination. All other Recommendations by the Discovery Commissioner are adopted. The Court is aware of scheduling issues but said time constraints are do the prior lack of diligence in the discovery process by prior counsel and present counsel waiting so long to designate his expert subsequent to the October 28, 2022 hearing. If Dr. Brown is unavailable, Defendant may select another qualified doctor within the aforementioned time restrictions of this Order.

Counsel for Defendant is directed to submit a proposed order consistent with the foregoing within fourteen (14) days after counsel is notified of the ruling and distribute a filed copy to all parties involved pursuant to EDCR 7.21. Status Check for the Order will be set for May 5, 2022 (Chambers). Status Check will be vacated if the Order is filed before the hearing date.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve/ og (04/15/22)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**May 02, 2022**

---

A-16-735550-C      Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

---

**May 02, 2022**

**3:00 AM**

**Minute Order**

**HEARD BY:** Villani, Michael

**COURTROOM:** Chambers

**COURT CLERK:** Odalys Garcia

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- Status Check: Order set to come before the Court on the May 5, 2022 (Chambers) Calendar. COURT NOTES, Order was received on April 29, 2022. COURT ORDERED, matter VACATED.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve/ OG (05/03/22)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**May 10, 2022**

---

A-16-735550-C      Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

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**May 10, 2022      9:00 AM      Calendar Call**

**HEARD BY:** Bixler, James      **COURTROOM:** RJC Courtroom 11A

**COURT CLERK:** Samantha Albrecht

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

**PRESENT:**      Giovanniello, Alexander F., ESQ      Attorney  
                 Giovanniello, Christopher Joseph      Attorney  
                 Kudler, Donald C      Attorney

**JOURNAL ENTRIES**

- Upon Court's inquiry, counsel announced ready for trial and estimated more than one week for trial.



MATTER RECALLED.

Christopher Giovanniello, Esq. not present.

Court stated it was not inclined to impose any other sanctions, only the sanctions related to the Motion in Limine. COURT FURTHER ORDERED, Motion for Sanctions DENIED as it related to the other matters, not as it relates to the Motion in Limine or the Independent Medical Examination (IME).

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability****COURT MINUTES****May 18, 2022**

A-16-735550-C

Jeffrey Myers, Plaintiff(s)

vs.

THI of Nevada at Cheyenne, LLC, Defendant(s)

**May 18, 2022****3:00 AM****Minute Order****HEARD BY:** Villani, Michael**COURTROOM:** Chambers**COURT CLERK:** Samantha Albrecht**RECORDER:****REPORTER:****PARTIES****PRESENT:**

**JOURNAL ENTRIES**

- Plaintiffs Motion for Sanctions and Motion in Limine came before the Court on the May 17, 2022 Calendar at 9:00 A.M. COURT NOTES, Motion in Limine was granted and the Motion for Sanctions was granted in part pertaining to the Motion in Limine, and denied in part as to the rest of Plaintiffs claims. The COURT FINDS that on October 28, 2021, the Court limited the scope of Rule 35 experts who the Defendants could retain to those that would rebut opinions of the three experts that were allowed to testify. Specifically at issue in this matter is that the Court ordered that defense counsel was free to depose Dr. Dixit, a neurologist, and could obtain an expert for the treatment that Dr. Dixit provided to the Plaintiff. Court further allowed an IME to take place for Dr. Dixit, as well as the other identified experts.

Almost 2 months after the Court's Order (December 20, 2021), Defendant's counsel notified Plaintiff's counsel that they wanted to conduct a Rule 35 examination of the Plaintiff in February 2022. Plaintiff's counsel responded on December 21, 2021, requesting that Defendant's counsel provide the name of the provider conducting the examination, the conditions of the examination and the scope of the examination in compliance with NRCP 35. Plaintiff's counsel resent this request on January 10, 2022. On January 11, 2022, Defendant's counsel responded, stating that [t]he examination will be conducted by psychiatrist and neurologist Gregory P. Brown, M.D. (emphasis added). On February 8, 2022, Plaintiff's counsel notified Defense that Plaintiff would not be attending the IME, as Dr.

