

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

JEFFREY A. MYERS and ANDREW JAMES,
Appellants,

v.

THI OF NEVADA AT CHEYENNE, LLC;
HEALTHCARE REALTY OF CHEYENNE, LLC;
FUNDAMENTAL ADMINISTRATIVE
SERVICES, LLC,
Respondents.

No. 85441

DOCKETING STATEMENT CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department XVII
County Clark Judge The Honorable Michael Villani
District Ct. Case No. A-16-735550-C

2. Attorney filing this docketing statement:

Attorney Donald C. Kudler, Esq. Telephone (702) 878-8778
Firm Cap & Kudler
Address 3202 W. Charleston Blvd.
Las Vegas, NV 89102

Client(s) Jeffrey A. Myers and Andrew James

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Alexander F. Giovanniello, Esq. Telephone (702) 784-7638
Firm Giovanniello Law Group
Address _____

Client(s) THI of Nevada at Cheyenne; Healthcare Realty of Cheyenne; Fundamental Administrative Services

Attorney _____ Telephone _____
Firm _____
Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input checked="" type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following? N/A

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

8. Nature of the action. Briefly describe the nature of the action and the result below:

This is a personal injury accident arising out of an incident that occurred on June 6, 2014 where the Plaintiffs were injured by an arc flash caused when a screw, that was negligently left in an unsafe place, fell and crossed contact points in an electrical panel on the Defendants' property. The Court had previously decided that the Defendants were liable for the screw being left where it was due to their failure to respond to Discovery.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Whether the Jury manifestly disregarded the Jury instructions in holding that the Defendants did not breach their duty of care in light of the evidence and instructions stating they had a duty of care to the Plaintiffs to properly maintain the premises, including the electrical panel and the breaker controlling that panel and the evidence demonstrating that they did not provide any maintenance or inspection of the panel or the breaker that controlled the panel. The Jury never made any findings beyond that issue.

Whether the Court erred in denying Plaintiffs' Motion for New Trial given the Jury's ruling that there was no breach of the duty of care in light of the evidence and instructions stating they had a duty of care to the Plaintiffs to properly maintain the premises, including the electrical panel and the breaker controlling that panel and the evidence demonstrating that they did not provide any maintenance or inspection of the panel or the breaker that controlled the panel.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None known

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues? N/A

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

None of the subparagraphs of Rule 17 apply. However, the Motion for New Trial was heard by Judge Mark Gibbons, who advised that his brother, Judge Michael Gibbons is on the Court of Appeals and that, in order to avoid any appearance of impropriety, this case should not be heard by that Court.

14. Trial. If this action proceeded to trial, how many days did the trial last? 5 days

Was it a bench or jury trial? Jury

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from 06/24/2022

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served 06/24/22

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☒ NRCP 59 Date of filing 07/18/2022

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See *AA Primo Builders v. Washington*, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion 09/27/2022

(c) Date written notice of entry of order resolving tolling motion was served 09/27/2022

Was service by: Electronic Service

☐ Delivery

☐ Mail

19. Date notice of appeal filed 09/28/2022 District Court & 09/30/2022 Supreme Court

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)(1), NRAP 4(a)(4)(D), NRAP 4(a)(5)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input checked="" type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The Plaintiffs are appealing from the Jury's Verdict in favor of the Defendants holding that the Defendants did not breach any duty to the Plaintiffs. The Plaintiffs are appealing the Court's denial of their Motion for a New Trial Pursuant to NRCP Rule 59 holding that the Jury did not manifestly disregard the Jury Instructions.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Plaintiffs: Jeffrey A. Myers and Andrew James

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

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

N/A

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

The Plaintiffs filed Negligence Claims. The Defendants denied liability.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

N/A

(b) Specify the parties remaining below:

N/A

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

N/A

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order


VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Jeffrey A. Myers and Andrew James
Name of appellant

Donald C. Kudler
Name of counsel of record

10/13/2022
Date


Signature of counsel of record

Nevada, Clark
State and county where signed

CERTIFICATE OF SERVICE

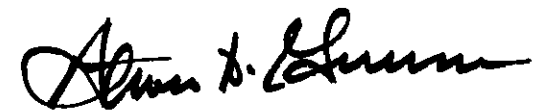
I certify that on the 13th day of October, 2022, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Alexander F. Giovanniello, Esq.
Christopher J. Giovanniello, Esq.
Giovanniello Law Group
3753 Howard Hughes Pkwy., Ste. 200
Las Vegas, NV 89169

Dated this 13th day of October, 2022


Signature



CLERK OF THE COURT

1 **ACOM**
2 **CAP & KUDLER**
3 Donald C. Kudler, Esq.
4 Nevada Bar #005041
5 3202 W. Charleston Blvd
6 Las Vegas, NV 89102
7 Tel. (702)878-8778
8 Fax (702)878-9350
9 Attorneys for Plaintiff

6 DISTRICT COURT
7 CLARK COUNTY, NEVADA
8

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

11 Plaintiff,

12 vs.

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

22 Defendants.

CASE NO. : A-16-735550-C

DEPT. NO.: VI

23 **AMENDED COMPLAINT**

24 COMES NOW, Plaintiffs , JEFFREY A. MYERS and ANDREW JAMES, by and through
25 their counsel of records, DONALD C. KUDLER, ESQ., of the law firm of CAP & KUDLER, and
26 for their causes of action against the Defendant, and each of them, alleges as follows:

27 **GENERAL ALLEGATIONS**

- 28 1. That at all times herein mentioned, Plaintiffs, JEFFREY A. MYERS was a resident
of Las Vegas, County of Clark, State of Nevada.
2. That at all times herein mentioned, Plaintiff, ANDREW JAMES was a resident of
Pahrump, County of Nye, State of Nevada.

1 3. At all times mentioned herein, Defendant, THI OF NEVADA AT CHEYENNE,
2 LLC d/b/a COLLEGE PARK REHABILITATION CENTER, is a Foreign Corporation, duly
3 authorized and qualified to conduct business in the State of Nevada.

4 4. At all times mentioned herein, Defendant, HEALTHCARE REALTY OF
5 CHEYENNE, LLC, is a Delaware Corporation, duly authorized and qualified to conduct business
6 in the State of Nevada.

7 5. At all times mentioned herein, Defendant, FUNDAMENTAL
8 ADMINISTRATIVE SERVICES, LLC, is a Delaware Corporation, duly authorized and qualified
9 to conduct business in the State of Nevada.

10 6. That at all time mentioned herein, Defendants, ROE CORPORATIONS I through
11 XXX, were corporations fully licensed to do business in the State of Nevada or other
12 Jurisdictions.

13 7. The true names and capacities of the Defendants designated herein as DOE or
14 ROE CORPORATIONS are presently unknown to Plaintiffs at this time who, therefore, sues said
15 Defendants by such fictitious names and when their true names and capacities are ascertained,
16 Plaintiffs will amend their Complaint accordingly to insert same herein.

17 8. The true names and capacities of the Defendants designated herein as ROE
18 CORPORATIONS I through XXX are presently unknown to Plaintiffs at this time who, therefore,
19 sue said Defendants by such fictitious names and when their true names and capacities are
20 ascertained, Plaintiffs will amend their Complaint accordingly to insert same herein.

21 9. At all times mentioned herein, Defendants, DOES I-XXX, ROE
22 CORPORATIONS I-XXX, and each of them, had improperly designed, installed and/or
23 maintained an electrical system located at the real property and premises located at 2856 E.
24 Cheyenne Avenue, in North Las Vegas, Clark County, Nevada, said premises commonly known
25 as College Park Rehabilitation Center.

26 10. At all time mentioned herein, Defendants and DOES I through V and ROE
27 CORPORATIONS I through V, and each of them were in possession, owners occupiers and/or in
28 control of College Park Rehabilitation Center located at 2856 E. Cheyenne Avenue, in North Las

1 Vegas, Clark County, Nevada at the time of the subject accident of June 6, 2014.

2 11. At all time relevant herein, Defendants, DOES VI through X and ROE
3 CORPORATIONS VI through X (hereinafter collectively referred to as "OPERATORS") and
4 each of them were Corporations responsible for operating College Park Rehabilitation Center, at
5 the time of the subject accident.

6 12. At all time relevant herein, Defendants, DOES XI through XV and ROE
7 CORPORATIONS XI through XV (hereinafter collectively referred to as "INSTALLERS") were
8 responsible for the installation of College Park Rehabilitation Center, at the time of the subject
9 accident.

10 13. At all time relevant herein, Defendants, DOES XVI through XX and ROE
11 CORPORATIONS XVI through XX (hereinafter collectively referred to as "DESIGNERS") were
12 the designers of College Park Rehabilitation Center, at the time of the subject accident.

13 14. At all time relevant herein, Defendants DOES XXI through XXV and ROE
14 CORPORATIONS XXI through XXV (hereinafter collectively referred to as
15 "MANUFACTURERS") were the manufacturers of College Park Rehabilitation Center, at the
16 time of the subject accident.

17 15. At all time relevant herein, Defendants DOES XXVI through XXX and ROE
18 CORPORATIONS XXVI through XXX (hereinafter collectively referred to as
19 "MAINTAINERS") were responsible for upkeep, care and maintenance of College Park
20 Rehabilitation Center, at the time of the subject accident.

21 16. At all times mentioned herein, Defendants, and each of them, were in the
22 possession and control of certain real property and premises located at 2856 E. Cheyenne Avenue,
23 North Las Vegas, Clark County, Nevada, said premises commonly known as College Park
24 Rehabilitation Center.

25 17. That on or about the 6th day of June, 2014, the Plaintiffs were upon said real
26 property and premises, as hereinabove referred to perform work at that location including the need
27 to access the electrical/breaker panel when the electrical/breaker panel short circuited causing an
28 arc flash explosion which resulted in Plaintiffs being badly burned.

1 18. At said time and place, the Defendants, and each of them, had negligently
2 designed, installed, maintained and/or controlled said electrical/breaker panel located on the real
3 property and premises and, further, negligently permitted a dangerous condition, not obvious or
4 apparent to the Plaintiffs, to exist thereon and further, did:

5 a. negligently cause a dangerous condition to exist to wit: an improperly designed,
6 installed and/or maintained a electrical/breaker panel including, but not limited to, leaving metal
7 parts unsecured within the panel;

8 b. negligently allow said dangerous condition to remain in existence, as aforesaid, for
9 an unreasonable length of time;

10 c. negligently failed to warn the Plaintiffs of the presence of said dangerous condition
11 and,

12 d. negligently allow the electrical/breaker panel to be in a condition dangerous and
13 unfit in that the Defendants caused and permitted the dangerous condition to exist at the
14 electrical/breaker panel of the said premises, and, further, negligently failed to reasonably warn or
15 guard the Plaintiffs in regard thereto.

16 19. As a proximate result of the aforesaid negligence of the Defendants, and each of
17 them, Plaintiffs, JEFFREY A. MYERS and ANDREW JAMES, were badly burned by an arc
18 flash explosion and otherwise injured while accessing said electrical/breaker panel on the
19 premises of the Defendants, and each of them, thereby causing the Plaintiffs to be electrocuted
20 and severely burn from the explosion, and thereby sustaining the injuries and damages as
21 hereinafter set forth.

22 20. Prior to the incident, the dangerous condition of said premises was known by
23 Defendants and each of them, or should have been known by the Defendants and each of them, in
24 the exercise of reasonable care.

25 **FIRST CAUSE OF ACTION**

26 21. Plaintiff, JEFFREY A. MYERS, incorporates paragraphs 1 through 20 of General
27 Allegations herein as though said paragraphs were fully set forth at this point herein.

28 22. That by reason of the premises and as a direct and proximate result thereof,

1 Plaintiff, JEFFREY A. MYERS, sustained injuries to his head, neck, back, bodily limbs, organs
2 and systems all or some of which conditions may be permanent and disabling in nature, all to his
3 general damage in a sum in excess of \$10,000.00.

4 23. That by reason of the premises and as a direct and proximate result of the
5 aforementioned negligence of the Defendants, and each of them, Plaintiff, JEFFREY A. MYERS,
6 was required to and did receive medical and other treatment for his injuries received in an expense
7 all to his damage in a sum in excess of \$10,000.00. That said services, care and treatment are
8 continuing and shall continue in the future, all to his damage in a presently unascertainable
9 amount, and Plaintiff will amend his Complaint accordingly when same shall be ascertained.

10 24. That prior to the injuries complained of herein, Plaintiff, JEFFREY A. MYERS,
11 was an able-bodied person readily and gainfully employed and physically capable of engaging in
12 all other activities for which he was otherwise suited.

13 25. That by reason of the premises and as a direct and proximate result thereof,
14 Plaintiff, JEFFREY A. MYERS, has been required to and did lose time from his employment,
15 continues to, and shall continue to be limited in his activities and occupations which has caused
16 and shall continue to cause the Plaintiff a loss of earnings and earning capacity, to his damage in a
17 presently unascertainable amount, in this regard, Plaintiff asks leave of this Court to insert said
18 amount when the same shall be fully ascertained.

19 SECOND CAUSE OF ACTION

20 26. Plaintiff, ANDREW JAMES, incorporates paragraphs 1 through 20 of General
21 Allegations herein and paragraphs 21 through 25 of the First Cause of Action herein as though
22 said paragraphs were fully set forth at this point herein.

23 27. That by reason of the premises and as a direct and proximate result thereof,
24 Plaintiff, ANDREW JAMES, sustained injuries to his head, neck, back, bodily limbs, organs and
25 systems all or some of which conditions may be permanent and disabling in nature, all to his
26 general damage in a sum in excess of \$10,000.00.

27 28. That by reason of the premises and as a direct and proximate result of the
28 aforementioned negligence of the Defendants, and each of them, Plaintiff, ANDREW JAMES,

1 was required to and did receive medical and other treatment for his injuries received in an expense
2 all to his damage in a sum in excess of \$10,000.00. That said services, care and treatment are
3 continuing and shall continue in the future, all to his damage in a presently unascertainable
4 amount, and Plaintiff will amend his Complaint accordingly when same shall be ascertained.

5 29. That prior to the injuries complained of herein, Plaintiff, ANDREW JAMES, was
6 an able-bodied person readily and gainfully employed and physically capable of engaging in all
7 other activities for which he was otherwise suited.

8 30. That by reason of the premises and as a direct and proximate result thereof,
9 Plaintiff, ANDREW JAMES, has been required to and did lose time from his employment,
10 continues to, and shall continue to be limited in his activities and occupations which has caused
11 and shall continue to cause the Plaintiff a loss of earnings and earning capacity, to his damage in a
12 presently unascertainable amount, in this regard, Plaintiff asks leave of this Court to insert said
13 amount when the same shall be fully ascertained.

14 WHEREFORE, Plaintiffs, JEFFREY A. MYERS and ANDREW JAMES, expressly
15 reserving their right to amend their Complaint prior to or at the time of trial of this action to insert
16 those items of damage not yet fully ascertainable, pray judgment as follows:

17 FIRST CAUSE OF ACTION

18 1. For general damages sustained by Plaintiff, JEFFREY A. MYERS, in an amount in
19 excess of \$10,000.00;

20 2. For costs of medical care and treatment and other expenses incurred thereto when
21 same are fully ascertained;

22 3. For lost wages incurred when same have been fully ascertained;

23 4. For costs of suit incurred herein; and

24 5. For such other and further relief as the Court may deem just and proper in the
25 premises.

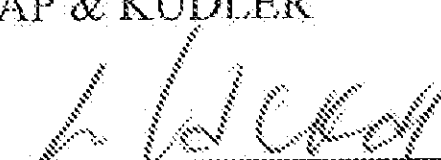
26 SECOND CAUSE OF ACTION

27 1. For general damages sustained by Plaintiff, ANDREW JAMES, in an amount in
28 excess of \$10,000.00;

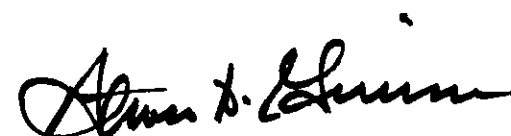
- 1 2. For costs of medical care and treatment and other expenses incurred thereto when
2 same are fully ascertained;
3 3. For lost wages incurred when same have been fully ascertained;
4 4. For costs of suit incurred herein; and
5 5. For such other and further relief as the Court may deem just and proper in the
6 premises.

7 DATED this 6th day of May, 2015.

CAP & KUDLER



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Nevada Bar No. 0005041
3202 W. Charleston Boulevard
Las Vegas, Nevada 89102
(702) 878-8778
Attorney for Plaintiffs



CLERK OF THE COURT

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Las Vegas, Nevada 89145
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Facsimile: (702) 515-7441

Attorneys for Defendant
**FUNDAMENTAL ADMINISTRATIVE
SERVICES, LLC**

DISTRICT COURT

CLARK COUNTY, NEVADA

JEFFERY A. MYERS and ANDREW JAMES,
individually,

Plaintiffs,

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.: VI

**ANSWER OF FUNDAMENTAL
ADMINISTRATIVE SERVICES, LLC**

COMES NOW, Defendant FUNDAMENTAL ADMINISTRATIVE SERVICES
(hereinafter "Defendant"), by and through its counsel of record Robert D. Rourke Esq. of the
ROURKE LAW FIRM and hereby Answers Plaintiffs' Amended Complaint on file herein, and
denies, admits, and alleges as follows:

GENERAL ALLEGATIONS

1 1. Answering paragraphs 1, 2, 6, 7, and 8, of the Amended Complaint on file herein,
2 this answering Defendant is without sufficient information, knowledge or belief upon which to
3 form a belief as to the truth or falsity of the allegations contained therein and, therefore, denies
4 same.

5 2. Answering paragraphs 3 and 4 of the Amended Complaint on file herein, this
6 answering Defendant states that paragraphs 3 and 4 are directed at a defendant other than
7 answering defendant and therefore no response is required.

8 3. Answering paragraph 5 of the Amended Complaint on file herein, this answering
9 Defendant states that Defendant is a Delaware limited liability company authorized to do
10 business in Nevada.
11

12 4. Answering paragraphs 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 (including all subparts
13 a-d), 19, and 20 of the Amended Complaint on file herein, this answering Defendant denies each
14 and every allegation contained therein.
15

16 **FIRST CAUSE OF ACTION**

17 5. Answering paragraph 21 of the Amended Complaint on file herein, this answering
18 Defendant repeats and realleges paragraphs 1 through 4 above as if more fully set forth herein.
19

20 6. Answering paragraph 22, 23, 24, and 25 of the Amended Complaint on file
21 herein, this answering Defendant denies each and every allegation contained therein.
22

23 **SECOND CAUSE OF ACTION**

24 7. Answering paragraph 26 of the Amended Complaint on file herein, this answering
25 Defendant repeats and realleges paragraphs 1 through 6 above as if more fully set forth herein.

26 8. Answering paragraphs 27, 28, 29, and 30 of the Amended Complaint on file herein,
27 this answering Defendant denies each and every allegation contained therein.
28

1 Any allegation contained in the Amended Complaint not specifically addressed above
2 due to construction or omission is hereby denied.

3 **AFFIRMATIVE DEFENSES**

4 **FIRST AFFIRMATIVE DEFENSE**

5 Defendant affirmatively states that the Amended Complaint fails to state a claim against
6 it upon which relief can be granted.
7

8 **SECOND AFFIRMATIVE DEFENSE**

9 Defendant alleges that the damage, if any, suffered by Plaintiffs, in whole or in part, was
10 contributed to by reason of the negligence of the Plaintiffs.
11

12 **THIRD AFFIRMATIVE DEFENSE**

13 The incident alleged in the Amended Complaint and the resulting damage, if any, to
14 Plaintiffs were proximately caused or contributed to by the Plaintiffs' own negligence, and such
15 negligence was greater than the negligence, if any, of this Defendant.
16

17 **FOURTH AFFIRMATIVE DEFENSE**

18 Defendant alleges that the occurrence referred to in the Amended Complaint and all
19 injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of a third
20 party over whom this Defendant had no control.
21

22 **FIFTH AFFIRMATIVE DEFENSE**

23 Defendant alleges that the subject Amended Complaint is barred by the doctrine of
24 laches, in that Plaintiffs have unreasonably delayed in bringing this claim and said delays have
25 caused prejudice to Defendant.
26

27 **SIXTH AFFIRMATIVE DEFENSE**

28 Plaintiffs failed to mitigate the damages.

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SEVENTH AFFIRMATIVE DEFENSE

Defendant is informed and believes, and upon such information and belief alleges, that at all times mentioned herein, if Plaintiffs were damaged, it was proximately caused by the independent conduct of third parties or entities, both known and unknown, and each of them, were negligent, careless and reckless and unlawfully conducted themselves so as to substantially contribute to Plaintiffs' purported injuries, and said negligence, if any, either bars in whole or in part damages sought herein against Defendant and any potential recovery against Defendant must therefore be reduced accordingly.

EIGHTH AFFIRMATIVE DEFENSE

Answering Defendant alleges that if it should be found that Defendant is in any manner legally responsible for the injury or damages, if any, sought by Plaintiffs, which supposition is not admitted but merely stated for the purpose of pleading this action, then any such injuries or damages were proximately caused or contributed to by Plaintiffs or other parties to this action, and/or any other persons or entities not parties to this action, and it is necessary that the proportionate degree of negligence, fault or unreasonable conduct of each of said persons or entities, whether parties to this action or not, be determined and pro-rationed and that any judgment which might be rendered against Defendant be reduced to reflect its percentage of fault, and that any award be reduced to reflect the total of the degree of negligence, fault and/or unreasonable conduct found to exist as to said other persons or entities.

NINTH AFFIRMATIVE DEFENSE

Defendant alleges that the subject Amended Complaint is barred by the applicable Statute of Limitations.