Brown is a psychiatrist and not a neurologist. On March 9, 2022, Defendants filed a Motion to Compel Rule 35 Examination by Dr. Brown. On March 25, 2022, the motion to compel was heard by Discovery Commissioner Young, and an objection thereto was heard by the Court on April 15, 2022. In the April 15 minute order, the Court allowed Dr. Brown to conduct the IME as he had recently been recertified by the American Board of Psychiatry and Neurology in 2017 and that he was qualified to perform a neurological evaluation. The Court reminded that the Rule 35 examination was to address the information and opinions provided by Dr. Dixit.

On April 11, 2022, Plaintiff appeared for a Rule 35 Examination with Dr. Brown, and his report was prepared on April 18, 2022. The report, titled Forensic Psychiatric Report is not limited to the scope set by the Court, and in fact contains minimal references to the opinions by Dr. Dixit. In the first paragraph of Dr. Brown's report, he states, I was contacted by Christopher Giovanniello, Esq., and asked to perform a psychiatric evaluation of Mr. Andrew James to determine whether or not he suffered from a psychiatric condition, including but not limited to potential traumatic brain injury, as a result of the incident from June 6, 2014, in which he was burned by an arc of electric current at a job site. In addition, I was asked to provide opinions regarding necessary treatment for said condition. On April 25, 2022, Plaintiff's counsel conducted a deposition of Dr. Brown, where Dr. Brown represented that he has never held himself out to be a neurologist because he is in fact not a neurologist. See Dr. Brown's deposition testimony relating to this issue at pages 8-10, 12-13. Based on the above findings, the Court finds that the representations made relating to the Rule 35 examination were misrepresented. It is incumbent upon an attorney retaining an expert to perform a Rule 35 exam that the expert is qualified and knows the perimeters of the examination.

Therefore, COURT ORDERED that Defendant's Counsel to pay attorney's fees and costs related to the issue of the Rule 35 exam incurred by Plaintiff's counsel from October 28, 2021 to the present day. Counsel for Plaintiff is to prepare the Order identifying the fees and costs associated with this matter and submit it to the Court. A Status Check: Order will be set for May 31, 2022 at 9:00 A.M. Status Check will be vacated if the Order is received prior to the hearing date.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve/ SA 5/18/2022

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**May 25, 2022**

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A-16-735550-C      Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

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**May 25, 2022      3:00 AM      Minute Order**

**HEARD BY:** Villani, Michael      **COURTROOM:** Chambers

**COURT CLERK:** Samantha Albrecht

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- Status Check: Order set to come before the Court on the May 31, 2022 Calendar at 9:00 A.M. COURT NOTES, Order was filed on May 24, 2022. COURT ORDERED, matter VACATED.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve/ SA 5/25/2022



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**May 31, 2022**

---

A-16-735550-C      Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

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**May 31, 2022      9:00 AM      Jury Trial - FIRM**

**HEARD BY:** Barker, David      **COURTROOM:** RJC Courtroom 11A

**COURT CLERK:** Samantha Albrecht

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

**PRESENT:**      Giovanniello, Alexander F., ESQ      Attorney  
Giovanniello, Christopher Joseph      Attorney  
James, Andrew      Plaintiff  
Kudler, Donald C      Attorney  
Myers, Jeffrey A.      Plaintiff

**JOURNAL ENTRIES**

- Court noted it had reviewed the Pre-Trial Memorandum. Colloquy regarding trial procedures. Court further noted no stay had been granted on the Writ.

**PROSPECTIVE JURY PANEL PRESENT:**

Roll Call CONDUCTED, Prospective Jury Panel SWORN IN. Voir Dire begins.

**OUTSIDE THE PRESENCE OF THE PROSPECTIVE JURY PANEL:**

Colloquy regarding voir dire and scheduling.

**PROSPECTIVE JURY PANEL PRESENT:**

Voir dire continues. Peremptory challenges EXECUTED, Jury SELECTED. Court thanked and DISMISSED the additional jurors. Jury Panel SWORN.

**OUTSIDE THE PRESENCE OF THE JURY PANEL:**

Colloquy regarding scheduling, exhibits and OSHA statutes. COURT ORDERED, matter CONTINUED.

CONTINUED TO: 6/1/2022 10:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**June 01, 2022**

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A-16-735550-C      Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

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**June 01, 2022      10:00 AM      Jury Trial - FIRM**

**HEARD BY:** Barker, David      **COURTROOM:** RJC Courtroom 11A

**COURT CLERK:** Samantha Albrecht  
Odalys Garcia

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

**PRESENT:**      Giovanniello, Alexander F., ESQ      Attorney  
Giovanniello, Christopher Joseph      Attorney  
James, Andrew      Plaintiff  
Kudler, Donald C      Attorney  
Myers, Jeffrey A.      Plaintiff

**JOURNAL ENTRIES**

- JURY PANEL PRESENT:  
Opening Statements by Mr. Kudler and Alexander Giovanniello. CONFERENCE AT BENCH.  
Testimony PRESENTED, Exhibits ADMITTED (see worksheets).

OUTSIDE THE PRESENCE OF THE JURY PANEL:  
Colloquy regarding defense counsel's medical condition, witnesses, and exhibits.

JURY PANEL PRESENT:  
COURT ORDERED, trial CONTINUED.

CONTINUED TO: 6/2/2022 9:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**June 02, 2022**

---

A-16-735550-C      Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

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**June 02, 2022      9:00 AM      Jury Trial - FIRM**

**HEARD BY:** Barker, David      **COURTROOM:** RJC Courtroom 11A

**COURT CLERK:** Samantha Albrecht  
Odalys Garcia

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

**PRESENT:**      Giovanniello, Alexander F., ESQ      Attorney  
Giovanniello, Christopher Joseph      Attorney  
James, Andrew      Plaintiff  
Kudler, Donald C      Attorney  
Myers, Jeffrey A.      Plaintiff

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE JURY PANEL:

Court clarified the identification of Exhibits 3A and 31A, that were admitted yesterday.

JURY PANEL PRESENT:

Testimony PRESENTED, Exhibits ADMITTED. (see worksheets). CONFERENCE AT BENCH.

OUTSIDE THE PRESENCE OF THE JURY PANEL:

Court noted the parties had approached regarding some concerns with disclosure of certain records that the witness was being cross-examined on. Alexander Giovanniello advised the witness testified as to records from January 18, 2021 onward, which were never disclosed. Upon Court's inquiry, Alexander Giovanniello confirmed the witness was never deposed due to her never being disclosed. Alexander Giovanniello further advised he had records starting in 2018, not 2016, which were also never provided. Mr. Kudler read from Exhibit #12 and Court noted that related back to 2019,

however there was mention of the treatment by Nurse Cipollini from January 18, 2021 through today, which were never disclosed and were subject to a Motion to Strike. COURT ORDERED, Motion to Strike GRANTED as to January 18, 2021 forward and DENIED as to the earlier treatment. Colloquy regarding Jury Instructions.

JURY PANEL PRESENT:

Alexander Giovanniello objected and requested the testimony be stricken from January 18, 2021 forward. COURT ORDERED, the Jury to disregard any testimony from January 18, 2021 forward and directed witness, Sheryl Cipollini to appear in person tomorrow at 9:00 am to continue her testimony. COURT ORDERED, trial CONTINUED.

CONTINUED TO: 6/3/2022 9:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**June 03, 2022**

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A-16-735550-C      Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

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**June 03, 2022**

**9:00 AM**

**Jury Trial - FIRM**

**HEARD BY:** Barker, David

**COURTROOM:** RJC Courtroom 11A

**COURT CLERK:** Samantha Albrecht  
Odalys Garcia

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

**PRESENT:**      Giovanniello, Alexander F., ESQ      Attorney  
                 Giovanniello, Christopher Joseph      Attorney  
                 James, Andrew      Plaintiff  
                 Kudler, Donald C      Attorney  
                 Myers, Jeffrey A.      Plaintiff

**JOURNAL ENTRIES**

- OUTSIDE THE PRESENCE OF THE JURY PANEL:  
Colloquy regarding exhibits, scheduling and Jury Instructions.