TENTH AFFIRMATIVE DEFENSE

1 Defendant alleges that the injuries and damages complained of in the Amended
2 Complaint, if any, were proximately caused by the intervening or superseding actions of others,
3 which intervening and superseding actions bar and/or diminish Plaintiffs' recovery, if any,
4 against this Defendant.

5 **ELEVENTH AFFIRMATIVE DEFENSE**

6 Defendant alleges that Plaintiff have, through their own acts and omissions, waived the
7 right to recover damages from Defendant.

8 **TWELTH AFFIRMATIVE DEFENSE**

9 Defendant is informed and believes, and based thereon alleges, that it is entitled to the
10 right of indemnification, whether by apportionment or otherwise, against all of the parties,
11 entities and persons whose negligence contributed proximately to the happening of the claimed
12 accident or alleged injuries.

13 **THIRTEENTH AFFIRMATIVE DEFENSE**

14 Defendant alleges that Plaintiffs have not sustained any damages or injuries which have
15 been proximately caused by any purported act, omission or breach of any duty on the part of this
16 answering Defendant.

17 **FOURTEENTH AFFIRMATIVE DEFENSE**

18 Defendant alleges that the events, injuries, losses and damages complained of in the
19 Amended Complaint, if any, were the result of an unavoidable accident insofar as Defendant is
20 concerned, and occurred without any negligence, want of care, default or other breach of duty to
21 Plaintiffs on the part of Defendant.

22 **FIFTEENTH AFFIRMATIVE DEFENSE**

1 Defendant alleges that any injury or damage suffered by Plaintiffs, whether as alleged or
2 otherwise, was a direct, proximate and sole result of the physical, mental or emotional bodily
3 condition and constitutional composition of Plaintiffs on, prior and subsequent to, all times
4 mentioned in the Complaint.

5 **SIXTEENTH AFFIRMATIVE DEFENSE**

6 Defendant alleges, upon such information and belief, that Plaintiffs, by the exercise of
7 reasonable effort and/or care, could have mitigated that amount of damages alleged to have been
8 suffered, but that Plaintiffs failed, neglected and refused, and continues to fail and refuse, to
9 exercise a reasonable effort to mitigate the alleged damages.
10

11 **SEVENTEETH AFFIRMATIVE DEFENSE**

12 Defendant alleges that at the times and places mentioned in the Amended Complaint,
13 Plaintiffs were careless, reckless and negligent in or about the matters and things alleged in the
14 Amended Complaint which said carelessness, recklessness and negligence concurred in point of
15 time with the alleged negligence of Defendant, if any, there may have been, and proximately
16 caused and contributed to whatever injury and/or damage Plaintiffs may have sustained, if any.
17

18 **EIGHTEENTH AFFIRMATIVE DEFENSE**

19 Defendant alleges that all risks and dangers involved in the factual situation described in
20 Plaintiffs' Amended Complaint were open, obvious, and known to Plaintiffs, and as such
21 Plaintiffs are barred from recovering damages from Defendant.
22

23 **NINETEENTH AFFIRMATIVE DEFENSE**

24 Defendant alleges that Plaintiffs' claims are barred by virtue of Plaintiffs' failure to join
25 necessary and indispensable parties to this lawsuit.
26

27 **TWENTIETH AFFIRMATIVE DEFENSE**

1 Defendant alleges that at the time and place of the alleged occurrence set forth in
2 Plaintiffs' Amended Complaint, there existed certain inherent, unavoidable risks of which
3 Plaintiffs were aware, and that Plaintiffs nonetheless knowingly and voluntarily assumed these
4 risks by acting in the manner described in the Amended Complaint, and that to the extent such
5 assumption of the risk was a proximate cause of Plaintiffs' alleged damages, Defendant is not
6 liable for Plaintiffs' alleged damages.
7

8 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

9 Defendant alleges that Plaintiffs, by virtue of their own acts and omissions, is estopped
10 from recovering damages from this Defendant.
11

12 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

13 Defendant alleges that this action is barred by the equitable doctrine of unclean hands.
14

15 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

16 Defendant alleges that at all times relevant to the allegations contained in Plaintiffs'
17 Amended Complaint, it acted with the due care and circumspection in the performance of any
18 and all duties imposed on it.
19

20 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

21 Defendant alleges that at the times and places mentioned in the Amended Complaint,
22 Plaintiffs were reckless and/or grossly negligent in or about the matters and things alleged in the
23 Amended Complaint which said recklessness and/or gross negligence concurred in point of time
24 with the alleged negligence of Defendant, if any there may have been, and proximately caused
25 and contributed to whatever injury and/or damage Plaintiffs may have sustained, if any.
26

27 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

28

1 Defendant alleges that it had no notice of the dangerous or defective condition alleged in
2 Plaintiffs Amended Complaint.

3 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

4 Defendant is informed and believes, and upon such information and belief alleges that if,
5 in fact, Defendant is found to have been negligent in any manner, its negligence could only be
6 passive and secondary, while the negligence of Plaintiffs, other Defendants, Third-Party
7 Defendants or other third parties would be active and primary and thus bar, in whole or in part,
8 recovery on this Amended Complaint.
9

10 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

11 Defendant is informed and believes, and based thereon alleges, that Plaintiffs have failed
12 to set forth facts sufficient to support an award for attorney's fees or other extra-contractual
13 damages, and that accordingly any alleged claims for attorney's fees or extra-contractual
14 damages are barred.
15

16 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

17 Defendant alleges that it has been necessary to employ the services of an attorney to
18 defend it in this action and a reasonable sum should be allowed Defendant for attorneys' fees,
19 together with costs of suit incurred herein.
20

21 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

22 Defendant claims that it is not responsible for any injuries or harm that Plaintiffs may
23 have suffered because their claims are barred under Nevada's Worker's Compensation Act.
24 Including, but not limited to, NRS 616A et seq.
25

26 **THIRTIETH AFFIRMATIVE DEFENSE**
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1 Defendant hereby incorporates by reference those affirmative defenses enumerated in
2 Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further
3 investigation or discovery reveals the applicability of any such defenses, Defendant reserves the
4 right to seek leave of Court to amend its Answer to specifically assert the same. Such defenses
5 are herein incorporated by reference for the specific purpose of not waiving the same.
6

7 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

8 Pursuant to NRCP 11, Defendant presently has insufficient knowledge or information on
9 which to form a belief as to whether it has additional, as yet unstated affirmative defenses
10 available. Answering Defendant hereby reserves its right to insert additional affirmative
11 defenses in the event discovery and investigation indicate it would be appropriate.
12

13 **WHEREFORE**, having fully answered and responded to Plaintiffs' Amended
14 Complaint, Defendant prays for judgment as follows:

- 15 1. That Plaintiffs take nothing by way of their Amended Complaint;
- 16 2. That the Amended Complaint be dismissed with prejudice and that Defendant be
17 awarded judgment in this action;
- 18 3. That Defendant be awarded its costs incurred therein;
- 19 4. That Defendant be awarded its attorney's fees; and
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5. For such other and further relief as the Court deems just and proper.

DATED this 26 day of July, 2016.

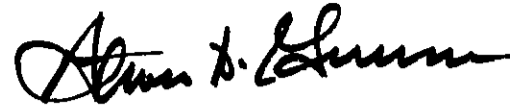
ROURKE LAW FIRM

ROBERT D. ROURKE, ESQ.
Nevada Bar No. 5757
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145
Attorneys for Defendant
**FUNDAMENTAL ADMINISTRATIVE
SERVICES, LLC**

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Donald C. Kudler, Esq.
CAP & KUDLER
3202 W. Charleston Blvd.
Las Vegas, NV 89102

An Employee of ROURKE LAW FIRM



CLERK OF THE COURT

ROBERT D. ROURKE, ESQ.
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ROURKE LAW FIRM
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 515-7440
Facsimile: (702) 515-7441

Attorneys for Defendant
HEALTHCARE REALTY OF CHYENNE, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

JEFFERY A. MYERS and ANDREW JAMES,
individually,

Plaintiffs,

vs.

CASE NO.: A-16-735550-C
DEPT NO.: VI

**ANSWER OF HEALTHCARE
REALTY OF CHEYENNE, LLC**

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.

COMES NOW, Defendant HEALTHCARE REALTY OF CHEYENNE, LLC
(hereinafter "Defendant"), by and through its counsel of record Robert D. Rourke Esq. of the
ROURKE LAW FIRM and hereby Answers Plaintiffs' Amended Complaint on file herein, and
denies, admits, and alleges as follows:

GENERAL ALLEGATIONS

1 1. Answering paragraphs 1, 2, 6, 7, and 8, of the Amended Complaint on file herein,
2 this answering Defendant is without sufficient information, knowledge or belief upon which to
3 form a belief as to the truth or falsity of the allegations contained therein and, therefore, denies
4 same.

5 2. Answering paragraph 4 of the Amended Complaint on file herein, this answering
6 Defendant states that it is a Delaware limited liability company authorized to do business in the
7 State of Nevada.
8

9 3. Answering paragraphs 3 and 5 of the Amended Complaint on file herein, this
10 answering Defendant states that paragraphs 3 and 5 are directed at a defendant other than
11 answering defendant and therefore no response is required.
12

13 4. Answering paragraphs 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 (including all subparts
14 a-d), 19, and 20 of the Amended Complaint on file herein, this answering Defendant denies each
15 and every allegation contained therein.
16

17 **FIRST CAUSE OF ACTION**

18 5. Answering paragraph 21 of the Amended Complaint on file herein, this answering
19 Defendant repeats and realleges paragraphs 1 through 4 above as if more fully set forth herein.

20 6. Answering paragraph 22, 23, 24, and 25 of the Amended Complaint on file
21 herein, this answering Defendant denies each and every allegation contained therein.
22

23 **SECOND CAUSE OF ACTION**

24 7. Answering paragraph 26 of the Amended Complaint on file herein, this answering
25 Defendant repeats and realleges paragraphs 1 through 6 above as if more fully set forth herein.

26 8. Answering paragraphs 27, 28, 29, and 30 of the Amended Complaint on file herein,
27 this answering Defendant denies each and every allegation contained therein.
28

1 Any allegation contained in the Amended Complaint not specifically addressed above
2 due to construction or omission is hereby denied.

3 **AFFIRMATIVE DEFENSES**

4 **FIRST AFFIRMATIVE DEFENSE**

5 Defendant affirmatively states that the Amended Complaint fails to state a claim against
6 it upon which relief can be granted.

7 **SECOND AFFIRMATIVE DEFENSE**

8 Defendant alleges that the damage, if any, suffered by Plaintiffs, in whole or in part, was
9 contributed to by reason of the negligence of the Plaintiffs.

10 **THIRD AFFIRMATIVE DEFENSE**

11 The incident alleged in the Amended Complaint and the resulting damage, if any, to
12 Plaintiffs were proximately caused or contributed to by the Plaintiffs' own negligence, and such
13 negligence was greater than the negligence, if any, of this Defendant.

14 **FOURTH AFFIRMATIVE DEFENSE**

15 Defendant alleges that the occurrence referred to in the Amended Complaint and all
16 injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of a third
17 party over whom this Defendant had no control.

18 **FIFTH AFFIRMATIVE DEFENSE**

19 Defendant alleges that the subject Amended Complaint is barred by the doctrine of
20 laches, in that Plaintiffs have unreasonably delayed in bringing this claim and said delays have
21 caused prejudice to Defendant.

22 **SIXTH AFFIRMATIVE DEFENSE**

23 Plaintiffs failed to mitigate the damages.
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SEVENTH AFFIRMATIVE DEFENSE

Defendant is informed and believes, and upon such information and belief alleges, that at all times mentioned herein, if Plaintiffs were damaged, it was proximately caused by the independent conduct of third parties or entities, both known and unknown, and each of them, were negligent, careless and reckless and unlawfully conducted themselves so as to substantially contribute to Plaintiffs' purported injuries, and said negligence, if any, either bars in whole or in part damages sought herein against Defendant and any potential recovery against Defendant must therefore be reduced accordingly.

EIGHTH AFFIRMATIVE DEFENSE

Answering Defendant alleges that if it should be found that Defendant is in any manner legally responsible for the injury or damages, if any, sought by Plaintiffs, which supposition is not admitted but merely stated for the purpose of pleading this action, then any such injuries or damages were proximately caused or contributed to by Plaintiffs or other parties to this action, and/or any other persons or entities not parties to this action, and it is necessary that the proportionate degree of negligence, fault or unreasonable conduct of each of said persons or entities, whether parties to this action or not, be determined and pro-rationed and that any judgment which might be rendered against Defendant be reduced to reflect its percentage of fault, and that any award be reduced to reflect the total of the degree of negligence, fault and/or unreasonable conduct found to exist as to said other persons or entities.

NINTH AFFIRMATIVE DEFENSE

Defendant alleges that the subject Amended Complaint is barred by the applicable Statute of Limitations.

TENTH AFFIRMATIVE DEFENSE

1 Defendant alleges that the injuries and damages complained of in the Amended
2 Complaint, if any, were proximately caused by the intervening or superseding actions of others,
3 which intervening and superseding actions bar and/or diminish Plaintiffs' recovery, if any,
4 against this Defendant.

5 **ELEVENTH AFFIRMATIVE DEFENSE**

6 Defendant alleges that Plaintiff have, through their own acts and omissions, waived the
7 right to recover damages from Defendant.

8 **TWELTH AFFIRMATIVE DEFENSE**

9 Defendant is informed and believes, and based thereon alleges, that it is entitled to the
10 right of indemnification, whether by apportionment or otherwise, against all of the parties,
11 entities and persons whose negligence contributed proximately to the happening of the claimed
12 accident or alleged injuries.

13 **THIRTEENTH AFFIRMATIVE DEFENSE**

14 Defendant alleges that Plaintiffs have not sustained any damages or injuries which have
15 been proximately caused by any purported act, omission or breach of any duty on the part of this
16 answering Defendant.

17 **FOURTEENTH AFFIRMATIVE DEFENSE**

18 Defendant alleges that the events, injuries, losses and damages complained of in the
19 Amended Complaint, if any, were the result of an unavoidable accident insofar as Defendant is
20 concerned, and occurred without any negligence, want of care, default or other breach of duty to
21 Plaintiffs on the part of Defendant.

22 **FIFTEENTH AFFIRMATIVE DEFENSE**

1 Defendant alleges that any injury or damage suffered by Plaintiffs, whether as alleged or
2 otherwise, was a direct, proximate and sole result of the physical, mental or emotional bodily
3 condition and constitutional composition of Plaintiffs on, prior and subsequent to, all times
4 mentioned in the Complaint.

5 **SIXTEENTH AFFIRMATIVE DEFENSE**

6 Defendant alleges, upon such information and belief, that Plaintiffs, by the exercise of
7 reasonable effort and/or care, could have mitigated that amount of damages alleged to have been
8 suffered, but that Plaintiffs failed, neglected and refused, and continues to fail and refuse, to
9 exercise a reasonable effort to mitigate the alleged damages.
10

11 **SEVENTEETH AFFIRMATIVE DEFENSE**

12 Defendant alleges that at the times and places mentioned in the Amended Complaint,
13 Plaintiffs were careless, reckless and negligent in or about the matters and things alleged in the
14 Amended Complaint which said carelessness, recklessness and negligence concurred in point of
15 time with the alleged negligence of Defendant, if any, there may have been, and proximately
16 caused and contributed to whatever injury and/or damage Plaintiffs may have sustained, if any.
17

18 **EIGHTEENTH AFFIRMATIVE DEFENSE**

19 Defendant alleges that all risks and dangers involved in the factual situation described in
20 Plaintiffs' Amended Complaint were open, obvious, and known to Plaintiffs, and as such
21 Plaintiffs are barred from recovering damages from Defendant.
22

23 **NINETEENTH AFFIRMATIVE DEFENSE**

24 Defendant alleges that Plaintiffs' claims are barred by virtue of Plaintiffs' failure to join
25 necessary and indispensable parties to this lawsuit.
26

27 **TWENTIETH AFFIRMATIVE DEFENSE**

1 Defendant alleges that at the time and place of the alleged occurrence set forth in
2 Plaintiffs' Amended Complaint, there existed certain inherent, unavoidable risks of which
3 Plaintiffs were aware, and that Plaintiffs nonetheless knowingly and voluntarily assumed these
4 risks by acting in the manner described in the Amended Complaint, and that to the extent such
5 assumption of the risk was a proximate cause of Plaintiffs' alleged damages, Defendant is not
6 liable for Plaintiffs' alleged damages.
7

8 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

9 Defendant alleges that Plaintiffs, by virtue of their own acts and omissions, is estopped
10 from recovering damages from this Defendant.
11

12 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

13 Defendant alleges that this action is barred by the equitable doctrine of unclean hands.
14

15 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

16 Defendant alleges that at all times relevant to the allegations contained in Plaintiffs'
17 Amended Complaint, it acted with the due care and circumspection in the performance of any
18 and all duties imposed on it.
19

20 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

21 Defendant alleges that at the times and places mentioned in the Amended Complaint,
22 Plaintiffs were reckless and/or grossly negligent in or about the matters and things alleged in the
23 Amended Complaint which said recklessness and/or gross negligence concurred in point of time
24 with the alleged negligence of Defendant, if any there may have been, and proximately caused
25 and contributed to whatever injury and/or damage Plaintiffs may have sustained, if any.
26

27 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**
28

1 Defendant alleges that it had no notice of the dangerous or defective condition alleged in
2 Plaintiffs Amended Complaint.

3 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

4 Defendant is informed and believes, and upon such information and belief alleges that if,
5 in fact, Defendant is found to have been negligent in any manner, its negligence could only be
6 passive and secondary, while the negligence of Plaintiffs, other Defendants, Third-Party
7 Defendants or other third parties would be active and primary and thus bar, in whole or in part,
8 recovery on this Amended Complaint.
9

10 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

11 Defendant is informed and believes, and based thereon alleges, that Plaintiffs have failed
12 to set forth facts sufficient to support an award for attorney's fees or other extra-contractual
13 damages, and that accordingly any alleged claims for attorney's fees or extra-contractual
14 damages are barred.
15

16 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

17 Defendant alleges that it has been necessary to employ the services of an attorney to
18 defend it in this action and a reasonable sum should be allowed Defendant for attorneys' fees,
19 together with costs of suit incurred herein.
20

21 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

22 Defendant claims that it is not responsible for any injuries or harm that Plaintiffs may
23 have suffered because their claims are barred under Nevada's Worker's Compensation Act.
24 Including, but not limited to, NRS 616A et seq.
25

26 **THIRTIETH AFFIRMATIVE DEFENSE**
27
28

1 Defendant hereby incorporates by reference those affirmative defenses enumerated in
2 Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further
3 investigation or discovery reveals the applicability of any such defenses, Defendant reserves the
4 right to seek leave of Court to amend its Answer to specifically assert the same. Such defenses
5 are herein incorporated by reference for the specific purpose of not waiving the same.
6


7 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

8 Pursuant to NRCP 11, Defendant presently has insufficient knowledge or information on
9 which to form a belief as to whether it has additional, as yet unstated affirmative defenses
10 available. Answering Defendant hereby reserves its right to insert additional affirmative
11 defenses in the event discovery and investigation indicate it would be appropriate.
12

13 **WHEREFORE**, having fully answered and responded to Plaintiffs' Amended
14 Complaint, Defendant prays for judgment as follows:

- 15 1. That Plaintiffs take nothing by way of their Amended Complaint;
- 16 2. That the Amended Complaint be dismissed with prejudice and that Defendant be
17 awarded judgment in this action;
- 18 3. That Defendant be awarded its costs incurred therein;
- 19 4. That Defendant be awarded its attorney's fees; and
- 20 5. For such other and further relief as the Court deems just and proper.
21

22 DATED this 26th day of July, 2016.

23 ROURKE LAW FIRM
24 

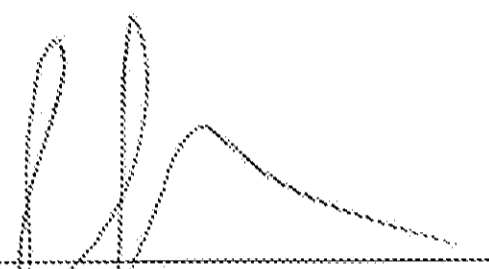
25 ROBERT D. ROURKE, ESQ.
26 Nevada Bar No. 5757
27 10161 Park Run Drive, Suite 150
28 Las Vegas, NV 89145
Attorneys for Defendant
HEALTHCARE REALTY OF CHEYENNE

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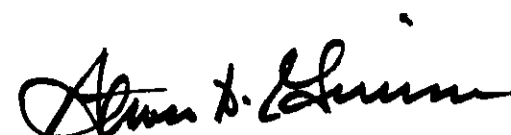
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of July, 2016 a true and correct copy of the foregoing **ANSWER OF HEALTHCARE REALTY OF CHEYENNE, LLC** was served via First-Class U.S. Mail, postage prepaid, at Las Vegas, Nevada and addressed as follows:

Donald C. Kudler, Esq.
CAP& KUDLER
3202 W. Charleston Blvd.
Las Vegas, NV 89102



An Employee of ROURKE LAW FIRM



CLERK OF THE COURT

ROBERT D. ROURKE, ESQ.
Nevada Bar No. 5757
ROURKE LAW FIRM
10161 Park Run Drive, Suite 150
Las Vegas, Nevada 89145
Telephone: (702) 515-7440
Facsimile: (702) 515-7441

Attorneys for Defendant/Third Party Plaintiff
THI OF NEVADA AT CHEYENNE, LLC
dba COLLEGE PARK REHABILITATION CENTER

DISTRICT COURT

CLARK COUNTY, NEVADA

JEFFERY A. MYERS and ANDREW JAMES,
individually,

Plaintiffs,

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.: VI

ANSWER AND THIRD PARTY
COMPLAINT OF THI OF NEVADA AT
CHEYENNE, LLC D/B/A COLLEGE PARK
REHABILITATION CENTER

COMES NOW, Defendant THI OF NEVADA AT CHEYENNE, LLC d/b/a COLLEGE
PARK REHABILITATION CENTER (hereinafter "Defendant"), by and through its counsel of
record Robert D. Rourke Esq. of the ROURKE LAW FIRM and hereby Answers Plaintiffs'
Amended Complaint on file herein, and denies, admits, and alleges as follows:

GENERAL ALLEGATIONS

1 1. Answering paragraphs 1, 2, 6, 7, and 8, of the Amended Complaint on file herein,
2 this answering Defendant is without sufficient information, knowledge or belief upon which to
3 form a belief as to the truth or falsity of the allegations contained therein and, therefore, denies
4 same.