JURY PANEL PRESENT:

Testimony PRESENTED, Exhibits ADMITTED (see worksheets). Plaintiff RESTS. CONFERENCE AT BENCH. COURT ORDERED, trial CONTINUED.

CONTINUED TO: 6/6/2022 11:00 AM

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**June 06, 2022**

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A-16-735550-C      Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

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**June 06, 2022      11:00 AM      Jury Trial - FIRM**

**HEARD BY:** Barker, David      **COURTROOM:** RJC Courtroom 11A

**COURT CLERK:** Samantha Albrecht  
Odalys Garcia

**RECORDER:** Aimee Curameng

**REPORTER:**

**PARTIES**

**PRESENT:**      Giovanniello, Alexander F., ESQ      Attorney  
Giovanniello, Christopher Joseph      Attorney  
James, Andrew      Plaintiff  
Kudler, Donald C      Attorney  
Myers, Jeffrey A.      Plaintiff

**JOURNAL ENTRIES**

- JURY PANEL PRESENT:  
Defense RESTS. CONFERENCE AT BENCH.

**OUTSIDE THE PRESENCE OF THE JURY PANEL:**

Alexander Giovanniello orally requested a Motion pursuant to NRCP 50(A) as to Fundamental Administrative Services LLC and Healthcare Realty of Cheyenne LLC, as there had been no evidence presented by the Plaintiff regarding those two entities. Mr. Kudler stated they were never able to obtain this information while the case was pending and noted the jury instruction included all Defendants. COURT ORDERED, oral Motion GRANTED as to Fundamental Administrative Services LLC and Healthcare Realty of Cheyenne LLC. Upon Alexander Giovanniello's inquiry, Court stated it would not advise the Jury that the two entities were dismissed, however defense counsel could in their closing argument. Jury Instructions SETTLED. Alexander Giovanniello offered Special Jury Instructions #1-4 and believed they were relevant to the law of the case. Mr. Kudler argued they

should not be allowed. Court stated it could not find any case law related to OSHA to be reduced to a jury instruction, therefore Defendant's proposed Special Jury Instructions #1-4 shall not be given to the Jury.

JURY PANEL PRESENT:

Jury INSTRUCTED. Closing Argument by Mr. Kudler and Alexander Giovanniello; Rebuttal by Mr. Kudler. At the hour of 2:19 pm, the Jury RETIRED to deliberate.

OUTSIDE THE PRESENCE OF THE JURY PANEL:

Court noted Mr. Kudler's objections to Alexander Giovanniello's closing argument.

At the hour of 4:38 pm, the Jury RETURNED with a verdict for Defendant. Jury POLLED. Court thanked and excused the jury. COURT FURTHER ORDERED, unused exhibits RETURNED to counsel.



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**August 02, 2022**

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A-16-735550-C      Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

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**August 02, 2022      9:00 AM      Motion to Continue**

**HEARD BY:** Gibbons, Mark      **COURTROOM:** RJC Courtroom 11A

**COURT CLERK:** Samantha Albrecht

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

**PRESENT:**      Giovanniello, Christopher Joseph      Attorney  
                 Kudler, Donald C      Attorney  
                 Stoberski, Michael E      Attorney

**JOURNAL ENTRIES**

- COURT ORDERED, Motion GRANTED and Motion for New Trial RESET. Mr. Kudler noted an Opposition had been filed yesterday.

8/16/2022 9:00 AM PLAINTIFFS' MOTION FOR NEW TRIAL

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Premises Liability**

**COURT MINUTES**

**August 16, 2022**

---

A-16-735550-C      Jeffrey Myers, Plaintiff(s)  
vs.  
THI of Nevada at Cheyenne, LLC, Defendant(s)

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**August 16, 2022      9:00 AM      Motion for New Trial**

**HEARD BY:** Gibbons, Mark      **COURTROOM:** RJC Courtroom 11A

**COURT CLERK:** Samantha Albrecht

**RECORDER:** Kristine Santi

**REPORTER:**

**PARTIES**

**PRESENT:**      Giovanniello, Alexander F., ESQ      Attorney  
                 Giovanniello, Christopher Joseph      Attorney  
                 Kudler, Donald C      Attorney

**JOURNAL ENTRIES**

- Arguments by Mr. Kudler and Alexander Giovanniello. Upon Court's inquiry, Mr. Kudler stated he did not make a Motion under NRCP 50(A) at the end of the submission of evidence. Court STATED ITS FINDINGS and ORDERED, Motion DENIED. Court noted the denial of the Motion for New Trial was an appealable order and directed Mr. Kudler to request the appeal, if filed, be kept in the Supreme Court. Mr. Giovanniello to prepare the order.

## PLAINTIFFS' EXHIBITS

CASE NO.: A-16-735550-C

Exhibit No.	Bates Numbers	Exhibit Description	Date Offered	Objection	Date Admitted
1	PLTF000001 - PLTF000004	Copy of Plaintiff Andrew James' Independent Medical Examination performed by Robert W. Patti, M.D. on February 2, 2016	6/2/22	NO	6/2/22
2	PLTF000005	Color photographs of Plaintiff Andrew James' injury			
3	PLTF000006 - PLTF000018	Thirteen (13) color photographs of Plaintiff Jeffrey Myers' injuries			
4	PLTF000019 - PLTF000027	Nine (9) color photographs of the incident scene	6/2/22	Slip	6/2/22
5	PLTF000028 - PLTF000035	Copy of Plaintiff Andrew James' medical records and billing statement from MedicWest Ambulance, Inc.			
6	PLTF000036 - PLTF000109	Copy of Plaintiff Andrew James' medical records and billing statement from University Medical Center	6/2/22	NO	6/2/22
7	PLTF000110	Copy of Plaintiff Andrew James' billing statement from EMP of Clark (McCourt), PLLC			
8	PLTF000111 - PLTF000123	Copy of Plaintiff Andrew James' medical records and billing statement from Desert Radiologists			
9	PLTF000124 - PLTF000171	Copy of Plaintiff Andrew James' medical records and billing statement from HealthCare Partners Medical Group			
10	PLTF000172 - PLTF000187	Copy of Plaintiff Andrew James' medical records and billing statement from Affiliated Physical Therapy			
11	PLTF000188 - PLTF000268	Copy of Plaintiff Andrew James' medical records and billing statement from Occupational Orthopaedic Health Center	6/2/22	NO	6/2/22
12	PLTF000269 - PLTF000270	Copy of letter from William V. Craig, M.D. regarding Andrew James' injuries	6/3/22	yes	
13	PLTF000271 - PLTF000323	Copy of Plaintiff Andrew James' medical records and billing statement from Reflections Healthcare	6/3/22	No	6/3/22
14	PLTF000324 - PLTF000341	Copy of Plaintiff Andrew James' medical records and billing statement form Summit Psychotherapy			
15	PLTF000342 - PLTF000344	Financial Estimate from Sierra Tucson regarding Plaintiff Andrew James' in patient rehabilitation for Mr. James' PTSD			
16	PLTF000345 - PLTF000385	Copy of Plaintiff Andrew James' medical records and billing statement from Nevada Orthopedic & Spine Center	6/3/22	yes	