5 2. Answering paragraph 3 of the Amended Complaint on file herein, this answering
6 Defendant admits that it is a Delaware limited liability company duly licensed by the state of
7 Nevada.
8

9 3. Answering paragraph 4 of the Amended Complaint on file herein, this answering
10 Defendant states that the paragraph 4 is directed at a defendant other than Answering defendant
11 and therefore no response is required.
12

13 4. Answering paragraph 5 of the Amended Complaint on file herein, this answering
14 Defendant states that the paragraph 5 is directed at a defendant other than Answering defendant
15 and therefore no response is required.

16 5. Answering paragraphs 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 (including all subparts
17 a-d), 19, and 20 of the Amended Complaint on file herein, this answering Defendant denies each
18 and every allegation contained therein.
19

20 **FIRST CAUSE OF ACTION**

21 6. Answering paragraph 21 of the Amended Complaint on file herein, this answering
22 Defendant repeats and realleges paragraphs 1 through 5 above as if more fully set forth herein.
23

24 7. Answering paragraph 22, 23, 24, and 25 of the Amended Complaint on file
25 herein, this answering Defendant denies each and every allegation contained therein.

26 **SECOND CAUSE OF ACTION**
27
28

1 8. Answering paragraph 26 of the Amended Complaint on file herein, this answering
2 Defendant repeats and realleges paragraphs 1 through 7 above as if more fully set forth herein.

3 12. Answering paragraphs 27, 28, 29, and 30 of the Amended Complaint on file herein,
4 this answering Defendant denies each and every allegation contained therein.

5 Any allegation contained in the Amended Complaint not specifically addressed above
6 due to construction or omission is hereby denied.
7

8 **AFFIRMATIVE DEFENSES**

9 **FIRST AFFIRMATIVE DEFENSE**

10 Defendant affirmatively states that the Amended Complaint fails to state a claim against
11 it upon which relief can be granted.
12

13 **SECOND AFFIRMATIVE DEFENSE**

14 Defendant alleges that the damage, if any, suffered by Plaintiffs, in whole or in part, was
15 contributed to by reason of the negligence of the Plaintiffs.
16

17 **THIRD AFFIRMATIVE DEFENSE**

18 The incident alleged in the Amended Complaint and the resulting damage, if any, to
19 Plaintiffs were proximately caused or contributed to by the Plaintiffs' own negligence, and such
20 negligence was greater than the negligence, if any, of this Defendant.

21 **FOURTH AFFIRMATIVE DEFENSE**

22 Defendant alleges that the occurrence referred to in the Amended Complaint and all
23 injuries and damages, if any, resulting therefrom, were caused by the acts or omissions of a third
24 party over whom this Defendant had no control.
25

26 **FIFTH AFFIRMATIVE DEFENSE**

1 Defendant alleges that the subject Amended Complaint is barred by the doctrine of
2 laches, in that Plaintiffs have unreasonably delayed in bringing this claim and said delays have
3 caused prejudice to Defendant.

4 **SIXTH AFFIRMATIVE DEFENSE**

5 Plaintiffs failed to mitigate the damages.

7 **SEVENTH AFFIRMATIVE DEFENSE**

8 Defendant is informed and believes, and upon such information and belief alleges, that at
9 all times mentioned herein, if Plaintiffs were damaged, it was proximately caused by the
10 independent conduct of third parties or entities, both known and unknown, and each of them,
11 were negligent, careless and reckless and unlawfully conducted themselves so as to substantially
12 contribute to Plaintiffs' purported injuries, and said negligence, if any, either bars in whole or in
13 part damages sought herein against Defendant and any potential recovery against Defendant
14 must therefore be reduced accordingly.

16 **EIGHTH AFFIRMATIVE DEFENSE**

17 Answering Defendant alleges that if it should be found that Defendant is in any manner
18 legally responsible for the injury or damages, if any, sought by Plaintiffs, which supposition is
19 not admitted but merely stated for the purpose of pleading this action, then any such injuries or
20 damages were proximately caused or contributed to by Plaintiffs or other parties to this action,
21 and/or any other persons or entities not parties to this action, and it is necessary that the
22 proportionate degree of negligence, fault or unreasonable conduct of each of said persons or
23 entities, whether parties to this action or not, be determined and pro-rated and that any
24 judgment which might be rendered against Defendant be reduced to reflect its percentage of
25
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1 fault, and that any award be reduced to reflect the total of the degree of negligence, fault and/or
2 unreasonable conduct found to exist as to said other persons or entities.

3 **NINTH AFFIRMATIVE DEFENSE**

4 Defendant alleges that the subject Amended Complaint is barred by the applicable Statute
5 of Limitations.

6 **TENTH AFFIRMATIVE DEFENSE**

7
8 Defendant alleges that the injuries and damages complained of in the Amended
9 Complaint, if any, were proximately caused by the intervening or superseding actions of others,
10 which intervening and superseding actions bar and/or diminish Plaintiffs' recovery, if any,
11 against this Defendant.

12 **ELEVENTH AFFIRMATIVE DEFENSE**

13
14 Defendant alleges that Plaintiff have, through their own acts and omissions, waived the
15 right to recover damages from Defendant.

16 **TWELTH AFFIRMATIVE DEFENSE**

17
18 Defendant is informed and believes, and based thereon alleges, that it is entitled to the
19 right of indemnification, whether by apportionment or otherwise, against all of the parties,
20 entities and persons whose negligence contributed proximately to the happening of the claimed
21 accident or alleged injuries.

22 **THIRTEENTH AFFIRMATIVE DEFENSE**

23
24 Defendant alleges that Plaintiffs have not sustained any damages or injuries which have
25 been proximately caused by any purported act, omission or breach of any duty on the part of this
26 answering Defendant.

27 **FOURTEENTH AFFIRMATIVE DEFENSE**

1 Defendant alleges that the events, injuries, losses and damages complained of in the
2 Amended Complaint, if any, were the result of an unavoidable accident insofar as Defendant is
3 concerned, and occurred without any negligence, want of care, default or other breach of duty to
4 Plaintiffs on the part of Defendant.

5 **FIFTEENTH AFFIRMATIVE DEFENSE**

6 Defendant alleges that any injury or damage suffered by Plaintiffs, whether as alleged or
7 otherwise, was a direct, proximate and sole result of the physical, mental or emotional bodily
8 condition and constitutional composition of Plaintiffs on, prior and subsequent to, all times
9 mentioned in the Complaint.
10

11 **SIXTEENTH AFFIRMATIVE DEFENSE**

12 Defendant alleges, upon such information and belief, that Plaintiffs, by the exercise of
13 reasonable effort and/or care, could have mitigated that amount of damages alleged to have been
14 suffered, but that Plaintiffs failed, neglected and refused, and continues to fail and refuse, to
15 exercise a reasonable effort to mitigate the alleged damages.
16

17 **SEVENTEETH AFFIRMATIVE DEFENSE**

18 Defendant alleges that at the times and places mentioned in the Amended Complaint,
19 Plaintiffs were careless, reckless and negligent in or about the matters and things alleged in the
20 Amended Complaint which said carelessness, recklessness and negligence concurred in point of
21 time with the alleged negligence of Defendant, if any, there may have been, and proximately
22 caused and contributed to whatever injury and/or damage Plaintiffs may have sustained, if any.
23

24 **EIGHTEENTH AFFIRMATIVE DEFENSE**

1 Defendant alleges that all risks and dangers involved in the factual situation described in
2 Plaintiffs' Amended Complaint were open, obvious, and known to Plaintiffs, and as such
3 Plaintiffs are barred from recovering damages from Defendant.

4 **NINETEENTH AFFIRMATIVE DEFENSE**

5 Defendant alleges that Plaintiffs' claims are barred by virtue of Plaintiffs' failure to join
6 necessary and indispensable parties to this lawsuit.
7

8 **TWENTIETH AFFIRMATIVE DEFENSE**

9 Defendant alleges that at the time and place of the alleged occurrence set forth in
10 Plaintiffs' Amended Complaint, there existed certain inherent, unavoidable risks of which
11 Plaintiffs were aware, and that Plaintiffs nonetheless knowingly and voluntarily assumed these
12 risks by acting in the manner described in the Amended Complaint, and that to the extent such
13 assumption of the risk was a proximate cause of Plaintiffs' alleged damages, Defendant is not
14 liable for Plaintiffs' alleged damages.
15

16 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

17 Defendant alleges that Plaintiffs, by virtue of their own acts and omissions, is estopped
18 from recovering damages from this Defendant.
19

20 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

21 Defendant alleges that this action is barred by the equitable doctrine of unclean hands.
22

23 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

24 Defendant alleges that at all times relevant to the allegations contained in Plaintiffs'
25 Amended Complaint, it acted with the due care and circumspection in the performance of any
26 and all duties imposed on it.
27

28 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

1 Defendant alleges that at the times and places mentioned in the Amended Complaint,
2 Plaintiffs were reckless and/or grossly negligent in or about the matters and things alleged in the
3 Amended Complaint which said recklessness and/or gross negligence concurred in point of time
4 with the alleged negligence of Defendant, if any there may have been, and proximately caused
5 and contributed to whatever injury and/or damage Plaintiffs may have sustained, if any.
6

7 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

8 Defendant alleges that it had no notice of the dangerous or defective condition alleged in
9 Plaintiffs Amended Complaint.

10 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

11 Defendant is informed and believes, and upon such information and belief alleges that if,
12 in fact, Defendant is found to have been negligent in any manner, its negligence could only be
13 passive and secondary, while the negligence of Plaintiffs, other Defendants, Third-Party
14 Defendants or other third parties would be active and primary and thus bar, in whole or in part,
15 recovery on this Amended Complaint.
16

17 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

18 Defendant is informed and believes, and based thereon alleges, that Plaintiffs have failed
19 to set forth facts sufficient to support an award for attorney's fees or other extra-contractual
20 damages, and that accordingly any alleged claims for attorney's fees or extra-contractual
21 damages are barred.
22

23 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

24 Defendant alleges that it has been necessary to employ the services of an attorney to
25 defend it in this action and a reasonable sum should be allowed Defendant for attorneys' fees,
26 together with costs of suit incurred herein.
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TWENTY-NINTH AFFIRMATIVE DEFENSE

Defendant claims that it is not responsible for any injuries or harm that Plaintiffs may have suffered because their claims are barred under Nevada's Worker's Compensation Act. Including, but not limited to, NRS 616A et seq.

THIRTIETH AFFIRMATIVE DEFENSE

Defendant hereby incorporates by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Defendant reserves the right to seek leave of Court to amend its Answer to specifically assert the same. Such defenses are herein incorporated by reference for the specific purpose of not waiving the same.

THIRTY-FIRST AFFIRMATIVE DEFENSE

Pursuant to NRCP 11, Defendant presently has insufficient knowledge or information on which to form a belief as to whether it has additional, as yet unstated affirmative defenses available. Answering Defendant hereby reserves its right to insert additional affirmative defenses in the event discovery and investigation indicate it would be appropriate.

WHEREFORE, having fully answered and responded to Plaintiffs' Amended Complaint, Defendant prays for judgment as follows:

1. That Plaintiffs take nothing by way of their Amended Complaint;
2. That the Amended Complaint be dismissed with prejudice and that Defendant be awarded judgment in this action;
3. That Defendant be awarded its costs incurred therein;
4. That Defendant be awarded its attorney's fees; and
5. For such other and further relief as the Court deems just and proper.

THIRD PARTY COMPLAINT

1 1. THI of Nevada at Cheyenne, LLC d/b/a College Park Rehabilitation Center
2 ("College Park" or "Third Party Plaintiff") is a Delaware limited liability company authorized
3 to and doing business in Clark County, Nevada.

4 2. SCI Construction Ltd. is authorized to and doing business in the State of Nevada
5 and performed services in Clark County, Nevada for College Park.

6 3. The names and capacities, whether individuals, corporate, associate or otherwise
7 of Third Party Defendants named herein as DOE and ROE CORPORATION are unknown or
8 not yet confirmed. Upon information and belief, said DOE and ROE CORPORATION
9 Defendants are responsible for damages suffered by Third Party Plaintiff and, therefore, Third
10 Party Plaintiff sues said Third Party Defendants by such fictitious names. Third Party Plaintiff
11 will ask leave to amend this Complaint to show the true names and capacities of each DOE and
12 ROE CORPORATION Third Party Defendant at such time as the same has been ascertained.

14 GENERAL ALLEGATIONS

15
16 4. Defendant THI of Nevada at Cheyenne, LLC d/b/a College Park Rehabilitation
17 Center (hereinafter "College Park" or "Third Party Plaintiff") is a skilled nursing facility duly
18 licensed by the State of Nevada and doing business in Clark County, Nevada.

19 5. As part of its operations, College Park contracts with third parties to provide
20 various services.

21 6. College Park contracted with SCI Construction, Ltd. to provide electrical
22 upgrades and electrical additions to its facility.

23 7. College Park and SCI Construction, Ltd. entered into a Construction Agreement
24 on or about December 9, 2013.

25 8. Upon information and belief, SCI Construction, Ltd. was in charge of and providing
26 services to College Park at the time of the incident alleged in the First Amended Complaint.

1 9. Upon information and belief, SCI Construction, Ltd. breached its obligations,
2 negligently performed their duties, and allegedly caused harm as alleged in the First Amended
3 Complaint.

4 10. Based on its scope of work, if the allegations in Plaintiffs' First Amended
5 Complaint are accurate, SCI Construction, Ltd. is responsible for the harm, if any, alleged in the
6 First Amended Complaint.

7 11. SCI Construction, Ltd. expressly agreed in the Construction Agreement with
8 College Park to indemnify, defend, and hold College Park as well as its parent company,
9 affiliates, officers, directors, employees harmless.

10 12. SCI Construction, Ltd. expressly agreed to maintain, at its sole expense, workers
11 compensation insurance in accordance with Nevada State law and liability insurance.

13 **FIRST CAUSE OF ACTION**

14 **(NEGLIGENCE)**

15
16 13. Third Party Plaintiff repeats, re-alleges, and incorporates all the allegations above
17 as though fully set forth herein.

18 14. The allegations in Plaintiffs' First Amended Complaint address the scope of work
19 in Construction Agreement and the duties of SCI Construction, Ltd.

20 15. If the allegations are true, SCI Construction, Ltd. failed to perform their work in a
21 reasonable manner.

22 16. SCI Construction, Ltd. had a duty to provide competent and qualified workers and
23 professionals to perform the services in a reasonable and safe manner.

24 17. If the allegations in the First Amended Complaint are true, SCI Construction, Ltd.
25 breached its duties and obligations to College Park.

26 18. As a direct and proximate cause of SCI Construction, Ltd.'s actions and omissions,
27 College Park has been damaged in an amount in excess of \$10,000.00.
28

1 19. It has become necessary for College Park to engage the services of an attorney in
2 these proceedings as a direct and proximate result of the conduct alleged above and, therefore,
3 College Park is entitled to recover its reasonable attorney fees and costs incurred as special
4 damages.

5
6 **SECOND CAUSE OF ACTION**

7 **(BREACH OF CONTRACT)**

8 20. Third Party Plaintiff repeats and re-alleges each and every paragraph set forth
9 above, and incorporates the same as though fully set forth herein.

10 21. There is a valid and existing contract between College Park and SCI Construction,
11 Ltd.

12 22. The agreement is supported by adequate consideration.

13 23. College Park satisfied all conditions and performed all obligations under the
14 agreement.

15 24. SCI Construction, Ltd. breached the agreement.

16 25. College Park suffered damages in excess of \$10,000.00 as a direct and proximate
17 result of SCI Construction, Ltd.'s conduct, the exact amount of which is to be proven at trial.

18 26. It has become necessary for College Park to engage the services of an attorney in
19 these proceedings as a direct and proximate result of the conduct alleged above and, therefore,
20 College Park is entitled to recover its reasonable attorney fees and costs incurred as special
21 damages.
22

23 **THIRD CAUSE OF ACTION**

24 **(EXPRESS INDEMNITY)**

25
26 27. Third Party Plaintiff repeats and re-alleges each and every paragraph set forth
27 above, and incorporates the same as though fully set forth herein.
28

28. College Park entered into an agreement with SCI Construction, Ltd., which included an express indemnity obligation.

29. Based upon Plaintiffs' allegations in the First Amended Complaint, SCI Construction, Ltd. failed to provide services in a reasonable and appropriate manner.

30. As a result, SCI Construction, Ltd. is liable and responsible for all alleged damages claimed by Plaintiffs.

31. College Park, by this action, demands SCI Construction, Ltd. defend, indemnify, and hold harmless College Park and its, parent company, affiliates, officers, directors, employees and agents from any and all damages, sums, judgment or otherwise to Plaintiffs.

32. It has become necessary for College Park to engage the services of an attorney in these proceedings as a direct and proximate result of the conduct alleged above and, therefore, College Park is entitled to recover its reasonable attorney fees and costs incurred as special damages.

PRAYER FOR RELIEF

WHEREFORE, Third Party Plaintiff, College Park, prays for the following relief against Third Party Defendant SCI Construction, Ltd.:

1. For general damages in excess of \$10,000 for each of its claims for relief;
2. For an order requiring SCI Construction, Ltd. to fully and completely indemnify, defend and hold harmless College Park, its parent companies, affiliates, officers, directors, employees and agents, from any and all claims from Plaintiffs.
3. For an award of reasonable attorney fees and costs of suit; and

/ / /

4. For any further relief as the Court deems just and appropriate.

DATED this 26th day of July, 2016.

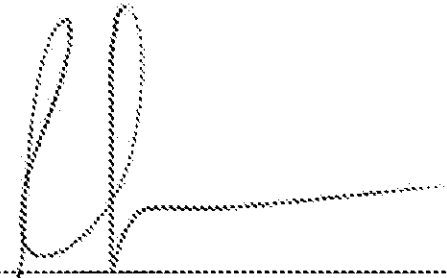
~~ROURKE LAW FIRM~~

ROBERT D. ROURKE, ESQ.
Nevada Bar No. 5757
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145
*Attorneys for Defendant/ Third Party
Plaintiff THI of Nevada at Cheyenne, LLC
d/b/a College Park
Rehabilitation Center*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of July, 2016 a true and correct copy of the foregoing ANSWER AND THIRD PARTY COMPLAINT OF THI OF NEVADA AT CHEYENNE, LLC d/b/a COLLEGE PARK REHABILITATION CENTER was served via First-Class U.S. Mail, postage prepaid, at Las Vegas, Nevada and addressed as follows:

Donald C. Kudler, Esq.
CAP & KUDLER
3202 W. Charleston Blvd.
Las Vegas, NV 89102



An Employee of ROURKE LAW FIRM

Heather S. Linn
CLERK OF THE COURT

JGJV

Alexander F. Giovanniello

Nevada Bar No.: 11141

Christopher J. Giovanniello

Nevada Bar No.: 15048

GIOVANNIELLO LAW GROUP

3753 Howard Hughes Parkway, Suite 200

Las Vegas, NV 89169

Ph: (702) 784-7638

service@giolawgroup.com

Attorneys for Defendants:

THI OF NEVADA AT CHEYENNE, LLC dba

COLLEGE PARK REHABILITATION CENTER;

HEALTHCARE REALTY OF CHEYENNE, LLC;

FUNDAMENTAL ADMINISTRATIVE

SERVICES, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

JEFFREY A. MYERS and ANDREW
JAMES, individually,

Plaintiffs,

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 1-XXX; and
ROE CORPORATIONS 1-XXX, inclusive,

Defendants.

) Case No.: A-16-735550-C

) **JUDGMENT**

) DEPT: XVII

) Complaint filed April 16, 2016

) Trial scheduled May 31, 2022

**JUDGMENT ON JURY VERDICT IN FAVOR OF DEFENDANT THI OF NEVADA AT
CHEYENNE, LLC dba COLLEGE PARK REHABILITATION CENTER**

The matter having come before the above-entitled Court starting on May 31, 2022, and
the jury on June 6, 2022, Alexander F. Giovanniello and Christopher J. Giovanniello of

1 GIOVANNIELLO LAW GROUP, appearing on behalf of Defendant THI OF NEVADA AT
2 CHEYENNE, LLC dba COLLEGE PARK REHABILITATION CENTER (hereinafter referred
3 to as "College Park"), and Donald C. Kudler of CAP & KUDLER, appearing on behalf of
4 Plaintiffs JEFFREY A. MYERS and ANDREW JAMES (hereinafter collectively referred to as
5 "Plaintiffs"), Honorable Judge David Barker, presiding, and the issues having been duly tried and
6 the jury having duly rendered its unanimous verdict, finding no liability on behalf of Defendant
7 College Park, the Court finds as follows:

8 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that pursuant to the
9 unanimous jury verdict, judgment is entered in favor of Defendant THI of Nevada at Cheyenne,
10 LLC dba College Park Rehabilitation Center regarding the above-entitled action.