\*: unused exhibits returned  
to counsel

17	PLTF000326 - PLTF000424	Copy of Plaintiff Andrew James' medical records from Calm Clinic Psychiatry	6/3/22	NO	6/3/22
18	PLTF000425 - PLTF000436	Copy of Plaintiff Andrew James' medical records from Neurology Center of Las Vegas			
19	PLTF000437 - PLTF000449	Copy of Plaintiff Andrew James' medical records and billing statement from Pulmonary Associates			
20	PLTF000450 - PLTF000464	Copy of Plaintiff Andrew James' Walgreens Pharmacy printout form 11/28/18 - 12/12/20			
21	PLTF000465 - PLTF000467	Copy of Plaintiff Andrew James' Smiths Pharmacy printout from 05/16/20 - 12/01/20			
22	PLTF000468 - PLTF000470	Copy of Plaintiff Andrew James' US Health Group Prescription History printout from 06/07/14 - 08/23/18			
23	PLTF000471 - PLTF000478	AARP's Average Monthly Drug Cost and Annual Estimated Drug Total.			
24	PLTF000479 - PLTF000481	Copy of Plaintiff Andrew James' prescription receipts for Ketamine			
25	PLTF000482 - PLTF000487	Copy of Plaintiff Jeffrey Myers' medical records and billing statement from MedicWest Ambulance, Inc.			
26	PLTF000488 - PLTF001209	Copy of Plaintiff Jeffrey Myers' medical records and billing statement from University Medical Center	6/1/22	yes	6/1/22
27	PLTF001210	Copy of Jeffrey Myers' billing statement from EMP of Clark (McCourt), PLLC			
28	PLTF001211 - PLTF001212	Copy of Plaintiff Jeffrey Myers' billing statement from Desert Radiologists			
29	PLTF001213 - PLTF001319	Copy of Plaintiff Jeffrey Myers' medical records and billing statement Valley Hospital Medical Center			
30	PLTF001320 - PLTF001321	Copy of Plaintiff Jeffrey Myers' billing statement from Shadow Emergency Physicians, PLLC			
31	PLTF001322 - PLTF001502	Workers comp documents regarding Andrew James			
32	PLTF001503 - PLTF001504	Letter from Douglas D. Smith regarding Plaintiff Andrew James' employment			
33	PLTF001505 - PLTF001512	Copy of Plaintiff Andrew James' W-2's for 2014-2021	6/2/22	NO	6/2/22
34	PLTF001513 - PLTF001551	Copy of Plaintiff Andrew James' Tax Returns for 2014-2020			
35	PLTF001552 - PLTF001555	Copy of Plaintiff Andrew James' 2014 Pay Stubs			
36	PLTF001556 - PLTF001573	College Park State Inspection Report dated March 8, 2019			

KG

37	PLTF001574 - PLTF001576	College Park State Inspection Report dated February 5, 2020			
38	PLTF001577	Copy of letter to Plaintiff Andrew James from Freedom Life Insurance Company of America re Cancellation			
39	PLTF001578 - PLTF001579	Copy of Industrial Light & Power's Energized Electrical Work Permit	6/2/22	ND	6/2/22
40	PLTF001580 - PLTF001731	Don Gifford's Report and File			

## EXHIBIT(S) LIST

**Case No: A-16-735550-C**

## Jeffrey Myers

VS.

**THI of Nevada at Cheyenne, LLC**

## EXHIBITS

[illegible]

CASE NO. A-19-796104-C	TRIAL DATE: May 31, 2022
DEPT. NO. 17	JUDGE: Hon. David Barker
	CLERK: Sam Albrecht / Odalys Garcia
	REPORTER: Kristine Senti / Aimee Curran
PLAINTIFF: JEFFREY A. MYERS and ANDREW JAMES, individually	JURY FEES:
	COUNSEL FOR PLAINTIFF: Donald C. Kudler
DEFENDANT: THI OF NEVADA AT CHEYENNE, LLC a foreign Corporation dba COLLEGE PARK REHABILITATION CENTER; HEALTHCARE REALITY OF CHEYENNE, LLC a Delaware Corporation; FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC a Delaware Corporation; Does 1-XXX; and ROE CORPORATIONS 1-XXX, inclusive	COUNSEL FOR DEFENDANT: Alexander F. Giovanniello Christopher J. Giovanniello

### DEFENDANTS EXHIBIT LIST

Exhibit No.	Bates Numbers	Exhibit Description	Date Offered	Objection	Date Admitted
200	1 - 8	American Medical Response (Medical & Billing)			
201	1 - 6	American Medical Response (Medical & Billing)			
202	1	EMP of Clark (Billing Statement)			
203	1 - 2	EMP of Clark (Billing Statement)			
204	1 - 74	University Medical Center (billing & medical)			
205	1 - 719	University Medical Center (Billing & Medical)			
206	1 - 14	University Medical Center (Amended Billing Statement)			
207	1 - 66	Healthcare Partners Medical Group (Medical & Billing)			
208	1 - 107	Valley Hospital Medical Center (Billing & Medical)			
209	1 - 2	Shadow Emergency Physicians (Billing)			
210	1 - 5	Desert Radiologist (Medical)			
211	1	Desert Radiologist (Billing)			
212	1 - 10	Desert Radiology (Additional Medical & Billing)			
213	1 - 2	Desert Radiologist (Billing)			
214	1 - 105	Occupational Orthopaedic Health Center (Medical & Billing)			
215	1 - 16	Affiliated Physical Therapy (Medical & Billing)			
216	1 - 21	Reflections Healthcare (Medical & Billing)			
217	1 - 34	Reflections Healthcare (Additional Medical)			
218	1 - 10	Summit Psychotherapy (Medical & Billing)			
219	1 - 3	Summit Psychotherapy (Additional Medical)			
220	1 - 3	Summit Psychotherapy (Additional Billing)			
221	1 - 9	UNLV School of Medicine Dept (Medical & Billing)			
222	1 - 10	Nevada Orthopedic & Spine Center (Medical & billing)			
223	1 - 7	Calm Clinic Psychiatry (Medical)			
224	1	Neurology Center of LV (Medical)			

\* unused exhibits returned to counsel

Exhibit No.	Bates Numbers	Exhibit Description	Date Offered	Objection	Date Admitted
225	1	Photo of Andrew James	6/2/22	SHIP	6/2/22
226	1	Photo of Andrew James at Beach	6/2/22	NO	6/2/22
227	1	Photo of Andrew James clapping	6/2/22	NO	6/2/22
228	1	Photo of Andrew James at table	6/2/22	NO	6/2/22
229	1	Photo of Andrew James drinking	6/2/22	NO	6/2/22
230	n/a	Surveillance Video of Andy James	6/6/22	NO	6/6/22
231	n/a	Video of Accident site	6/3/22	NO	6/3/22
232	1 - 13	Photos of Electrical Room and Panel			
233	1	College Park State License 2014			
234	1 - 26	Gregory P. Brown MD Report			
235	1 - 9	Medical Authorizations signed by Andrew James			
236	1 - 9	OSHA 1910 Standards			
237	1 - 12	Plaintiff Jeffrey A. Myers Response to Defendant College Park Rehabilitation Center's First Set of Interrogatories			
238	1 - 18	Plaintiff Andrew James Response to Defendant College Park Rehabilitation Center's First Set of Interrogatories			
239	1-2	Industrial Light and Power work permit	6/1/22	NO	6/1/22
240	1-15	Southwest Medical Records (James)			



## EXHIBIT(S) LIST

**Case No: A-16-735550-C**

**Jeffrey Myers**

VS.

**THI of Nevada at Cheyenne, LLC**

## EXHIBITS

[illegible]

# EXHIBIT(S) LIST

Case No.: A-16-735550-C

Hearing / Trial Date: 5/31/2022

Dept. No.: 17

Judge: David Barker

Court Clerk: Sam Albrecht/Odalys Garcia

Plaintiff: Jeffrey Myers

Recorder / Reporter: Kristine Santi

Counsel for Plaintiff: Donald Kudler

vs.

Defendant: THI of Nevada at Cheyenne, LLC

Counsel for Defendant: Alexander Giovanniello  
Christopher Giovanniello

## HEARING / TRIAL BEFORE THE COURT

### COURT'S EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
1	Voir Dire Questions	5/31/22	—	5/31/22
2	Juror #3 Question — not asked	6/1/22	—	6/1/22
3	Juror #4 Question — not asked	6/1/22	—	6/1/22
4	Juror #1 Question — asked	6/1/22	—	6/1/22
5	Juror #10 Question — asked	6/1/22	—	6/1/22
6	Juror #8 Question — asked	6/1/22	—	6/1/22
7	Juror #2 Question — asked	6/1/22	—	6/1/22
8	Juror #1 Question — asked	6/1/22	—	6/1/22
9	Juror #10 Question — asked	6/1/22	—	6/1/22
10	Juror #7 Question — asked	6/1/22	—	6/1/22
11	Juror # Question — not asked	6/1/22	—	6/1/22
12	Juror #4 Question — asked	6/2/22	—	6/2/22
13	Juror #10 Question — not asked	6/2/22	—	6/2/22
14	Juror #4 Question — asked	6/2/22	—	6/2/22
15	Juror #2 Question — asked	6/2/22	—	6/2/22
16	Juror #6 Question — asked	6/2/22	—	6/2/22
17	Juror #1 Question — asked	6/2/22	—	6/2/22