11
12 Dated this _____ day of June, 2022.

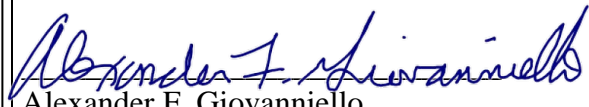
Dated this 14th day of June, 2022

13
14 
15 DISTRICT COURT JUDGE

16 Submitted by:

17 **F18 3A4 D0D2 6811**

David Barker to form and content by:
District Court Judge

18 
19 Alexander F. Giovanniello
20 Christopher J. Giovanniello
21 Giovanniello Law Group
22 3753 Howard Hughes Pkwy., Ste. 200
23 Las Vegas, Nevada 89169
24 Attorneys for Defendants
25 THI of Nevada at Cheyenne, LLC dba
26 College Park Rehabilitation Center;
27 Healthcare Realty of Cheyenne, LLC;
28 and Fundamental Administrative
Services, LLC

/s/ Donald C. Kudler, Esq.

Donald C. Kudler
Cap & Kudler
3202 W. Charleston Blvd.
Las Vegas, Nevada 89102
Attorney for Plaintiffs
Jeffrey A. Myers and Andrew James

From: [Donald Kudler](#)
To: [Christopher Giovanniello](#)
Subject: Re: Myers, et. al. v. THI of Nevada, et. al. - Judgments
Date: Friday, June 10, 2022 10:00:30 AM

These are fine. You may attach my signature as Approved as to form and content.

/s Donald Kudler

From: Christopher Giovanniello <cjg@giolawgroup.com>
Sent: Thursday, June 9, 2022 9:25 AM
To: Donald Kudler <donaclkudler@capandkudler.com>; Liz Carrion <lizcarrion@capandkudler.com>
Cc: Alex Giovanniello <afg@giolawgroup.com>; Carolina Olmos <cio@giolawgroup.com>
Subject: Myers, et. al. v. THI of Nevada, et. al. - Judgments

Counsel,

Please see the attached judgments and advise of any changes. If none, please let me know if I may affix your e-signature. Thanks.

Christopher J. Giovanniello



California Office

One Pointe Drive | Suite 300 | Brea, CA 92821
Tel. (714) 364-4000 | Fax (714) 364-4001
cjg@giolawgroup.com

Nevada Office

3753 Howard Hughes Parkway | Suite 200 | Las Vegas, NV 89169
Tel. (702) 784-7638 | Fax (714) 364-4001

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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 Judgment on Jury Verdict 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: 6/14/2022

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

20 Michael Stoberski

mstoberski@ocgas.com

21 Melanie Thomas

melanie@rourkelawfirm.com

22 Giovanniello Law Group

service@giolawgroup.com

23 Jane Hollingsworth

jhollingsworth@ocgas.com

24 Antoinette Watkins

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25 Liz Carrion

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26
27
28

1	Donald Kudler	donaldkudler@capandkudler.com
2	Cindie McCulloch	cmcculloch@ocgas.com
3	Robert Rourke	robert@rourkelawfirm.com
4	Giovanniello Law Group	service@giolawgroup.com
5	Christopher Giovanniello	cjg@giolawgroup.com
6	Christopher Giovanniello	cjg@giolawgroup.com
7	Christopher Giovanniello	cjg@giolawgroup.com
8	Alexander Giovanniello	afg@giolawgroup.com
9	Alexander Giovanniello	afg@giolawgroup.com
10	Alexander Giovanniello	afg@giolawgroup.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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FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

JUN 06 2022 @4:38 pm

BY, *S. Albrecht*
SAMANTHA ALBRECHT, DEPUTY

A-16-735550-C
SJV
Special Jury Verdict
4994805



DISTRICT COURT
CLARK COUNTY, NEVADA

JEFFREY A. MYERS and ANDREW
JAMES, individually,

Plaintiffs,

vs.

THI OF NEVADA AT CHEYENNE, LLC
a foreign Corporation d/b/a COLLEGE
PARK REHABILITATION CENTER,

Defendant.

) Case No.: A-16-735550-C

) SPECIAL VERDICT FORM

) DEPT: 17

We the jury in the above-entitled case, find the following verdict on the questions
submitted to us:

1. Were the Defendants negligent?

THI OF Nevada At Cheyenne, LLC a foreign Corporation d/b/a College Park Rehabilitation
Center

ANSWER: YES _____ NO X

1 If you have answered Question No. 1 "YES," then answer the next question. If you
2 answered Question No. 1 "NO," you will leave the answers to the remaining questions blank
3 and sign and return this verdict without answering any of the following questions.

4 2. Was the negligence of the Defendant a legal cause of the injury to the Plaintiffs?

5 ANSWER: YES _____ NO _____

6 If you have answered Question No. 2 "YES," then answer the next question. If you have
7 answered Question No. 2 "NO," you will leave the answers to the remaining questions blank
8 and sign and return this verdict without answering any of the following questions.

9 3. Were the Plaintiffs negligent?

10 ANSWER: YES _____ NO _____

11 4. Was the negligence of Plaintiffs a legal cause of their own injuries?

12 ANSWER: YES _____ NO _____

13 5. If you have answered Question No. 3 OR Question No. 4 "NO," as Plaintiffs do not
14 answer this question and proceed to Question No. 6. However, if you have answered both
15 Question No. 3 and Question No. 4 "YES," then answer the following: "Taking a combined
16 negligence which caused the injuries as 100%, what percentage of negligence do you attribute
17 to":

18 Plaintiffs Percentage: _____ %.

19 Defendants Percentage: _____ %.

20 Total must be 100%.

21 6. What sum of money will fairly and reasonably fully compensate Plaintiffs for:

22 (a) The reasonable medical expenses Plaintiffs have necessarily incurred as a result of
23 the accident.

24 Plaintiff Jeffrey Myers \$ _____.

25 Plaintiff Andrew James \$ _____.

26 (b) The medical expenses which you believe the Plaintiffs are reasonably certain to incur
27 in the future as a result of the accident.

28 Plaintiff Jeffrey Myers \$ _____.

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Plaintiff Andrew James \$_____.

(c) Plaintiff's past loss of earnings from the date of the accident to the present.

Plaintiff Jeffrey Myers \$_____.

Plaintiff Andrew James \$_____.

(d) Plaintiff's future loss of earnings.

Plaintiff Andrew James \$_____.

(e) The physical and mental pain, suffering, anguish and disability endured by the
Plaintiffs from the date of the accident to the present.

Plaintiff Jeffrey Myers \$_____.

Plaintiff Andrew James \$_____.

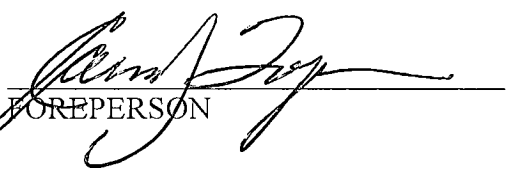
(f) The physical and mental pain, suffering, anguish and disability which you believe
Plaintiffs is reasonably certain to experience in the future as a result of the accident.

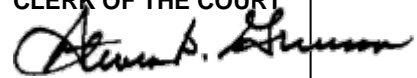
Plaintiff Jeffrey Myers \$_____.

Plaintiff Andrew James \$_____.

Total Damages \$_____.

DATED this 6 day of June, 2022.


FOREPERSON



NEOJ
Alexander F. Giovanniello
Nevada Bar No.: 11141
Christopher J. Giovanniello
Nevada Bar No.: 15048
GIOVANNIELLO LAW GROUP
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Ph: (702) 784-7638
service@giolawgroup.com

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

DISTRICT COURT
CLARK COUNTY, NEVADA

JEFFREY A. MYERS and ANDREW JAMES, individually,)	Case No.: A-16-735550-C
)	
Plaintiffs,)	
)	NOTICE OF ENTRY OF ORDER
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 1-XXX; and)	
ROE CORPORATIONS 1-XXX, inclusive,)	DEPT: XVII
)	
Defendants.)	
)	
)	

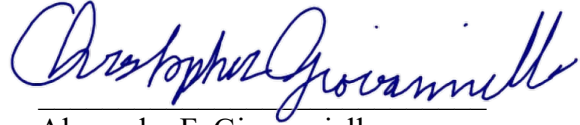
TO: ALL INTERESTED PARTIES TO THIS ACTION; and
TO: THEIR ATTORNEYS OF RECORD:
///
///

1 **PLEASE TAKE NOTICE** that an Order was entered in the above-entitled matter on the
2 14th day of June, 2022 and filed on the 15th day of June, 2022, a copy of which is attached hereto.

3
4 Dated: June 21, 2022

GIOVANNIELLO LAW GROUP

5
6 By:



Alexander F. Giovanniello

Nevada Bar No.: 11141

Christopher J. Giovanniello

Nevada Bar No.: 15048

3753 Howard Hughes Parkway, Suite 200

Las Vegas, Nevada 89169

Attorneys for Defendant

THI OF NEVADA AT CHEYENNE, LLC dba

COLLEGE PARK REHABILITATION CENTER;

HEALTHCARE REALTY OF CHEYENNE, LLC;

FUNDAMENTAL ADMINISTRATIVE

SERVICES, LLC

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

DISTRICT COURT
CLARK COUNTY, NEVADA

JEFFREY A. MYERS and ANDREW) Case No.: A-16-735550-C
JAMES, individually,)

Plaintiffs,) **JUDGMENT**

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 1-XXX; and)
ROE CORPORATIONS 1-XXX, inclusive,) DEPT: XVII
Defendants.) Complaint filed April 16, 2016

) Trial scheduled May 31, 2022

JUDGMENT ON JURY VERDICT IN FAVOR OF DEFENDANT THI OF NEVADA AT
CHEYENNE, LLC dba COLLEGE PARK REHABILITATION CENTER

The matter having come before the above-entitled Court starting on May 31, 2022, and
the jury on June 6, 2022, Alexander F. Giovanniello and Christopher J. Giovanniello of

1 GIOVANNIELLO LAW GROUP, appearing on behalf of Defendant THI OF NEVADA AT
2 CHEYENNE, LLC dba COLLEGE PARK REHABILITATION CENTER (hereinafter referred
3 to as "College Park"), and Donald C. Kudler of CAP & KUDLER, appearing on behalf of
4 Plaintiffs JEFFREY A. MYERS and ANDREW JAMES (hereinafter collectively referred to as
5 "Plaintiffs"), Honorable Judge David Barker, presiding, and the issues having been duly tried and
6 the jury having duly rendered its unanimous verdict, finding no liability on behalf of Defendant
7 College Park, the Court finds as follows:

8 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that pursuant to the
9 unanimous jury verdict, judgment is entered in favor of Defendant THI of Nevada at Cheyenne,
10 LLC dba College Park Rehabilitation Center regarding the above-entitled action.

11
12 Dated this _____ day of June, 2022.

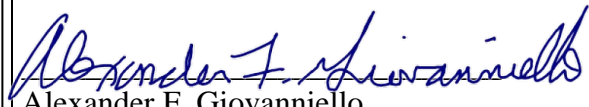
Dated this 14th day of June, 2022

13
14 
15 DISTRICT COURT JUDGE

16 Submitted by:

17 **F18 3A4 D0D2 6811**

David Barker to form and content by:
District Court Judge

18 
19 Alexander F. Giovanniello
20 Christopher J. Giovanniello
21 Giovanniello Law Group
22 3753 Howard Hughes Pkwy., Ste. 200
23 Las Vegas, Nevada 89169
24 Attorneys for Defendants
25 THI of Nevada at Cheyenne, LLC dba
26 College Park Rehabilitation Center;
27 Healthcare Realty of Cheyenne, LLC;
28 and Fundamental Administrative
Services, LLC

/s/ Donald C. Kudler, Esq.
Donald C. Kudler
Cap & Kudler
3202 W. Charleston Blvd.
Las Vegas, Nevada 89102
Attorney for Plaintiffs
Jeffrey A. Myers and Andrew James

From: [Donald Kudler](#)
To: [Christopher Giovanniello](#)
Subject: Re: Myers, et. al. v. THI of Nevada, et. al. - Judgments
Date: Friday, June 10, 2022 10:00:30 AM

These are fine. You may attach my signature as Approved as to form and content.

/s Donald Kudler

From: Christopher Giovanniello <cjg@giolawgroup.com>
Sent: Thursday, June 9, 2022 9:25 AM
To: Donald Kudler <donaclkudler@capandkudler.com>; Liz Carrion <lizcarrion@capandkudler.com>
Cc: Alex Giovanniello <afg@giolawgroup.com>; Carolina Olmos <cio@giolawgroup.com>
Subject: Myers, et. al. v. THI of Nevada, et. al. - Judgments

Counsel,

Please see the attached judgments and advise of any changes. If none, please let me know if I may affix your e-signature. Thanks.

Christopher J. Giovanniello



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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 Judgment on Jury Verdict 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: 6/14/2022

15 "Donald C. Kudler, Esq." .

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1 **CERTIFICATE OF MAILING**

2 The undersigned, designee of Alexander F. Giovannello, Esq., hereby certifies that on
3 this 24th day of June 2022, a true and correct copy of **NOTICE OF ENTRY OF ORDER OF**
4 **JUDGMENT ON JURY VERDICT** was served to the following person(s) as indicated below:

5 xx Via E-Service through email or the Court's Electronic Service system pursuant to
6 NEFCR 4(b) on the following

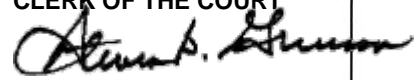
7 by placing a true and correct copy of the above-mentioned document(s) in a sealed
8 envelope, first class postage fully pre-paid, in the United States mail.

9 Donald C. Kudler
10 CAP & KUDLER
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Attorneys for Plaintiffs

14
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17 By: 

18 Carolina Olmos, an employee of
19 Giovanniello Law Group
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9 *Attorneys for Plaintiffs*

6
7 DISTRICT COURT
8 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

HEARING REQUESTED

21 **MOTION FOR NEW TRIAL**

22 COME NOW, Plaintiffs, ANDREW JAMES AND JEFFREY MYERS, by and through
23 their Counsel of Record and bring forth this Motion for Protective Order Regarding Subpoenas
24 Duces Tecum on Order Shortening Time.


25 This Motion is made and based on the Papers and Pleadings on file herein, the attached
26 Points and Authorities and the oral argument of Counsel, if any, at the time this matter is heard
27 before the Court.

28

. . . .

. . . .

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Personal Injury Experts

STATEMENT OF THE FACTS

Background

This cases arises out of a June 6, 2014 incident at the Defendants' property. At the time of the incident, the Plaintiffs were working on an electrical panel when one of two screws that had been left on a shelf fell causing a short resulting in an arc flash that injured the Plaintiffs. During this event, the main breaker should have tripped ending the possibility of the arc flash and injuries. At no time did the main breaker trip during this event - it failed to work as intended after not having been inspected or maintained for several years. The case was tried to a Jury from May 31, 2022 to June 6, 2022. After hearing the testimony cited below, the Jury concluded that the Defendants were not negligent - that they had not breached any duty owed to the Plaintiffs. See, **Exhibit "1"**.

Jury Instructions At Issue

The Court read the following Jury Instructions to the Jury, See **Exhibit "2"**:

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

Plaintiffs' **Exhibits "3-5"** are the Trial Transcripts for Don Gifford, Roy Comstock, Jeffrey Myers and Andrew James which are referenced below. **Exhibit "3"** is the testimony of Don Gifford, **Exhibit "4"** is the testimony of Roy Comstock and **Exhibit "5"** is the testimonies of Jeffrey Myers and Andrew James.

The Defendants Had a Duty to Maintain Their Breakers

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

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

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

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

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

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

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

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

8 On the other hand, the OSHA -- the OSHA violations by College Park was the fact that
9 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
10 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

11 National Electrical Safety Code and under the National Electrical Code, the owner of the
12 facility has to maintain and inspect their equipment. Those things were not done. And that
comprises an OSHA violation.

13 The requirement to maintain the breakers pursuant to law was reiterated by Plaintiff

14 Andrew James testified about the requirements to test and maintain breakers at Page 88,
15 line 23 - page 89, line 10:

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

17 A Yes.

18 Q Why?

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

24 **The Defendants Failed to Maintain Electrical**
25 **Equipment Including the Main Breaker**

26 Roy Comstock has worked as the director of the maintenance department for the
27 Defendant since 2007. See, Comstock Trial testimony at Page 6, Lines 17 - 25. The testimony
28 cited below demonstrates that the Defendant has not, and does not, conduct regular inspections of

1 the electrical system or conduct any maintenance on it unless something goes wrong.

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

4 Q Okay. What is your job responsibilities?

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

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

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

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

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

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

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

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

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

18 A No, sir.

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

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

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

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

25 A No, sir.

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

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

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

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

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

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

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

12 A No. No, sir.

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

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

17 A No. the only maintenance that's done is when there's a problem. That's correct.

18 Q No regular inspections had been done on that panel ever?

19 A Well I can't say ever. I don't know. There was people there before me.

20 Q The entire time that you've been there?

21 A No. It's only if there's a problem. It isn't like somebody comes out and does the
22 inspection.

23 Q Let me ask the question again.

24 A The people who inspected it when it was --

25 Q Let me ask the question again.

26 A Yes, sir.

27 Q You do not do regular inspections on that electrical panel or have somebody do them,
28 do you?

MR. A. GIOVANNIELLO: Objection. Asked and answered.

THE WITNESS: Yes. I don't. That's correct.

The failure to maintain the equipment continued even after the arc flash that injured the

1 Plaintiffs as confirmed by Mr. Comstock at Page 38, lines 17 - 22

2 THE COURT: Was any work done on the electrical panel between ILP [Andrew James]
3 finished? Was there -- was any work done on the electrical panel between when ILP
4 finished their work, and when Helix discovered the screw placed through the electrical
5 wires?

6 THE WITNESS: No. No work was done by any other electrical company. It was James,
7 and then Helix

8 The Court asked Plaintiff Jeffrey Myers about maintenance log books which lead to him
9 testifying that he would expect the Defendants to have fulfilled their duty and maintained the
10 equipment at Page 57, line 25 - page

11 THE COURT: Is it part of your process to check maintenance logs before you perform
12 work on a breaker? Were those logs checked?

13 THE WITNESS: No logs were made available for me to check.

14 THE COURT: You mentioned the breaker had not been properly maintained. Are you
15 required to continue working on equipment if it hasn't been properly maintained?

16 THE WITNESS: Well, I can only say that I believe that it wasn't maintained after that
17 incident. Before that incident, all you can do is assume that it had been.

18 Mr. James again discussed the requirement to maintain the equipment at Page 120, line
19 17 - page 121 line 4:

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

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

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

27 A Evidence in this case, yes.

28 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

1 manufactured that breaker, they have maintenance requirements that are required, you
2 know, under Medicaid, Medicare, under the NFPA, under the NEC, under OSHA -- it all
3 refers to manufacturer-recommended maintenance intervals. Eaton, who now owns the
4 company that built that breaker, their manufacturer's inspection intervals are every three
5 years, that breaker is supposed to be manually tripped, manually turned off, manually
6 turned back on.

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

15 The Main Breaker Failed

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

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

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

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

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

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

A circuit breaker can and should trip in about 25 milliseconds. Let me break that down in
different ways. You probably heard that with electricity in alternating 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.

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

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

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

15 THE WITNESS: That's an excellent question. We don't know. I haven't seen the arc study
16 on that particular breaker. I'm just telling you that it never tripped. Therefore, no matter
17 what the study
18 showed or the what curve for the electrical current, with respect to time and voltage with
19 respect to time, would be -- it would not be of value to me in determining, why didn't the
20 breaker trip. It didn't trip because it was faulty. There was enough -- there was enough
21 electrical energy that
22 there's no question it should have tripped.

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

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

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

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

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

Q Were the lights on?


A The lights never went off.

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

A The breaker never tripped.

....

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Personal Injury Experts

LEGAL ARGUMENT

NRCP Rule 59(a)(1)(E) allows the Court to grant a Motion for New Trial where the Jury Manifestly disregarded its Instructions. That Rule states, in pertinent part:

Rule 59 - New trials; Amendment of Judgments

(a) In General.

(1) Grounds for New Trial. The court may, on motion, grant a new trial on all or some of the issues-and to any party-for any of the following causes or grounds materially affecting the substantial rights of the moving party:

...

(E) manifest disregard by the jury of the instructions of the court; . . .

The Nevada Supreme Court has addressed this issue holding, as discussed below, that the Court should grant a new Trial where the Jury could not have reached its verdict if it applied the law correctly.

In determining the propriety of the granting of a new trial under subdivision (a)(5), the question is whether the court is able to declare that, had the jurors properly applied the instructions of the court, it would have been impossible for them to reach the verdict which they reached. *Weaver Bros. v. Misskelley*, 98 Nev. 232, 645 P.2d 438, 1982 Nev. LEXIS 437 (Nev. 1982); *Town & Country Elec. Co. v. Hawke*, 100 Nev. 701, 692 P.2d 490, 1984 Nev. LEXIS 460 (Nev. 1984); *Jaramillo v. Blackstone*, 101 Nev. 316, 704 P.2d 1084, 1985 Nev. LEXIS 422 (Nev. 1985). New trial where verdict for defendant impossible had law been correctly applied. — In a medical malpractice action, where the only two expert witnesses at the trial testified that the defendant did not comply with the standard of care required of a general practitioner, and if the jury had correctly applied the law, it would have been impossible for them to reach a verdict in favor of defendant, accordingly, the trial court did not err in ordering a new trial based upon the jury's manifest disregard of the instructions. *Rees v. Roderiques*, 101 Nev. 302, 701 P.2d 1017, 1985 Nev. LEXIS 421 (Nev. 1985).

Court properly granted a new trial based on a manifest disregard by the jury of the instructions of the court, where trial court concluded that had the jury paid due regard to the instructions of the court, it was not possible to return a defense verdict. *Groomes v. Fox*, 96 Nev.

1 457, 611 P.2d 208, 1980 Nev. LEXIS 618 (Nev. 1980). If the jurors could not have reached the
2 verdict that they reached if they had properly applied the court's instruction on proximate cause,
3 then the district court is obligated to grant a new trial. *Taylor v. Silva*, 96 Nev. 738, 615 P.2d
4 970, 1980 Nev. LEXIS 694 (Nev. 1980).

5 Here, the Jury answered the first question on the Jury Verdict Form (See, **Exhibit "2"**) in
6 the negative, holding that the Defendants were not negligent and concluded their deliberations as
7 instructed in the Verdict Form. The only way they could have come to this conclusion was to find
8 that the Defendants had no duty to maintain the breakers or that they did not breach that duty.
9 Given the evidence and the Jury Instructions set forth above, this is impossible. As noted above,
10 the Jury Instructions (27, 28 and 29) required the Defendants to maintain their premises.
11 Uncontradicted testimony showed that the Defendants had a specific and codified duty to inspect
12 and maintain the main breaker.


13 Defendants' own director of Maintenance testified that, at least during the seven years
14 between his start of employment and the arc flash at issue in this case (and indeed, even after this
15 arc flash event) there were no regular inspections or maintenance of the main breaker - or any
16 other equipment in the electrical panel. As the Defendants had a duty and clearly breached that
17 duty, the Jury must have found that they were negligent in inspecting the main breaker which, as
18 the evidence cited above shows, failed to trip leading to the arc flash.

19 CONCLUSION

20 The Court should grant this Motion for a new Trial as the Jury manifestly disregarded the
21 Jury Instructions in holding that the Defendants did not breach any duty owed to the Plaintiffs.

22 DATED this 18th day of July, 2022.

23 CAP & KUDLER

24
25 
26 Donald C. Kudler, Esq.
27 Nevada Bar No.005041
28 3202 W. Charleston Blvd.
Las Vegas, NV 89102
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of July, 2022, pursuant to Administrative Order 14-2, I electronically served a true and correct copy of the foregoing **MOTION FOR NEW TRIAL**, addressed as follows:

Alexander F. Giovanniello, Esq.
Christopher J. Giovanniello, Esq.
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service@giolawgroup.com
Giovanniello Law Group
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Attorney for Defendants
THI of Nevada at Cheyenne, LLC;
Healthcare Realty of Cheyenne, LLC; and
Fundamental Administrative Services, LLC


An Employee of CAP & KUDLER

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EXHIBIT 1

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

JUN 06 2022 @4:38 pm

BY, *S. Albrecht*
SAMANTHA ALBRECHT, DEPUTY

A-16-735550-C
SJV
Special Jury Verdict
4994805



DISTRICT COURT
CLARK COUNTY, NEVADA

JEFFREY A. MYERS and ANDREW
JAMES, individually,

Plaintiffs,

vs.

THI OF NEVADA AT CHEYENNE, LLC
a foreign Corporation d/b/a COLLEGE
PARK REHABILITATION CENTER,

Defendant.

Case No.: A-16-735550-C

SPECIAL VERDICT FORM

DEPT: 17

We the jury in the above-entitled case, find the following verdict on the questions
submitted to us:

1. Were the Defendants negligent?

THI OF Nevada At Cheyenne, LLC a foreign Corporation d/b/a College Park Rehabilitation
Center

ANSWER: YES _____ NO ☒

1 If you have answered Question No. 1 "YES," then answer the next question. If you
2 answered Question No. 1 "NO," you will leave the answers to the remaining questions blank
3 and sign and return this verdict without answering any of the following questions.

4 2. Was the negligence of the Defendant a legal cause of the injury to the Plaintiffs?

5 ANSWER: YES _____ NO _____

6 If you have answered Question No. 2 "YES," then answer the next question. If you have
7 answered Question No. 2 "NO," you will leave the answers to the remaining questions blank
8 and sign and return this verdict without answering any of the following questions.

9 3. Were the Plaintiffs negligent?

10 ANSWER: YES _____ NO _____

11 4. Was the negligence of Plaintiffs a legal cause of their own injuries?

12 ANSWER: YES _____ NO _____

13 5. If you have answered Question No. 3 OR Question No. 4 "NO," as Plaintiffs do not
14 answer this question and proceed to Question No. 6. However, if you have answered both
15 Question No. 3 and Question No. 4 "YES," then answer the following: "Taking a combined
16 negligence which caused the injuries as 100%, what percentage of negligence do you attribute
17 to":

18 Plaintiffs Percentage: _____ %.

19 Defendants Percentage: _____ %.

20 Total must be 100%.

21 6. What sum of money will fairly and reasonably fully compensate Plaintiffs for:

22 (a) The reasonable medical expenses Plaintiffs have necessarily incurred as a result of
23 the accident.

24 Plaintiff Jeffrey Myers \$ _____.

25 Plaintiff Andrew James \$ _____.

26 (b) The medical expenses which you believe the Plaintiffs are reasonably certain to incur
27 in the future as a result of the accident.

28 Plaintiff Jeffrey Myers \$ _____.

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Plaintiff Andrew James \$_____.

(c) Plaintiff's past loss of earnings from the date of the accident to the present.

Plaintiff Jeffrey Myers \$_____.

Plaintiff Andrew James \$_____.

(d) Plaintiff's future loss of earnings.

Plaintiff Andrew James \$_____.

(e) The physical and mental pain, suffering, anguish and disability endured by the
Plaintiffs from the date of the accident to the present.

Plaintiff Jeffrey Myers \$_____.

Plaintiff Andrew James \$_____.

(f) The physical and mental pain, suffering, anguish and disability which you believe
Plaintiffs is reasonably certain to experience in the future as a result of the accident.

Plaintiff Jeffrey Myers \$_____.

Plaintiff Andrew James \$_____.

Total Damages \$_____.

DATED this 6 day of June, 2022.


FOREPERSON

EXHIBIT 2

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

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:

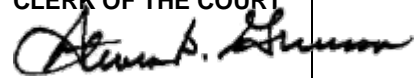
1. That Defendants controlled the property;
2. That Defendants were negligent in the inspection, use or maintenance of the property;
3. That Plaintiffs were harmed; and
4. That Defendants' negligence was a substantial factor in causing Plaintiffs' harm.

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.

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3 An owner or occupant of land must exercise ordinary care and prudence to
4 render the premises reasonably safe for the visit of a person invited on their
5 premises for business purposes. An owner or occupant of land who knows, or in
6 the exercise of reasonable care should know, of their dangerous and unsafe
7 condition, and who invites other to enter upon the property, owes to such invitees a
8 duty to warn them of the danger, where the peril is hidden, latent, or concealed, or
9 the invitees are without knowledge thereof
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EXHIBIT 3



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 JEFFREY MYERS, ET AL.,

8 Plaintiffs,

9 vs.

10 THI OF NEVADA AT CHEYENNE,
11 LLC, ET AL.,

12 Defendants.

) CASE#: A-16-735550-C

) DEPT. XVII

13 BEFORE THE HONORABLE DAVID BARKER
14 DISTRICT COURT JUDGE
15 WEDNESDAY, JUNE 1, 2022

16 **RECORDER'S PARTIAL TRANSCRIPT OF JURY TRIAL - DAY 2**
17 **TESTIMONY OF DONALD GIFFORD**

18 APPEARANCES

19 For the Plaintiffs: DONALD C. KUDLER, ESQ.

20 For the Defendants: ALEXANDER F. GIOVANNIELLO, ESQ.
21 CHRISTOPHER J. GIOVANNIELLO, ESQ.

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25 RECORDED BY: KRISTINE SANTI, COURT RECORDER

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1 Las Vegas, Nevada, Wednesday, June 1, 2022

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3 [Designation of the record begins at 11:10 a.m.]

4 THE MARSHAL: Stand right there. Please remain standing,

5 raise your right hand, face the clerk to be sworn in, please.

6 DON L. GIFFORD, PLAINTIFFS' WITNESS, SWORN

7 THE CLERK: Please be seated.

8 Please state and spell your first and last name for the record.

9 THE WITNESS: My name is Don L. Gifford, G-I-F-F-O-R-D.

10 Just the letter L.

11 THE COURT: Let's get the headphones for our Juror Number

12 1, please.

13 [Counsel confer]

14 THE COURT: Go ahead.

15 MR. A. GIOVANNIELLO: What exhibit, counsel?

16 MR. KUDLER: 40.

17 MR. A. GIOVANNIELLO: 40?

18 THE COURT: Perfect. Test, test, test.

19 MR. A. GIOVANNIELLO: Exhibit 40.

20 THE COURT: Test, test, test.

21 MR. KUDLER: Your Honor, may I approach for the exhibit?

22 THE COURT: Yes.

23 [Pause]

24 THE COURT: Sir, can you hear? Test, test. Does that help?

25 UNIDENTIFIED SPEAKER: Yes.

1 THE COURT: Very good.

2 We are on direct examination of the witness.

3 Mr. Kudler, you have the floor.

4 MR. KUDLER: Now I have a mic.

5 THE COURT: Good.

6 DIRECT EXAMINATION

7 BY MR. KUDLER:

8 Q Could you state your name to the jury?

9 A I did. It's Don L. Gifford.

10 Q And, Don, let's talk about your background.

11 A Sure.

12 Q You work in the electrical field?

13 A Yes. I pretty much grew up in the electrical industry.

14 Q When did you start?

15 A Well, my dad was a contractor, and I started working for him
16 when I was a teenager.

17 Q Okay. More than ten years ago?

18 A Well, I learned electrical parts primarily in the -- in the
19 commercial realm and industrial realm, and to some degree residential
20 as well. And ultimately I went to college and got a degree. Not -- not in
21 installation of electrical systems. But after I graduated, I became a
22 master electrician, and ultimately I obtained electrical contracting
23 licenses in the state of Wisconsin and ultimately in Nevada, California,
24 and Arizona as well. So I've been involved in the electrical trade most of
25 all of my life. I went to the School of -- the School of Electricity in

1 Minnesota in the late 1970s as part of my journey of education. And I
2 have an undergraduate degree and I have a master's degree.

3 Q Okay. An undergraduate degree in what?

4 A My undergraduate degree is in business. And my master's
5 degree an MBA, but it's focused on economics and finance.

6 Q Okay. So in addition to being an electrician, you also dealt
7 with the business end?

8 A Definitely so. And then, finally, many years ago, I enrolled in
9 a direct doctoral program in general engineering, and I did all of my
10 coursework, and I was in the process of writing my dissertation. I didn't
11 complete that because life got in the way. So that's still in the works
12 perhaps sometime in the future.

13 Q How many years did you spend actually working as an
14 electrician approximately?

15 A Well, I would -- well, considering the fact that during the last
16 25 or 26 years I've been doing -- working as an expert witness in
17 forensics, a portion of that time I do some hands-on electrical work, no
18 question about that, and so prior to that I would say a couple of decades
19 at least of actually hands-on electrical work.

20 Q How many times have you been retained -- let's say per year
21 over the last five years, how many times have you been retained to
22 render opinions in regards to electrical issues?

23 A I'm going to guess with -- 100 times. In my career, I've been
24 retained over 1,300 times, and at least half of those have been with
25 respect to electrical issues.

1 Q Okay. So 6,700 times you've testified or been retained to
2 testify regarding electrical issues?

3 A Yes.

4 Q Okay. Have you ever been disqualified by a court to testify
5 regarding electrical issues?

6 A No, I've not been -- I've not been thrown off the stand.

7 Q What courtrooms -- or what jurisdictions have you testified
8 in?

9 A Clark County District Court, Los Angeles Superior Court,
10 Orange County, and I believe San Diego is the other one as well.

11 Q Okay. So the Southern Nevada, Southern California area?

12 A Yes, sir.

13 Q Okay.

14 MR. KUDLER: At this time I would ask that the Court
15 recognize Mr. Gifford as an expert in the field of electrical.

16 THE COURT: We don't do that anymore, Counsel.

17 MR. KUDLER: You don't do that anymore.

18 THE COURT: We don't do that, Mr. Kudler.

19 MR. KUDLER: Okay.

20 THE COURT: We listen to the evidence and wait for a
21 contemporary objection. I'm hearing none, let's move forward with the
22 witness.

23 MR. KUDLER: Thank you.

24 BY MR. KUDLER:

25 Q Do you recall when I contacted you in regards to this case?

1 That's your exhibit there, Exhibit number 40.

2 [Witness reviews document]

3 BY MR. KUDLER:

4 Q Approximately?

5 A I can do a little better than that. I'll give you a very close date
6 here. Just one second, please. It was on or about January 24th of 2019.

7 Q Okay. And what were you asked to do?

8 A Well, at the time, you contacted me and advised me that
9 there had been an electrical event involving Mr. Myers and Mr. James,
10 the Plaintiffs in this matter, and you wanted to retain my services with
11 regard to -- on behalf of them as Plaintiffs in the matter wherein they had
12 been working at College Park, a facility where an electrical event, the
13 explosion, had occurred. And asked me to do some conflict check, which
14 I did. And then asked me if I could render objectives, opinions in this
15 regard based upon certain minor information at that time.

16 Q Okay. What did you do in order to form your opinions?

17 A Well, I was provided documents pertaining to the actual
18 event, including photographs. You and I communicated. I had some
19 communications as well with one of the Plaintiffs. I was invited to go to
20 the property and look over the circumstances within the electrical room
21 itself where there's an electrical panel -- an electrical panel, let me just
22 clarify that a little bit, is an electrical piece of equipment that's several
23 feet wide, about seven feet tall, and a couple of feet deep. And this
24 particular panel was called MSA, which really is probably an acronym for
25 Main Service A.

1 So I looked at that, I looked at the transformer that was provided
2 by Nevada Power Company way back in time. Now NV Energy. And I
3 took some photographs, evaluated that information, and then I did
4 research with respect to applicable codes and standards, not only to the
5 electricians that were working there but also with regard to the standards
6 and codes that were applicable to College Park.

7 Q Okay. Did you open that box that day, that panel?

8 A I did not.

9 Q Why not?

10 A I had seen the interior of it. There was no evidence to show
11 that it had been changed. It had been compromised at the time of the
12 event that affected Mr. Myers and Mr. James. And I -- if I felt like I
13 needed to, I would have been uncomfortable in doing so without
14 significant gear in place in order to do so.

15 Q Okay. Do you recall a second event taking place after the
16 event with Mr. James and Mr. Myers?

17 A I was advised that there was a second event. And, in fact,
18 one of the gentlemen that was in the room with us, Mr. Comstock,
19 testified in deposition that there was a second event involving Helix
20 Electric employees.

21 Q Okay. And that second event was another either arc flash or
22 some kind of a short?

23 A Yes, it was. The evidence I saw indicated underscored that.

24 Q Okay. And by evidence, was that some materials from that
25 event, that second event?

1 A Some materials and photographs, and then, of course,
2 Mr. Comstock's deposition testimony.

3 Q That second event is completely separate from our event?

4 A Yes. I see those as completely separate events.

5 Q Okay. The fact that there was a second event, what does that
6 tell you about whether the power was on or off to that box?

7 A The power retained on in the box.

8 Q Okay.

9 A In order for there to be such an event, which really is a
10 matter of a ground fault or a phase-to-phase fault resulting in an
11 explosion, which really is called an arc flash, the power has to be on for
12 that to happen.

13 Q Okay. So your conclusion from what you heard is that there
14 was a second time the box was being worked on while it was energized?

15 A Yes, sir.

16 Q Okay. Did you talk to Mr. James about what equipment he
17 was wearing to protect himself --

18 A Yes, I did.

19 Q -- or they were wearing? And what's your understanding of
20 the equipment they were wearing?

21 A Well, in reviewing the documentations, it would appear that
22 they had on at least a 4 calorie suit, which would give them protection
23 for up to a Category 1. And the thing that dictates Category 1 would be
24 the National Standards, NFPA, National Fire Protection Association.
25 Probably just a book called *70E*, which is Electrical Safety in the

1 Workplace. And the gear they had on, the protective gear was
2 equivalent to what was required for this particular application.

3 Q Okay. Category 1 is the lowest category there is?

4 A Well, no. There's a Category 0.

5 Q Okay.

6 A In which case it's either not energized or a person is not
7 opening any exposed electrical wiring.

8 Q Category 1, what's the amount of power that's running
9 through a system?

10 A Category 1 normally would be 240 volts or less.

11 Q Okay. And your understanding and your information is that
12 this was a Category 1 piece of equipment?

13 A Yes. As a matter of fact, this particular MSA that we've
14 talked about a minute ago is actually a 208/120 3-phase electrical panel.
15 So the greatest voltage to ground under normal conditions would be 120
16 volts, which we use to plug in our radios, and 208 volts, which we use to
17 power air conditioners and other type of equipment.

18 Q Okay. Similar to the power you would have at home?

19 A Well, rather similar. Normally at home we have 240/120. In a
20 commercial facility, such as this, it's 208/120 for technical reasons.

21 Q Okay. So you went in the room, you looked from outside,
22 you looked at photographs, you spoke to Mr. Comstock, you spoke to
23 one of the clients -- one of my clients. Did that give you enough
24 information to form any opinions about this case?

25 A Well, that provided me a very good basis. So then based

1 upon my review and documents, which I was normally familiar with, but
2 nonetheless, I go back in the code books, go into OSHA standards and
3 the National Electrical Safety document I talked about a few moments
4 ago, which is 70E, and with that information, I was very much
5 empowered to form opinions in this matter.

6 Q Okay. Which section of OSHA did you look at?

7 A I was focused on OSHA number 1926. Let me verify that.

8 Q And that's on page 5 of 14, Bates stamped, which is the
9 stamp on the bottom right-hand corner, 1584 in Exhibit 40?

10 A That's exactly right. At the top of the page it makes
11 references to two OSHA under 29 CFR. One of those is 1926.20(b)(1) and
12 the other is 1926.404(b)(1)(iii)(E).

13 Q In your opinion, were either of those statutes violated here?

14 A Very much so.

15 Q By whom?

16 A They were violated by College Park.

17 Q And how?

18 A Well, looking under the language particularly of 1926.404, it
19 says, "Wiring design and protection, all required tests shall be
20 performed." Under 1926.404(b)(1)(iii)(E)(2), "Before equipment is
21 returned to service following any repairs." And then under 1926.20(b)(1),
22 "Accident prevention responsibilities: It shall be the responsibility of the
23 employer to initiate and maintain such programs as may be necessary to
24 comply with this part." And OSHA, part 1926 addresses in greater detail
25 those things that are required in order to comply.

1 Q What's your understanding of how the arc flash occurred?

2 A Based on my -- based on communications and evidence --
3 the electrical panel has three covers on it. There's two side panels
4 vertical. It's very common in the electrical industry in commercial and
5 industrial applications for those to be on to provide protection over the
6 location where the wires come up and go to a circuit breaker. On the
7 left- and right-hand side of panel MSA, there are such panels. Cover
8 panels. Another term in the electrical trade we typically use is called a
9 dead front. Literally an electrical term that I've heard for decades,
10 meaning that it's something there to protect life and limb. Then in the
11 middle there's another electrical section that covers over the bodies of
12 the circuit breakers themselves.

13 Mr. Myers and Mr. James, the Plaintiffs, removed those covers so
14 that they could gain access to one of circuit breakers for -- it's my
15 understanding for the kitchen. Their assignment was to remove the
16 circuit breaker and replace it with a new one. They were also advised by
17 personnel of College Park that it was critical that they do so with the
18 power energized, which is understandable in a healthcare facility. We
19 have to consider whether or not it is feasible and suitable to work on
20 something live in the interest of protection -- protecting the greater good.

21 So these gentlemen there had this opened up. They started to do
22 the work. And in the top of electrical panel there was a piece of -- it's a
23 very thin charcoal-colored -- in more modern times, it's phenolic or
24 plastic. In those days, it kind of reminds me of a very thin fibrous
25 material, but it may be plastic as well. This material up in the top of the

1 panel is very flexible and it's prone to vibration.

2 So what the Plaintiffs did not know is that somebody had left some
3 screws up in the top. These screws were more than one inch long, they
4 were about one-quarter of an inch in diameter, and at least one of those
5 fell down. My understanding is more than one fell. But one of those
6 came down and landed between two of the fingers that were designed to
7 contact the electrical circuit breaker that they were going to remove and
8 reinstall. And when it did that, it allowed for electrical current to flow
9 from one electrical phase, let's call it in this case, B, to phase C.

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

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

23 And what happens with an arc flash kind of reminds me a
24 little bit of what we -- what we see with lightning, it grows and builds
25 into something that is very big. They call it a plasmic [phonetic] ball.

1 And that plasmic ball can get up to temperatures as high as 35,000
2 degrees. So all the metallic parts that are within that region are likely
3 going to be ejected or evaporated. And the other interesting thing is that
4 the air within that ball actually becomes ionized. And, as a consequence,
5 the ball then will ultimately extinguish itself, which it did, but not before
6 it created great damage to the Plaintiffs physically and damage to the
7 gear -- to the switchgear.

8 Q So after this, that switchgear was damaged as a result of this
9 event?

10 A Absolutely. I saw evidence that one of the fingers was blown
11 off. But the other thing that happens when an electrical piece of gear,
12 particularly one that's been around for a long time, has gone through an
13 event like that, the electrical panel itself is compromised and the circuit
14 breaker feeding that particular circuit is compromised. And they have to
15 be changed out. And the code that dictates is the National Electrical
16 Code.