# EXHIBIT(S) LIST

Case No: A735550-C

Myers

vs. THI of Nevada at Cheyenne

Court's

EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
18	Juror # 8 Question - not asked	6/2/22	—	6/2/22
19	Juror # 10 Question - not asked	6/2/22	—	6/2/22
20	Juror # 2 Question - asked	6/2/22	—	6/2/22
21	Juror # 10 Question - Not asked	6/2/22	—	6/2/22
22	Juror # 7 Question - Not asked	6/2/22	—	6/2/22
23	Juror # 6 Question - asked	6/2/22	—	6/2/22
24	Juror # 4 Question - asked	6/2/22	—	6/2/22
25	Juror # 1 Question - asked	6/2/22	—	6/2/22
26	Juror # 8 Question - asked	6/2/22	—	6/2/22
27	Juror # 8 Question - asked	6/2/22	—	6/2/22
28	Juror # 10 Question - asked	6/2/22	—	6/2/22
29	Juror # 10 Question - asked	6/2/22	—	6/2/22
30	Juror # 2 Question - asked	6/2/22	—	6/2/22
31	Juror # 1 Question - Not asked	6/3/22	—	6/3/22
32	Juror # 4 Question - asked	6/3/22	—	6/3/22
33	Juror # 4 Question - asked	6/3/22	—	6/3/22
34	Juror # 10 Question asked	6/3/22	—	6/3/22
35	Juror # 9 Question - asked	6/3/22	—	6/3/22
36	Juror # 8 Question - asked	6/3/22	—	6/3/22
37	Juror # 2 Question - asked	6/3/22	—	6/3/22
38	Juror # 4 Question - asked	6/3/22	—	6/3/22



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE  
**NOTICE OF DEFICIENCY**  
ON APPEAL TO NEVADA SUPREME COURT

**DONALD C. KUDLER, ESQ.**  
**3202 W. CHARLESTON BLVD.**  
**LAS VEGAS, NV 89102**

**DATE: September 30, 2022**  
**CASE: A-16-735550-C**

**RE CASE:** JEFFREY A. MYERS; ANDREW JAMES vs. THI OF NEVADA AT CHEYENNE, LLC dba COLLEGE PARK REHABILITATION CENTER; HEALTHCARE REALTY OF CHEYENNE, LLC; FUNDAMENTAL ADMINISTRATIVE SERVICES, LLC

NOTICE OF APPEAL FILED: September 28, 2022

**YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.**

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)\*\*
  - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)\*\*
- ☐ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)\*\*
  - NRAP 7: Bond For Costs On Appeal in Civil Cases
  - *Previously paid Bonds are not transferable between appeals without an order of the District Court.*
- ☒ Case Appeal Statement
  - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

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NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

***Please refer to Rule 3 for an explanation of any possible deficiencies.***

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***\*\*Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.***

# Certification of Copy

State of Nevada }  
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER DENYING PLAINTIFFS' MOTION FOR NEW TRIAL; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

JEFFREY A. MYERS; ANDREW JAMES,

Plaintiff(s),

vs.

THI OF NEVADA AT CHEYENNE, LLC dba  
COLLEGE PARK REHABILITATION  
CENTER; HEALTHCARE REALTY OF  
CHEYENNE, LLC; FUNDAMENTAL  
ADMINISTRATIVE SERVICES, LLC,

Defendant(s),

Case No: A-16-735550-C

Dept No: XVII

now on file and of record in this office.

**IN WITNESS THEREOF**, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 30 day of September 2022.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