17 Under Articles 110.3 and 110.12, but Article 3 says that use of a
18 piece of equipment has to be in compliance with the manufacturer's
19 instructions or recommendations. The manufacturer is not going to
20 stand by a circuit breaker that has failed or an electrical panel now that's
21 been compromised by this tremendous plasmic arc ball that occurred.

22 Q Given what you reviewed in preparing your report, do you
23 have an opinion as to whether or not Mr. James and Mr. Myers did
24 anything wrong that night?

25 A Not in my opinion. When I first got involved in this case --

1 because I like to be objective -- I considered whether or not they had
2 done things that were inappropriate. One of my first concerns is that
3 they had not suited themselves up in the proper gear. I learned rather
4 early on that they had actually been suited up. If they hadn't, in fact,
5 they may not be here.

6 The other thing I was concerned about is why were you guys
7 working on the electrical gear energized? A piece of electrical gear rated
8 at 240 volts and below, you can work on it energized. The people doing
9 it have to be qualified. These were requested electricians. And,
10 furthermore, the work they were doing was an essential part of replacing
11 this without shutting down MSA and shutting down a medical facility.

12 And based on those things and based of my understanding of
13 Mr. James' clear understanding of how electricity works and why, I'm
14 satisfied that the gentlemen had the expertise needed in order to do the
15 work. And, in fact, they had gotten a permit, a hot work permit from
16 College Park to do that work. At least that's my understanding.

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

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

25 And I am also critical, based on it is my understanding, and

1 certainly it was my understanding on the date of my inspection of the
2 property at least two years ago, that the circuit breaker that had tripped
3 had never been replaced and the MSA had never been replaced. I'm
4 critical of that.

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

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

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

19 Q Okay. Thank you for your time.

20 MR. KUDLER: That's all I have for now.

21 THE COURT: The witness is passed?

22 MR. KUDLER: Yes.

23 THE COURT: Cross -examination.

24 MR. A. GIOVANNIELLO: Can I use this thing?

25 THE CLERK: Yes.

1 THE COURT: You can use whatever technology we have if --

2 MR. A. GIOVANNIELLO: This goes right up there, right?

3 THE CLERK: Yeah.

4 THE COURT: It should.

5 THE CLERK: You need to turn the BlueJeans on.

6 MR. A. GIOVANNIELLO: I am really technologically

7 challenged, so --

8 THE CLERK: Well, you're [indiscernible].

9 [Counsel confer]

10 MR. A. GIOVANN: You're going to get yourself some water?

11 THE WITNESS: Yes, sir. If there's any way I could get a

12 cup --

13 MR. A. GIOVANNIELLO: Oh.

14 THE WITNESS: -- for some water, that would be great.

15 Thank you.

16 MR. A. GIOVANNIELLO: You're going to get better than a

17 cup.

18 THE WITNESS: Oh, okay. Very good. Thank you.

19 MR. A. GIOVANNIELLO: No rush. It's okay.

20 THE WITNESS: No. I'm good. Thank you.

21 MR. A. GIOVANNIELLO: All right.

22 CROSS-EXAMINATION

23 BY MR. A. GIOVANNIELLO:

24 Q So, Mr. Gifford, obviously you're a well-qualified electrician,

25 correct?

1 A I feel like I am, yes.

2 Q Okay. Nothing to question your qualifications. How long
3 have you worked -- you're here as an expert witness, correct?

4 A Yes, sir.

5 Q You were retained by the Plaintiffs in this case, correct?

6 A That's correct.

7 Q What did they pay you? What was your retainer fee?

8 A I don't recall giving them a retainer.

9 Q Sure.

10 A I just billed for my time as I went along. There -- there may
11 have been. I just don't remember.

12 Q All right.

13 A Overall, I'll just tell you. Overall, I billed them for 12,000 --
14 \$12,000 in this matter.

15 Q Okay. So -- all right. So as of -- up to today, you've billed
16 \$12,000?

17 A Well, at least that.

18 Q Okay. Have you been paid?

19 A Yes.

20 Q Okay. You've been paid in full?

21 A Well, there's some invoices that are in the works.

22 Q Okay.

23 A Trial prep, for example.

24 Q Sure.

25 A But outside of that, yes, I've been paid.

1 Q And you're being paid to be here today, too, right?

2 A Yes. I'm paid for my time.

3 Q And it's just your time?

4 A That's correct. I'm paid for my time --

5 Q Okay.

6 A -- and paid for -- yeah, for my time to testify and provide

7 objective opinions.

8 Q Sure. And that's all we ask of you is to provide objective

9 opinions, right?

10 A Yes, sir.

11 Q Okay. Now, how much are you charging for today?

12 A My -- my fee for today gets billed at I believe \$425 an hour.

13 Q Okay. So that's how many hours you're here plus travel

14 time?

15 A Yes. The travel time I bill at a lesser rate.

16 Q Okay. So you have -- what's that rate?

17 A 240.

18 Q Okay. So 240 for travel time and, I'm sorry, you said 3 --

19 what did you say? 400 and something?

20 A 425.

21 Q 425 for actual testimony?

22 A And the travel time is minimum. I live in Las Vegas.

23 Q Oh, okay.

24 A I grew up here.

25 Q That's good. Born and raised here?

1 A Almost born here.

2 Q Wow. Okay.

3 Okay. Now, is your sole business working as an expert witness or
4 are you still doing electricity work?

5 A Principally what I do is testify in expert with regard to
6 electrical, fires, explosions, and other matters. That's mostly what I do. I
7 do get some hands -- my hands into things. And I have licensing to do
8 that if I -- if I so choose.

9 Q How many times do you actually get your hands into things?

10 A All the time.

11 Q Okay.

12 A I've got a -- I have a cabin that's out of state, I have friends who ask
13 me to give them a hand with what they're doing. And in terms of
14 obtaining permits and taking contracts to do work, I'm not doing much of
15 that.

16 Q Okay. That's what I was kind of getting at.

17 A No.

18 Q Okay. You don't do much of that anymore?

19 A I'm not doing much of that anymore.

20 Q How much of your time is spent as an expert witness?

21 A 95 percent --

22 Q About --

23 A -- at least.

24 Q -- 95 percent?

25 A Yes.

1 Q Okay. Now, how do you break -- do you -- breaking it down,
2 do you work more for the plaintiff or the defense or is it 50/50? Tell me
3 how that -- how that works.

4 A Over more than my 25 years, with respect to this type of case
5 and fires, electrical, lighting, other issues, just about 50/50.

6 Q Okay. Now, here, you were retained, it looks like, in 2019,
7 January of 2019?

8 A That's exactly right.

9 Q Okay. And you went inspected did the property and the area,
10 it looks like, on March 5, 2019? If you're wondering where that is, that's
11 on page 3 of your report.

12 A Thank you. Well, I tend to believe that. That sounds correct
13 to me.

14 Q I wouldn't lie to you.

15 A Right.

16 Q We'd both get in trouble for that.

17 [Witness reviews document]

18 BY MR. A. GIOVANNIELLO:

19 Q So essentially you went and inspected the property about
20 five years later?

21 A That's correct.

22 Q Okay. And do you know if anybody else worked on that
23 panel within that five-year period?

24 A I do not know.

25 Q Does it -- would it make a difference, in your opinion, if

1 someone else had worked on that panel in the previous five years?

2 A Between the time that this had occurred and the by the time I
3 got there?

4 Q Yeah. I should say yes. I said yeah.

5 A Given the scope of my assignment, I don't know that that
6 made much difference. I was just trying to ascertain whether or not --
7 well, first, I wanted to establish the character and nature of the
8 electrical --

9 Q Sure.

10 A -- panel MSA, I wanted to see whether or not it had been
11 changed out, and, in particular, I wanted to know if MSA had been
12 changed out. If that had been done, that would have made a difference
13 to me. But during the five years, if somebody had gotten in and out of
14 the panel, as far as I'm concerned, the only difference is if Mr. Comstock
15 had testified, yes, we've been in and maintained the panel, but he said,
16 "No."

17 Q Not in the previous five years.

18 A Oh.

19 Q I think Mr. Comstock said yes afterwards.

20 A Thanks for correcting me.

21 Q Yeah.

22 A You're exactly right.

23 Q Right.

24 A In fact, Helix went in -- was in the panel afterwards.

25 Q Afterwards --

1 A Uh-huh.

2 Q -- right. And in your direct examination, you talked about a
3 second event?

4 A Yes, sir.

5 Q Do you know what caused that second event?

6 A Based --

7 Q I believe you took pictures of it, too, in your report.

8 A Yes. Well, based on my experience, that looks to me like an
9 event where somebody was attempting to put a screw through the cover
10 to a cable that was very close to the front of the electrical panel.

11 Q Uh-huh.

12 A And so when they were inserting the screw in, it actually
13 drilled a hole from the insulation. And I'm -- I didn't observe it happen,
14 but based on my experience, based upon the view of this, that's exactly
15 what happened. And I've seen that happen --

16 Q Sure.

17 A -- many times in my lifetime.

18 Q And do you know whether or not the person who did that,
19 put that screw in there, was Industrial -- somebody from Industrial Light
20 and Power?

21 A I do not know that.

22 Q Okay. You were -- you -- as an expert, right, you're given
23 certain documents to give some -- you're given certain statements.
24 That's how you base your opinion, right?

25 A Well, my opinion is based upon a number of things.

1 Q Yeah. But as well as a lot of these statutes and regulations?
2 Which we're going to get into as well. But basically you're not there?
3 You weren't there? You didn't visual -- you didn't see this event, right?

4 A Correct, I wasn't there.

5 Q Exactly. So you have to rely on what is given to you in order
6 to -- it's almost like -- we call it forensic examination. In other words,
7 you're going backwards in time to look at all the documents to say,
8 "Okay, this is what I think happened, this is my professional opinion,"
9 right?

10 A Yes.

11 Q You have to do it that way, right?

12 A Yes.

13 Q Okay. So your opinion really is based upon, well, yes, the
14 records you reviewed -- the statutes you reviewed -- we'll talk about
15 them -- but it's also based upon the documents that you were actually
16 given and what was told to you about what happened, right? That's
17 what you have to base it on?

18 A That's true.

19 Q Right. And unless you know somebody's lying, you have no
20 reason not to believe them?

21 A Well that's true unless --

22 Q Right.

23 A -- it's -- unless it's contrary to my expertise and education
24 where electrical and mechanical systems are concerned.

25 Q Fair enough. So, here, Mr. James is the one who told you

1 what happened, right?

2 A Yes.

3 Q Okay. And you have to -- you believed him?

4 A Yes, I did.

5 Q No reason not to believe him, right?

6 A And the evidence underscored what he told me.

7 Q Okay. Now, I look a page 6 of your -- of your report, and here
8 it says the documents you reviewed.

9 MR. A. GIOVANNIELLO: Can I publish it so he can look at it?

10 THE COURT: Is it -- if the exhibit is in evidence, you may
11 publish. Has it been offered and admitted?

12 MR. KUDLER: It has not, Your Honor.

13 THE COURT: What is it?

14 MR. A. GIOVANNIELLO: It's his report.

15 THE COURT: Oh, is there -- are you offering it? Has it been
16 marked by the clerk?

17 MR. A. GIOVANNIELLO: No, it has not been marked by the
18 clerk and I think I'm not going to do that. What I'm going to do is just
19 read it.

20 THE COURT: Well, I'll let you examine the witness. But if it's
21 not in, it can't be published.

22 MR. A. GIOVANNIELLO: Gotcha, Your Honor. Understood.
23 Sorry about saying gotcha.

24 BY MR. A. GIOVANNIELLO:

25 Q Okay. You reviewed the amended -- just look at it. You

1 reviewed an amended complaint?

2 A True.

3 Q You reviewed American Medical Response dated 6/6 for
4 Jeffrey Myers?

5 A Yes.

6 Q MedicWest Ambulance for Andrew James?

7 A Yes.

8 Q You reviewed UMC records for both of them?

9 A Yes.

10 Q It looks like you reviewed a Southwest Electric Services
11 Power System Study [phonetic]. I don't know what that is. What -- what
12 is that for?

13 A Southwest Electric Tech Services [phonetic] is an
14 independent company who evaluates electrical systems. They may
15 evaluate other types of systems well -- as well and make
16 recommendations.

17 Q Sure.

18 A And they very often have the capability of them bringing
19 electrical equipment up to modern standards.

20 Q Okay. And was that just like a -- just for research?

21 A Well, it was provided to me by counsel, so I reviewed
22 everything that I had.

23 Q Oh, okay. You also reviewed, it looks like, photos taken by
24 Andrew James?

25 A Yes, sir.

1 Q And narratives prepared by Andrew James?

2 A Yes.

3 Q Photos of each Plaintiff provided by counsel?

4 A Yes.

5 Q College Park photos? I'm not exactly sure what that is. Did
6 you take those or were they provided by College Park?

7 A They were provided to me by counsel.

8 Q Okay.

9 A It's my understanding they were taken by people with
10 College Park.

11 Q Okay. And then a series of photos provided by counsel
12 depicting conditions at the interior of the subject panel, including photos
13 of an exemplar screw?

14 A Yes, sir.

15 Q Okay. You were not provided the work permit though, right?

16 A I have not seen the -- sir, are you referring to the permit that
17 was issued by College Park for working on the electrical equipment hot?

18 Q I don't believe it was issued by College Park. But we're going
19 to look at it right now. Take the black book behind, and it would be the --
20 the one that starts at 208 I believe.

21 A The one that starts at 208?

22 MR. A. GIOVANNIELLO: Your Honor, may I approach?

23 THE COURT: Yes.

24 THE WITNESS: And then parenthetically 1 to 107?

25 THE COURT: Counsel, if you want to -- if you want to follow

1 along. It's up to you.

2 MR. KUDLER: No, I'm fine. Thanks.

3 MR. A. GIOVANNIELLO: Yeah, that's it.

4 THE WITNESS: Okay.

5 MR. A. GIOVANNIELLO: Your Honor --

6 BY MR. A. GIOVANNIELLO:

7 Q Turn to Exhibit 239. Right at the end. This is a two-page
8 document.

9 A Okay.

10 Q Just let me know when you're there, Mr. Gifford.

11 A Yeah, I have it.

12 Q Oh, you have it?

13 A Sure. Sorry for the delay.

14 Q Okay.

15 MR. A. GIOVANNIELLO: This is --

16 BY MR. A. GIOVANNIELLO:

17 Q No, no problem.

18 MR. A. GIOVANNIELLO: This is Exhibit 239. I would like to
19 proffer into evidence.

20 THE COURT: 239 is offered. Any objection?

21 MR. KUDLER: No, Your Honor.

22 THE COURT: Hearing none, 239's admitted.

23 [Defendants' Exhibit 239 admitted into evidence]

24 BY MR. A. GIOVANNIELLO:

25 Q Okay. Now, 239 is an electrical -- it's an Energized Electrical

1 Work Permit, correct?

2 A Yes, it is.

3 Q Okay. And the top of that says Industrial Light and Power,
4 correct?

5 A Yes, it does.

6 Q So does that tell you that it was issued by Industrial Light
7 and Power and not by College Park?

8 A It says -- it says, "To be completed by the person requesting
9 the permit." So based on that, it looks like that was prepared by
10 Industrial Light and Power.

11 Q Okay.

12 A Okay.

13 Q Now, when you go down, look at, "Description of safe work
14 practices to be employed."

15 A Are we still on 239-1?

16 Q Yes, we are, sir.

17 A Okay. I'm there.

18 Q "Description of safe work practices to be employed," can you
19 read that for us?

20 A It says, "Crew member on watch during energized work
21 outside electrical room door, watch all clearances around energized bus,
22 use insulated tools where possible, and if required, safety glasses and
23 insulated gloves on at all times the energized panel is open."

24 Q And these are some of the safety procedures that have to be
25 followed by the electricians when they're working on an energized panel,

1 right, according to this work permit; is that correct, sir?

2 A According to this document, yes.

3 Q Okay. And one of the things that they're supposed to do is
4 watch all clearances around energized bus, right?

5 A "Watch all clearances around energized bus," yes.

6 Q Okay. And if you were to believe Mr. James, that a screw
7 came down and fell, obviously somebody didn't watch all clearances
8 around the bus; isn't that right?

9 A Well, actually, this was above their heads for the height.
10 And I guess we'd have to have a discussion about what it means to be
11 around the bus.

12 Q Well, you're the -- you're the expert here, you're the master --

13 A Okay.

14 Q -- you're the guy who knows everything about electricity.
15 Now, if we -- if you were working on an energized panel, and you know
16 that's a lot of electricity, you'll agree with me electricity is dangerous,
17 right?

18 A Yes, I do.

19 Q You'll agree with me that electricity could kill you?

20 A Yes, I do.

21 Q And a big arc that's supposed to be 35,000 degrees, which I
22 think is hotter than the sun, that -- that would melt anything in the room,
23 right?

24 A Yes, sir.

25 Q So you're going to check all clearances, aren't you?

1 A I'm going to do -- I'm going to carry out an observation of the
2 conditions there --

3 Q Sir --

4 A -- to --

5 Q -- will you answer my question?

6 MR. KUDLER: Your Honor, he was answering the question,
7 and he was --

8 THE COURT: Overruled. This is cross-examination. But the
9 witness is allowed to answer the question to his satisfaction. So,
10 Counsel.

11 MR. A. GIOVANNIELLO: Okay. Thank you, Your Honor.

12 BY MR. A. GIOVANNIELLO:

13 Q Go ahead. You can respond.

14 A The electricians then would be obligated to check for safe
15 conditions within the electrical panel. Is it possible for them to find every
16 single condition, particularly those things that were a condition that had
17 been created prior to them being there that was not within their line of
18 sight, so are they responsible for ascertaining and validating every
19 condition in electrical panel, well, that's questionable simply because we
20 have these safe practices, we have obligations on the part of a company
21 owner, such as College Park, to maintain their equipment to give access
22 to live gear. And so the electricians can some degree -- to a certain
23 degree can rely upon the viability of the company that's giving them
24 access to the panel.

25 Q And they should also watch all clearances around an

1 energized bus, right --

2 A That's the --

3 Q -- because that's what that says?

4 A That's the exact language.

5 Q That's what that says right there?

6 A Look for all clearances.

7 MR. KUDLER: Your Honor, could he not be argumentative
8 and let him answer without interruption?

9 THE COURT: Just state the objection. Don't speak. Don't --
10 no speaking objections, gentlemen. State your basis, and I'll rule.

11 So that was argumentative?

12 MR. KUDLER: Argumentative.

13 THE COURT: It's cross. Overruled.

14 MR. A. GIOVANNIELLO: Okay.

15 BY MR. A. GIOVANNIELLO:

16 Q Let's turn to page 2 of this document. Look at the very top --
17 mine's highlighted. Look at the very top right of this document.

18 A Yes, sir.

19 Q And it says, "Results of the arc flash risk," correct?

20 A Yes.

21 Q Okay. Now, isn't that saying that, at least up there, that there
22 is a risk of an arc flash when working on an energized panel?

23 A Yes, there is. However, under NFPA 70E, which is the
24 standard for Electrical Safety in the Workplace, these gentlemen were
25 working on a panel that was 240 volts or less. So they have effectively

1 decreased that arc flash risk. And, of course, they're depending on the
2 viability and the condition of the electric equipment that they're entering.

3 Q Okay. Now, when you look down, it says, "Necessary PPE
4 and other protective equipment to safely perform assigned tasks." It
5 says, "FR shirt." What does FR stand for?

6 A Fire resistant. Fire rated shirt, actually.

7 Q Okay. "Safety glasses"?

8 A Yes, sir.

9 Q "Steel toe boots, rubber insulated gloves"?

10 A Yes, sir.

11 Q Okay. Did you see the photograph taken of Mr. Myers, the
12 turns on his face?

13 A I believe I did.

14 Q Okay. And did you see that the burns were completely on his
15 face and that he was not wearing safety glasses?

16 A Well, I can't speak to that. Here's the problem with 35,000 --
17 an arc flash that's 35,000, it tends to move things around.

18 Q So --

19 A It tends to affect -- the idea here is that if you're working in an
20 electrical panel that's rated 240 volts or less, you're also working under
21 the assumption that the overcurrent device, the circuit breaker, that's
22 feeding the panel has been properly maintained. Meaning that it will trip
23 instantaneously. In this particular instance, I'm not the right person to
24 make statements about what's going to happen with the consequences
25 of a 35,000 degree Fahrenheit ball that's in front of these guys. So I'm

1 not equipped to tell you what the potential consequences of that
2 are --

3 Q Okay.

4 A -- other than the fact that it can be devastating and deadly.

5 Q Right. But weren't they there to make that panel safe?
6 Wasn't that the whole reason they were there?

7 A No. They were there to change out a circuit breaker within
8 that panel.

9 Q Here we have a signature that's under, "Do you agree that
10 the above work can be done safely?" Do you know who that signature
11 is?

12 A Well, it looks like Andrew James. But I -- you know, I seem to
13 recall his signature.

14 Q Okay. And so under that, Andrew James signed it saying he
15 agrees that the above work can be done safely, right?

16 A Yes, sir.

17 Q Using all -- well, never mind. And then going down even
18 further, it says, "Authorizing and Managing Director," is it -- that would
19 be Darrin Cook's signature? Do you know that?

20 A I do not know that.

21 Q Okay. But underneath that, there's also the same signature
22 as above, which I believe you identified as the signature of Andrew
23 James?

24 A It looks like Andrew James, yes.

25 Q Okay. Well, when he gets on the stand, we'll -- we can

1 always -- always him verify it as well.

2 MR. A. GIOVANNIELLO: All right. Your Honor, it's 12:00. I'm
3 not done. Are we going to --

4 THE COURT: How much longer do you have? I'd like to
5 finish the examination of the witness, if possible, before we take our
6 break.

7 MR. A. GIOVANNIELLO: I'm not sure I could do that.

8 THE COURT: All right. Ladies and Gentlemen, then, we're
9 going to take our luncheon recess at this time.

10 Remember during this recess, you are admonished you must
11 not discuss or communicate with anyone, including fellow jurors, in any
12 way regarding this case or its merits either by voice, phone, email, text,
13 Internet, or other means of communication or social media; you may not
14 read, watch, or listen to any news reports or media accounts or
15 commentary upon the case, do not do any research, consult dictionaries,
16 use the Internet, or reference materials; make any investigation, test any
17 theory in the case, recreate any aspect of the case, or in any other way
18 investigate the case, learn about the case on your own; do not form or
19 express any opinion regarding the case until it's finally submitted to you.

20 We'll say 1:15, Ladies and Gentlemen, for our luncheon
21 break. Follow the marshal, please. Have a good lunch.

22 THE MARSHAL: Please rise.

23 Leave your notepads and your headphones on your seats.

24 [Jury out at 12:03 p.m.]

25 [Outside the presence of the jury]

1 THE COURT: The record should reflect outside the presence
2 the jury. Also, acknowledge the witness remains in the witness stand.

3 Any additional record need to be made by either side as a
4 function of examination or openings this morning? Plaintiff?

5 MR. KUDLER: Nothing at this time.

6 THE COURT: Defendant?

7 MR. A. GIOVANNIELLO: Nothing, Your Honor.

8 THE COURT: See you at 1:15 or a little before.

9 MR. A. GIOVANNIELLO: 1:15. Okay. Thank you,
10 Your Honor.

11 [Recess taken from 12:03 p.m. to 1:11 p.m.]

12 [Outside the presence of the jury]

13 THE COURT: Take a count.

14 THE MARSHAL: Yes, sir.

15 THE COURT: We can put the witness back on the stand.

16 MR. KUDLER: If we may before the jury comes in --

17 THE COURT: Oh, we need to go outside the presence?

18 MR. KUDLER: One quick thing. A very quick thing.

19 THE COURT: Oh, all right. We're on the record in A-735550;
20 Myers versus THI of Nevada. The record should reflect the presence of
21 the Plaintiff and Defense. Outside the presence of the jury. The witness
22 is present in the room.

23 Counsel, Mr. Kudler?

24 MR. KUDLER: Yes. I understand Mr. Giovanniello's
25 condition. Unfortunately he's had surgery. But we had brought it to the

1 jury's attention twice. I don't think we need to have the jury told that
2 he's having this condition and asking for their forgiveness.

3 THE COURT: And agreed to an extent.

4 Mr. Giovanniello, I'm going to give you leave to -- if you need
5 to sit, sit; if you need to stand, within reason and respect, do what you
6 need to do to be comfortable to try your case. Okay?

7 MR. A. GIOVANNIELLO: Thank you.

8 MR. KUDLER: Yeah. It's just the commentary of, you know,
9 "I can't walk."

10 MR. A. GIOVANNIELLO: I'll stop.

11 MR. KUDLER: Thank you.

12 THE COURT: That's fine. Yeah. Noted.

13 MR. A. GIOVANNIELLO: I just -- I just thought they'd be
14 wondering what I'm doing. That's the only reason.

15 THE COURT: You told them.

16 MR. A. GIOVANNIELLO: Yeah, I told them. I'm done.

17 THE COURT: Good. All right.

18 MR. KUDLER: Thank you.

19 THE COURT: You got ten in the room or ten ready?

20 THE MARSHAL: We'll check now, sir.

21 THE COURT: Okay.

22 MR. KUDLER: Would you like the witness in the stand -- in
23 the box?

24 THE COURT: Yes. And we don't need to re-swear him. He
25 remains under oath. And I'll say that in front of your jury.

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[Pause]

THE COURT: There's always one. Always.

MR. KUDLER: One lost sheep.

THE COURT: Please don't be -- don't be that jury. Everybody just be here. Of course, I didn't start off good this morning being a half hour late.

THE CLERK: That wasn't your fault.

THE COURT: But tomorrow, by the way, just for scheduling purposes, we only have two -- I have two matters on calendar that I've worked with the clerk -- law clerk with. So we're going to start promptly at 9:00. There's nothing in front of us. Okay?

MR. KUDLER: Thank you, Your Honor.

THE COURT: And same for Friday. Nothing on calendar. So we're working Friday. So, as I tell you, rack 'em and stack 'em.

THE WITNESS: I feel like I lost a day this week.

MR. A. GIOVANNIELLO: Are you going to go Friday?

MR. KUDLER: Yeah.

MR. A. GIOVANNIELLO: Okay. So I'll put mine on on Monday?

MR. KUDLER: Probably.

MR. A. GIOVANNIELLO: All right.

MR. KUDLER: I don't know. Let me -- I'll have to see how far we get.

MR. A. GIOVANNIELLO: Yeah. Let me know.

MR. KUDLER: I don't think I'm going to get through the -- the

1 two other ones I have today.

2 MR. A. GIOVANNIELLO: Yeah. I -- I think you're right.

3 MR. KUDLER: Yeah. I have -- Dr. Zobio is -- I thought we'd
4 be done at 1:30.

5 THE COURT: Oh.

6 MR. KUDLER: So, he's scheduled to be here at 1:30, but I --
7 you know, he'll just have to sit I guess.

8 THE COURT: Okay.

9 THE MARSHAL: Please rise for the jury.

10 THE COURT: Try -- try your case.

11 MR. KUDLER: Yes. I just wanted to let you know.

12 [Jury in at 1:15 p.m.]

13 THE COURT: Please be seated, Ladies and gentlemen.

14 We're on the record in A-735550; Myers versus THI of
15 Nevada at Cheyenne. The record should reflect the presence of --
16 representing the Plaintiff and Defense.

17 All members of the jury panel do appear to be present. Will
18 the parties stipulate to the entire panel? Plaintiff?

19 MR. KUDLER: The Plaintiff does. Thank you, Your Honor.

20 THE COURT: And Defense?

21 MR. A. GIOVANNIELLO: Stipulated.

22 THE COURT: Thank you.

23 The record should further reflect the remaining Plaintiffs'
24 case-in-chief, cross-examination of the witness. I'll remind the witness
25 that he remains under oath.

1 Mr. Giovanniello, you have the witness on cross.

2 MR. A. GIOVANNIELLO: Thank you, Your Honor.

3 CROSS-EXAMINATION CONTINUED

4 BY MR. A. GIOVANNIELLO:

5 Q Okay. We were talking I think before the break about
6 Mr. Myers and whether he was wearing PP -- whether he was wearing a
7 face shield, I believe?

8 A Yes.

9 Q Okay. Now, what I want you to do is take the books behind
10 you, the blue -- the white ones, and you're going to go to Exhibit 3. And
11 I'm not sure if yours is colored, but mine is black and white. But I do
12 have a colored picture. Yours is black and white as well?

13 A [No audible response.]

14 Q All right. Go to 3. Now, go to 3, number 8.

15 A It's in black and white.

16 Q Yeah, it's black and white, but I have a color picture of the
17 same one.

18 MR. A. GIOVANNIELLO: And I want to put this into evidence,
19 Your Honor.

20 THE COURT: All right. So Defense marked as trial Exhibit 3
21 is being offered. Counsel, is there any objection?

22 MR. KUDLER: No objection. And you're talking about the
23 entire exhibit?

24 MR. A. GIOVANNIELLO: No. I'm talking about just this
25 picture.

1 MR. KUDLER: Okay. Okay. So just Bates stamp 8?
2 MR. A. GIOVANNIELLO: Yeah. As of right now --
3 MR. KUDLER: I have no objection.
4 MR. A. GIOVANNIELLO: -- yeah.
5 THE COURT: So is this -- I am looking at what you provided
6 to the Court as noted as trial Exhibits 205, I believe 1 -- Exhibits 1 through
7 719. Is that not --
8 MR. A. GIOVANNIELLO: No, Your Honor.
9 THE COURT: Is that incorrect?
10 MR. A. GIOVANNIELLO: No. Are you looking at the white
11 books?
12 MR. KUDLER: Plaintiffs' exhibits --
13 THE COURT: The white books? Plaintiffs' --
14 MR. A. GIOVANNIELLO: Yeah. I'm looking --
15 MR. KUDLER: Plaintiffs' exhibits, Your Honor.
16 MR. A. GIOVANNIELLO: -- at Plaintiffs' exhibit book.
17 THE COURT: Okay.
18 MR. A. GIOVANNIELLO: And it's the first one. It's Exhibit 1
19 through 25.
20 THE COURT: So Plaintiffs?
21 MR. A. GIOVANNIELLO: Yeah. And then go to 3, and then
22 picture number 8 should be --
23 THE COURT: So Bates --
24 MR. A. GIOVANNIELLO: -- a face --
25 THE COURT: -- stamp 8?

1 MR. A. GIOVANNIELLO: Yeah. Yes.

2 THE COURT: All right. And it's offered, Bates stamp --
3 Plaintiffs' 8 is offered. Any objection?

4 MR. KUDLER: No, Your Honor.

5 THE COURT: And it's received.

6 [Defendants' Exhibit 3-8 admitted into evidence]

7 MR. A. GIOVANNIELLO: Okay.

8 BY MR. A. GIOVANNIELLO:

9 Q Mr. Gifford, have you seen this picture before?

10 A I probably have.

11 Q Okay. And this is a picture of Mr. Myers?

12 A It looks very much like Mr. Myers.

13 Q Okay. And it's a picture depicting his injuries?

14 A Well, to whatever degree it's showing injury, okay.

15 Q Okay. And do you see whether or not -- look around his
16 eyes. Is there any marks like he was wearing a face mask?

17 A With 35,000 degree, he was wearing some protection.

18 Q 35,000 degree, wouldn't it vaporize everybody in the room? I
19 mean that's technically hotter than the sun I think.

20 A It is hotter than the sun. But there's a ball and when we're in
21 the region of the ball, that's where the temperature is.

22 Q So if he was inside --

23 A So --

24 Q I'm sorry.

25 A I was just going to say, if he's wearing no protection

1 whatever, this picture doesn't show -- it doesn't look anything near like
2 the photos I've seen in the past, in my study and education with
3 electricity, third degree burns.

4 Q That's not a third degree burn, right?

5 A I don't see a third degree burn there. But, once again, I'm
6 looking at a photo.

7 Q Yeah.

8 A And I don't know what the timing of the photo is exactly.

9 Q Okay. Do all arcs -- are all arcs 35,000 degrees?

10 A Well, it's a good question. I don't know. I know that from my
11 study of the publications over decades, that they frequently refer to arc
12 flashes as getting into the range of 35,000 degrees. Whereas the
13 surface -- the surface of the sun is probably 7 or 8 or 9,000 degrees.

14 Q Okay. Now, let's talk about I guess the basis of your opinion
15 as was discussed -- the events as were told to you by Mr. James.

16 A Okay.

17 Q Will you -- now, you were not provided -- we talked about
18 this. You were not provided with -- you need to grab the second set of
19 books with the white copy, and it's 27 to 40.

20 A Well, Counselor, I have a look here that goes up to as high as
21 25 in white. And I have another white book here that's strictly Bates
22 stamped.

23 Q Yeah, that's not it.

24 A Oh.

25 Q I think this is it.

1 A Oh. It's on my desk. I apologize.

2 MR. A. GIOVANNIELLO: I'm sorry, Your Honor. May I
3 approach?

4 THE COURT: Binder 3 of 3?

5 MR. A. GIOVANNIELLO: It's 1 -- it's something to 40.

6 THE WITNESS: Your Honor, 3 of 3.

7 BY MR. A. GIOVANNIELLO:

8 Q Okay. This is a form 4-C. Okay. Have you ever -- have you
9 seen this form before?

10 A Will you redirect me to the tab --

11 Q Yeah. I'm sorry.

12 A -- you want me to open up?

13 Q Yeah, you're right, I did not do that.

14 A Okay.

15 Q Thank you for reminding me. It's Exhibit 31 --

16 A Okay.

17 Q -- and it's 31-1464.

18 [Counsel confer]

19 THE WITNESS: I'm looking at 1464 now.

20 BY MR. A. GIOVANNIELLO:

21 Q Okay.

22 MR. A. GIOVANNIELLO: Your Honor, may I publish?

23 THE COURT: It needs to be -- we need to do foundational
24 aspects and admission unless you're --

25 MR. A. GIOVANNIELLO: Sure.

1 THE COURT: -- referring to it in a general sense.

2 BY MR. A. GIOVANNIELLO:

3 Q This is a form 4-C, and it's an employee's claim for
4 compensation. And if you'll look at the form, the first third on the right-
5 hand side, that's a signature that I think you identified earlier as being
6 Mr. James, correct?

7 A On the right-hand side, I don't see Mr. James' signature.

8 MR. A. GIOVANNIELLO: May I approach, Your Honor?

9 THE COURT: Yes.

10 THE WITNESS: I'm with you now. Thank you.

11 MR. A. GIOVANNIELLO: You're welcome.

12 BY MR. A. GIOVANNIELLO:

13 Q Mr. James --

14 A So, yes, I recognize this being the same signature we've
15 identified before. So --

16 Q Okay.

17 A -- I think it's sufficient to say that it's Mr. James' signature.

18 Q Okay. And there's dates on this. If you look to the left of that
19 signature, that date?

20 A I'm seeing a date of 6/6/2014.

21 Q Okay.

22 A Date of injury.

23 Q So we have -- the day of the injury. So we have -- and that's
24 the day that the injury occurred. So we do have a signature of
25 Mr. James. If you look at the bottom of this --

1 MR. A. GIOVANNIELLO: And may I point it out again,
2 Your Honor?

3 THE COURT: Yes.

4 BY MR. A. GIOVANNIELLO:

5 Q This part over here where will it says, "Certified," I want you
6 to look at that date right there.

7 A I do.

8 Q And that date is 6/11?

9 A It's 6/11/14.

10 Q Okay.

11 MR. A. GIOVANNIELLO: Now may I publish?

12 THE COURT: Are you offering 31 dash --

13 MR. A. GIOVANNIELLO: Yes.

14 THE COURT: -- 1464 Plaintiff?

15 MR. A. GIOVANNIELLO: Yes. That's --

16 THE COURT: That's offered. Is there any objection to
17 admission?

18 MR. KUDLER: No, Your Honor.

19 THE COURT: Then it's received.

20 [Plaintiffs' Exhibit 31-1464 admitted into evidence]

21 MR. A. GIOVANNIELLO: I'm not sure how to make this
22 bigger.

23 [Counsel and Clerk confer]

24 BY MR. A. GIOVANNIELLO:

25 Q Do you see the part where it says, "How did this injury or

1 occupational disease occur?"

2 A Why don't you just point on it in ELMO there for the region
3 you're looking at. Right there? Okay.

4 Q Okay. And the response is, "Unknown what happened,
5 electric arc flash"?

6 A Yes.

7 Q Right. So as of the date this is written, signed by Mr.
8 James --

9 A Yes.

10 Q -- it's unknown how that arc flash happened, at least on the
11 date this was done, which it looks like 6/11/16?

12 A Well, I don't agree with the -- that being -- 6/11/14 is indicated
13 the date of which the employer's copy of the form was mailed to the
14 employer. This thing was prepared apparently on June 6, '14 and mailed
15 five days later.

16 Q Still, it says, "Unknown what happened, electrical arc flash."
17 Doesn't it say that?

18 A Yeah, it does.

19 Q Okay. And based upon that, could it be that essentially the
20 story that you received about a screw being -- falling down and causing
21 an arc flash, couldn't that have been concocted sometime later?

22 A Well, based on this document, the way I read this is unknown
23 as to what happened. They hadn't figured it out by there. Or, who
24 knows, he could have been in a state of shock. I mean I've been -- I've
25 been in the presence of electrical shocks, and it sounds like lightning

1 going off. It wouldn't be surprised at all if it wasn't completely clear as
2 to what happened. But he did that have the presence of mind to indicate
3 electrical arc flash.

4 Q Well, yeah, it was definitely electrical arc flash. But he
5 doesn't know how it occurred, right?

6 A Well, when this thing occurred --

7 Q No, not -- okay.

8 A So the --

9 Q I don't want to argue with you. The document speaks for
10 itself.

11 Okay. So let me tell you this. Let's just take this -- you're an
12 expert. I guess I'll give you a hypothetical. I take it that the story you
13 were told is not correct, okay, on how this occurred, okay. And really
14 they don't know how it occurred, okay. It could have occurred any time.
15 It could have been -- Mr. Myers was working on it. He could have done
16 something to cause an arc flash. Is -- could that -- is that within the
17 realm of possibility?

18 A I haven't seen anything to support that. But I suppose there's
19 other possibilities --

20 Q Right.

21 A -- besides what I was told. But what I've been told is
22 consistent with what -- the evidence I've seen.

23 Q Except for this document, which --

24 MR. KUDLER: Your Honor --

25 BY MR. A. GIOVANNIELLO:

1 Q -- contradicts the evidence you've seen, right?

2 MR. KUDLER: -- objection on commentary.

3 THE COURT: Sustained.

4 MR. A. GIOVANNIELLO: Okay.

5 BY MR. A. GIOVANNIELLO:

6 Q Now let's talk about some regulations. You mentioned
7 OSHA?

8 A I did.

9 Q Occupational Safety and -- what's the name again? I think
10 you gave it to me. I keep forgetting it.

11 MR. C. GIOVANNIELLO: Health. Occupational Safety and
12 Health.

13 BY MR. A. GIOVANNIELLO:

14 Q Occupational Safety and Health Act or administration.

15 A I'm familiar with it.

16 Q All right. You know what, before we get there --

17 MR. A. GIOVANNIELLO: And, Your Honor, this is a document
18 I'm going to put into evidence, but I've got to redact it.

19 THE COURT: Well, let's look through it and see where it
20 takes us. Go ahead.

21 MR. A. GIOVANNIELLO: Okay.

22 THE COURT: You have the witness.

23 BY MR. A. GIOVANNIELLO:

24 Q Before we go there, okay, one other thing. You were -- were
25 you -- do you -- do you know what an interrogatory is?

1 A Yes, I do.

2 Q Okay. That's a question that is asked from one side to the
3 other, and they answer it under oath, right?

4 A Yes. That's --

5 Q Okay.

6 A -- my understanding as well.

7 Q Okay.

8 A I've read many of them in my life.

9 Q Were you -- I bet you have. Were you given interrogatories
10 that were responded to by Mr. James?

11 A I don't recall seeing the interrogatories in this matter.

12 Q Okay. So if -- and I'm going to read you something and I'm
13 going to ask you whether it changes your opinion. If Mr. James was to
14 say, "Jeff was in the corner of the room, his face blackened by the
15 explosion, and we did not have any idea at the time what exactly had
16 happened," now, take this in conjunction with the document I showed
17 you, the C-4 document, okay, does that change -- will that change your
18 opinions at all?

19 A No.

20 Q Okay. You talked about OSHA, correct?

21 A Yes, I did.

22 Q And OSHA is what?

23 A It's the Occupational Safety and Health Act.

24 Q Okay.

25 A A governmental program for the purpose of providing

1 protection of people in the workplace.

2 Q And as -- I would say the electrical guru, which I believe you
3 are -- as the electrical guru and as a fact that you have mentioned OSHA
4 in your report and in your testimony, you talked about one specific part
5 of OSHA. But are you familiar now with OSHA Section 1910.33(a)?

6 A Yes.

7 Q You are?

8 A Oh, yeah.

9 Q That -- you know what, I can make it easy for you. Look in
10 the black book, and it's Exhibit 236. It's in the big, fat one. It is this one.

11 A Oh.

12 Q Here, it's this one.

13 A I think it is 2 --

14 MR. A. GIOVANNIELLO: Your Honor, the black book, 236. I
15 think you took the middle one.

16 THE WITNESS: I'm in tab number 236, sir.

17 BY MR. A. GIOVANNIELLO:

18 Q And you see that that's OSHA regulation 1910.33(a)?

19 A Yes, I can.

20 Q Now, do electricians have to abide by these regulations?

21 A I'm going to look at something here and give us a little
22 context for 1910. 1910 refers to the employer and the employee.

23 Q Right. Who's the employer? Is it Electric Light and Power
24 [sic]?

25 A In this particular instance, yeah, sure, we could have an

1 employer/employee relationship between them. But really this pertains
2 to an employee and employer relationship. Whereas the 1926 part of
3 OSHA that I've referred to early -- earlier is an overarching prescript. It --

4 Q Sure.

5 A -- applies to College Park, it applies to the contractor.

6 Q But this is talking about working deenergized and energized
7 parts, correct? It applies to that? So in this case, they were working on
8 an energized part. Wouldn't you say it applies to that?

9 A Under 1910.333(a)(1), they talk about deenergized parts, and I
10 will just read a part of this because the document speaks for itself. "Live
11 parts" --

12 Q Right. But I'd like you to read the whole thing.

13 A I don't need to read the whole thing, but I can read the first
14 line or so.

15 Q No. I want you to read every single -- every single one.
16 Now, if you're going to talk 1933(a), I just wanted you to read the whole
17 section.

18 A Okay. Is this a question then?

19 Q Yes. Can you read that, please?

20 A Absolutely. I started to. I don't understand what you would
21 like me to do. I'd be happy to do whatever. Do you want me to start
22 reading from deenergized parts past the --

23 Q No, no --

24 A -- quotation?

25 Q -- no. I want you -- you're reading 1910.333 small a.

1 A Okay.

2 Q Just that section.

3 A Of course. "General."

4 Q Yes.

5 A "Safety-related work practices shall be employed to prevent
6 electric shock or other injuries resulting from either direct or indirect
7 electrical contacts when work is performed near or on equipment or
8 circuits which are or may be energized. The specific safety-related work
9 practices shall be consistent with the nature and extent of the associated
10 electrical hazards."

11 Q Great. Now, can you read 1910.333(a)(2)? And that's talking
12 about energized parts.

13 A "Energized parts" -- period. "If the exposure life parts are not
14 deenergized" -- parenthetically it says, for example, "for reasons of
15 increased or additional hazards or infeasibility, other safety-related work
16 practices shall be used to protect employees who may be exposed to the
17 electrical hazards involved. Such work practices shall protect employees
18 against contact with energized circuit parts directly with any part of their
19 body or indirectly through some other conductive object. The work
20 practices that are used shall be suitable for the conditions under which
21 the work is to be performed and for the voltage level of exposed electric
22 conductors or circuit parts. Specific work practice requirements are
23 detailed in paragraph (c) of this section."

24 Q Right. Okay. Now what I'd like you to do is go to 236-5.

25 A I'm there.

1 Q And read -- it's 1910.333(c)(2).

2 A "Working on or near exposed energized parts."

3 Q Are we on the right page?

4 A I'm on --

5 Q 236 --

6 A -- 236-5.

7 Q 1910.333(c)(2)?

8 A Oh, (c)(2).

9 "Work on energized equipment" -- period. "Only qualified persons
10 may work on electric circuit parts or equipment that have not been
11 deenergized under the procedures of paragraph (b) of this section. The
12 proper" -- "such persons shall be capable of working safely on energized
13 circuits and shall be familiar with the proper use of special precautionary
14 techniques, personal protection equipment, insulting and shielding
15 materials, and insulated tools."

16 Q Okay. Now the three sections you read; wouldn't you say
17 that they apply in this situation?

18 A Well, certainly all of this has application. Sure.

19 Q Okay. Thank you.

20 A What we've covered is the fact that there's application here
21 for you shall not work on energized parts, but there are exceptions to
22 that. Meaning, if you're going to work on energized parts, there's certain
23 protocols that have to be followed.

24 Q And you need to follow those protocols, right?

25 A Of course.

1 Q Okay. And if you don't follow those protocols, that's not
2 good, right?

3 A It can -- it could be unfortunate if you don't follow those
4 protocols.

5 Q Okay. Thank you, sir.

6 MR. A. GIOVANNIELLO: That's all the questions I have for
7 you.

8 THE COURT: Redirect?

9 MR. KUDLER: Thank you, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. KUDLER:

12 Q Was this a situation where they were shocked because they
13 touched inappropriate parts?

14 A I didn't -- I haven't seen anything in testimony or any other
15 way that they reported that they were electrically shocked.

16 Q Okay. They were not injured by direct contact with energized
17 parts, correct, or were they injured --

18 A I -- no. Based on what I've seen, they were injured By virtue
19 of an arc flash, which is the area of air that's near energized parts. But I
20 haven't seen anything where they actually were in contact with those
21 electrical parts in such a way that it shocked either of the gentlemen.

22 Q You had mentioned that the subsequent incident was
23 propagated by a screw being screwed in through insulation and causing
24 a short. Would that have happened in 2014, and stayed idle and
25 dormant until Helix was there several years later?

1 A Well, it's possible. But more likely than not, the incident
2 occurred with that screw at the time that Helix was doing their work.

3 Q Okay. And that's because it wouldn't be likely that it stayed
4 in there for a year or more without shorting anything out?

5 A It's been my experience when a screw goes into a cable
6 that's behind the dead front of panel, when that screw goes in, there's an
7 electrical event immediately. And if Mr. Myers and Mr. James, either of
8 them had run that screw into the cable, more likely than not, it would
9 have occurred at the time that they did that, as opposed to then it's
10 sitting idle for some -- for four years, at which time Helix came in and
11 they could have turned the screw, taken it out and put it back in or they
12 could have been turning it in some way and created the arc flash at that
13 point.

14 Q So, your opinion, more likely Helix did that?

15 A That's my opinion.

16 Q Okay. We've heard this phrase several times, that somebody
17 was to watch all clearances around the energized bus. What is the
18 energized bus?

19 A This particular panel MSA has a neutral bus up at the top of
20 the electrical panel. That's not considered an energized bus. It's --
21 actually, it's a grounded bus. Then in the bottom of the panel, and
22 sometimes in other locations, there's a grounding bus. Once again, not
23 considered an energized bus. The energized bus would be the part that
24 you would see in your phase when you take the panel covers off and
25 you're looking at the circuit breakers and the fingers or bars that come

1 from the bus to the circuit breakers. So the busbars are those long, flat,
2 copper material that's running vertical down through the middle of the
3 panel.

4 Q Okay. And why is it that you watch all clearances around
5 those energized buses?

6 A This -- what happened in this particular incident is a perfect
7 example of that. You watch for those clearances because you want to
8 make certain that two thing don't happen. You don't want your
9 screwdriver or even your hand, for that matter, but you don't want tools,
10 screwdrivers, or metal parts to come between two pieces of busbar, or
11 you do not want that screwdriver or something else to come between
12 one of the busbars and something that's grounded within the panel.
13 Either of those events would create an arc fault.

14 Q And these screws were not located at the energized busbars,
15 correct?

16 A These screws were up directly underneath the neutral
17 busbar, which was not energized.

18 Q Okay. Looking back at Exhibit 238, and if you could get that
19 out --

20 A I'm there.

21 Q -- and why don't we look at page -- and you're looking at 238-
22 6?

23 A Now I am.

24 Q Okay. The -- and I know -- excuse me. I just remembered
25 this. The document that you were shown that Mr. James signed on 6/6 --

1 A Yes, sir.

2 Q -- do you recall where that was signed?

3 A Well, on the page or where he was standing when he signed
4 it?

5 Q Where he was standing when he signed it.

6 A I do not recall.

7 Q Okay. And if you would go to -- back to page 1464 in the
8 white book. Sorry about that.

9 A That's okay. I'm looking at 1464.

10 Q Okay. And -- and in the middle there above the -- the bar up
11 on the screen --

12 MR. A. GIOVANNIELLO: Counsel, give me a second to get
13 there, please.

14 MR. KUDLER: Sure. And you could look on the screen.

15 MR. A. GIOVANNIELLO: I'm there, counsel.

16 MR. KUDLER: Thank you.

17 BY MR. KUDLER:

18 Q You can go ahead and -- oh, the screen in front of you should
19 have it as well.

20 A Yeah, I've got it.

21 Q Okay. So looking right here, it says, "Place"?

22 A Yes, sir.

23 Q And where was it signed?

24 A It was signed at UMC --

25 Q Okay.

1 A -- which, in my mind, that's University Medical Center.

2 Q Okay. So at the ER?

3 A Yes.

4 Q Okay. And so -- you mentioned they may not have looked at
5 everything at that point. There was other things go on; people being
6 burned, ambulance, getting to the hospital. Now, going back to 238-6 in
7 the black book --

8 A Yes.

9 Q Now, I want to go back to 238-4.

10 A Okay.

11 Q Okay? There's an answer that starts there, and it goes
12 through 238-5, all of 238-5.

13 A Yes.

14 Q And it goes through all of 238-6.

15 A Agreed.

16 Q And it ends at the bottom of 238-6. So it's two plus pages
17 long, that answer.

18 A Okay.

19 Q And what you were read starts on line 3 of 238-6 and says,
20 "At this time Jeff's face was black. I had a large flap of skin on my left
21 elbow. Jeff was in the corner of the room, his face was blackened by the
22 explosion, and we did not have any idea at that time what exactly had
23 happened."

24 And that's the portion that Defense counsel read to you?

25 A They read a portion of that.

1 Q Correct. Did they read the rest of that answer?

2 A No.

3 Q Okay.

4 A No.

5 Q Does that answer explain how it is that they discovered that
6 the screw fell?

7 A Well, in reading through this, a couple of things -- the fire
8 department people actually found a couple --

9 MR. A. GIOVANNIELLO: Objection, Your Honor. Hearsay.

10 THE COURT: Sustained.

11 MR. KUDLER: Okay.

12 BY MR. KUDLER:

13 Q It talks about an investigation after the fact?

14 A Yeah.

15 MR. A. GIOVANNIELLO: Objection. Hearsay.

16 THE COURT: No, it's not hearsay. Overruled. I mean the
17 fact that the fire department appeared -- evidently was on premises is
18 not hearsay. I don't know where you're headed next, but that part --

19 MR. KUDLER: Just as to --

20 THE COURT: -- is not hearsay.

21 MR. KUDLER: -- as to how they discovered --

22 THE COURT: Well, let's --

23 MR. KUDLER: -- that a screw --

24 THE COURT: -- see where we go.

25 MR. A. GIOVANNIELLO: And I'm going to object on it. That's

1 hearsay.

2 THE COURT: I haven't got a question yet.

3 MR. A. GIOVANNIELLO: Okay. I didn't have my glasses on. I
4 thought you were looking at me.

5 THE COURT: No. I'm not looking at anybody. I'm staring at
6 the ceiling.

7 MR. A. GIOVANNIELLO: I'm going to put my glasses on.

8 BY MR. KUDLER:

9 Q So at some time after, did they discover what had happened
10 after they -- he was at UMC?

11 MR. A. GIOVANNIELLO: And objection. Beyond the scope of
12 this witness' expertise.

13 MR. KUDLER: It is opened -- the door was opened.

14 THE COURT: Cross-examination. Overruled. Let's see
15 where we go.

16 BY MR. KUDLER:

17 Q In your understanding, at some point after they discovered
18 what happened, after they -- the form was filled out at UMC the night of
19 the incident?

20 A I apologize. When you say, "they," are you talking about the
21 fire department or --

22 Q Mr. --

23 A -- Mr. --

24 Q -- James?

25 A -- Myers and Mr. James?

1 Q Mr. James, yes.

2 A They discovered afterwards what it was.

3 Q Okay. Was -- regardless of whether it's applicable or not
4 because of the employer issue with OSHA regulation, did they violate
5 1910.333?

6 A No. In my opinion, they were compliant with OSHA 1910.

7 Q Okay. They had -- did they have a valid reason to go in with
8 it energized?

9 A They did.

10 Q Okay. Were they wearing PPE?

11 A Yes, they were.

12 Q And were they qualified to be in this box while it was
13 energized?

14 A Yes.

15 MR. KUDLER: That's all I have. Thank you.

16 THE COURT: Recross?

17 MR. A. GIOVANNIELLO: No recross, Your Honor.

18 THE COURT: So nothing else for this witness.

19 Is this witness free to go?

20 MR. KUDLER: Yes, Your Honor.

21 THE COURT: I see two hands -- three hands going up.

22 Parties approach. Lawyers, I need you up here so you can examine the
23 questions with me.

24 Don't be shy. Use the whole piece of paper. It makes it
25 easier on me. Quite big. I'm old. Thank you.

1 [Sidebar begins at 1:51 p.m.]

2 THE COURT: I don't think it's this witness' ability to offer
3 that. That's appropriate, in my opinion. Go ahead and give that a read.
4 [Indiscernible] just about someone [indiscernible] in a second.

5 MR. A. GIOVANNIELLO: Yeah, I opened the door.

6 THE COURT: I don't know, counsel, that's a tough one.

7 MR. KUDLER: That's --

8 THE COURT: [Indiscernible] a breaker.

9 MR. KUDLER: -- [indiscernible]

10 MR. A. GIOVANNIELLO: Now I can [indiscernible].

11 THE COURT: No.

12 MR. KUDLER: It's outside of his expertise.

13 THE COURT: All these seem to be probably focused on an
14 expert. Provide more details of OSHA violations. Eyewitness
15 determined the [Indiscernible]. That kind of -- woops. I don't if you can
16 -- I don't know if they meant that one. You can ask him if he knows,
17 Mr. Myers.

18 So let's do them one at a time. Any objection to this
19 question?

20 MR. A. GIOVANNIELLO: I object to that question.

21 THE COURT: What's that?

22 MR. A. GIOVANNIELLO: I think I object to that.

23 THE COURT: So --

24 MR. A. GIOVANNIELLO: I don't see how he would know that.
25 I think Mr. Myers --

1 THE COURT: That's not a question for this witness.
2 MR. A. GIOVANNIELLO: Yeah. I think --
3 MR. KUDLER: Yeah. That's --
4 MR. A. GIOVANNIELLO: -- Mr. Myers [indiscernible].
5 THE COURT: That one -- that one's out. The
6 screws [indiscernible]. He wasn't there.
7 MR. A. GIOVANNIELLO: No, he wasn't there.
8 THE COURT: So that one's out. Provide more details. It kind
9 of seems like this is where he was. And so I'm okay. Objections?
10 MR. KUDLER: I'm fine with that.
11 MR. A. GIOVANNIELLO: I'm fine with that.
12 THE COURT: Okay. Good.
13 MR. A. GIOVANNIELLO: I'm fine with that one.
14 THE COURT: You're good with this one too? I don't
15 remember which one it is. But if you're not objecting, I'll do it.
16 MR. KUDLER: Yeah, you can [indiscernible].
17 THE COURT: Okay. What was the instantaneous setting on
18 the breaker? How about these?
19 MR. A. GIOVANNIELLO: There's something on the back of
20 that too.
21 THE COURT: Yeah. Read the front. Read the back. What
22 was the -- I mean we can ask him. He may not know.
23 MR. KUDLER: Yeah. That's fine.
24 THE COURT: Okay.
25 MR. A. GIOVANNIELLO: Uh-huh.

1 THE COURT: Okay. How can you tell if [indiscernible]? Well,
2 you showed him the photos, so you kind of let him do this.

3 MR. A. GIOVANNIELLO: Yeah. I'm okay with it.

4 THE COURT: All right?

5 MR. KUDLER: All right.

6 [Sidebar ends at 1:54 p.m.]

7 THE COURT: All right. Let's go back on the record.

8 Provide more details of OSHA violations. If you can.

9 THE WITNESS: Let me approach that in two different ways
10 then. First, Mr. Myers and Mr. James and their employer were obligated
11 to comply with the OSHA rules. They were going to be working on a
12 panel that normally an electrical contractor would send his employees in
13 and say, "Look, turn the power off if you're going to work on the panel."
14 There are special circumstances. In this case, a health facility. It wasn't
15 really reasonable to turn the power off to the panel.

16 So they had to work on it hot. In order to do so, then they
17 had to suit up, wear the proper gear, they had to take certain steps and
18 procedures, and they had to be qualified. Qualified is defined pretty well
19 in the National Electrical Code and elsewhere. Individuals who are
20 actual electricians as opposed to just saying they are -- that they are.
21 These gentlemen are so qualified to do so.

22 On the other hand, the OSHA -- the OSHA violations by
23 College Park was the fact that the requirement under 1926 is that the
24 employer, in this particular case, College Park, had an obligation to
25 provide a safe working environment. They had an old electrical panel

1 that had been -- had been opened and something had been done inside
2 of it and people had left materials inside of it that they shouldn't have
3 left. And as time went on, because under the -- under the rules of the
4 National Electrical Safety Code and under the National Electrical Code,
5 the owner of the facility has to maintain and inspect their equipment.
6 Those things were not done. And that comprises an OSHA violation.

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

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

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

21 So when the arc flash -- when the -- when the event that --
22 let's say that this is the bus location between -- this is an insulator, and
23 this is phase B and phase C. So when the screw gets on those, 20 -- 25
24 milliseconds is so fast that immediately the circuit breaker would trip.
25 And that prevents the arc flash from going into a big ball. In this

1 particular instance, it took many cycles for it to develop into a big ball.
2 And, quite frankly, the other part is I've not seen any evidence that the
3 circuit breaker ever did trip. But with an arc flash of that nature tells me
4 that the circuit breaker was not maintained and was not functioning
5 properly.

6 THE COURT: Would it be common practice for electricians to
7 check for any loose screws or parts before opening up any panels for
8 maintenance and/or repair?

9 THE WITNESS: A very good question again. In approaching
10 a panel, before you open it up, certainly you would look for things
11 around the panel. You look for other people who are in the room. You
12 would look for equipment; pipes, ladders, or things that could possibly
13 tip over. Or another thing too, somebody could leave a -- leave a piece
14 of pipe on the floor that you could trip on.

15 Once you've done that, then you open up the covers from the
16 electrical panel and now you observe all of the live parts, and you
17 consider what you're going to do. Would it be wise to stop and look at
18 every area within the electrical panel? You could do that. In this
19 particular instance, these things were -- this thing was up above their
20 heads. They weren't visible from where they were. In my opinion, they
21 did a reasonable job of determining whether or not it was safe to work in
22 the panel.

23 There's another two reasons why I think it was reasonable.
24 They were relying upon a health -- a company that happened to be a
25 health organization who would normally be required to comply with

1 inspection and maintenance and had given access to these gentlemen by
2 someone -- Mr. Comstock gave them permission to go in and do the
3 work, which is equivalent to saying, "It's safe to work in this area."

4 Based upon all of those things, I think they took reasonable
5 steps to determine whether or not they would be safe. Keeping in mind
6 too, they put on the protective gear, and they worked as a team.

7 THE COURT: How can you tell if Mr. Myers was wearing PPE
8 from photos shown?

9 THE WITNESS: Considering the fact that the circuit maker --
10 breaker never tripped, the arc flash could have been very large. And if it
11 was in the region of these guys at 35,000 degrees, it would have been
12 horrific. I don't see how either one of them could have lived.

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

18 THE WITNESS: That's an excellent question. We don't
19 know. I haven't seen the arc study on that particular breaker. I'm just
20 telling you that it never tripped. Therefore, no matter what the study
21 showed or the what curve for the electrical current, with respect to time
22 and voltage with respect to time, would be -- it would not be of value to
23 me in determining, why didn't the breaker trip. It didn't trip because it
24 was faulty. There was enough -- there was enough electrical energy that
25 there's no question it should have tripped.

1 THE COURT: Any follow-up questions from the jury as
2 consequence of questions asked and answered from the jury? I'm
3 seeing no hands.

4 Follow-up jury questions, Plaintiff?

5 MR. KUDLER: No, thank you, Your Honor.

6 THE COURT: Follow-up, Defendant?

7 MR. A. GIOVANNIELLO: No thank you, Your Honor.

8 THE COURT: Please step down.

9 THE WITNESS: Thank you, Your Honor.

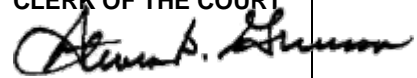
10 [Designation of the record ends at 2:02 p.m.]
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20 ATTEST: I do hereby certify that I have truly and correctly transcribed the
21 audio-visual recording of the proceeding in the above entitled case to the
22 best of my ability.



23 Maukele Transcribers, LLC
24 Jessica B. Cahill, Transcriber, CER/CET-708
25

EXHIBIT 4



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 JEFFREY MYERS, ET AL.,

8 Plaintiffs,

9 vs.

10 THI OF NEVADA AT CHEYENNE,
11 LLC, ET AL.,

12 Defendants.

) CASE#: A-16-735550-C

) DEPT. XVII

13
14 BEFORE THE HONORABLE DAVID BARKER
DISTRICT COURT JUDGE
FRIDAY, JUNE 3, 2022

15 **RECORDER'S PARTIAL TRANSCRIPT OF JURY TRIAL - DAY 4**
16 **TESTIMONY OF LEROY COMSTOCK**

17
18 APPEARANCES

19 For the Plaintiffs: DONALD C. KUDLER, ESQ.

20 For the Defendants: ALEXANDER F. GIOVANNIELLO, ESQ.
21 CHRISTOPHER J. GIOVANNIELLO, ESQ.

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25 RECORDED BY: KRISTINE SANTI, COURT RECORDER

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MARKED

RECEIVED

None

FOR THE DEFENDANT

MARKED

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Las Vegas, Nevada, Friday, June 3, 2022

[Designation of the record begins at 2:08 p.m.]

THE COURT: Your next witness.

MR. KUDLER: At this time the Plaintiff rests, Your Honor.

PLAINTIFF RESTS

THE COURT: Plaintiff rests. We move now to the Defense.
Do you have witnesses you'd wish to present?

MR. A. GIOVANNIELLO: Yes, Your Honor. We call LeRoy Jay
Comstock.

THE CLERK: Please raise your right hand.

LEROY COMSTOCK, DEFENDANTS' WITNESS, SWORN

THE CLERK: And state and spell your first and last name for
the record.

THE WITNESS: Yeah. My first name is LeRoy. That's
L-E capital R-O-Y. Last name Comstock, C-O-M-S-T-O-C-K.

THE COURT: Counsel, your witness.

THE WITNESS: I beg your pardon? I can't hear you.

THE COURT: I said -- your lawyer is about to ask you
questions, Mr. Comstock.

THE WITNESS: Okay.

DIRECT EXAMINATION

BY MR. A. GIOVANNIELLO:

Q Mr. Comstock, can you hear me okay?
A Do it louder please.

1 Q Can you hear me okay?

2 A Yeah, that's good. Yeah.

3 Q Okay. I have to talk really loud here. Do you want me to
4 keep the mask on?

5 A No, that's fine.

6 Q Okay.

7 A I'm just used to wearing it, sorry.

8 Q Okay. You're good to go?

9 A Yeah.

10 Q All right. Mr. Comstock, when did you come to -- well, how
11 long have you lived in Las Vegas?

12 A Since 1963.

13 Q Okay. And you went to school I take it?

14 A Yes. I went to school here, yes.

15 Q Okay.

16 A High school and college, yes.

17 Q And you went to a little bit -- what college did you go to?

18 A I went to the University of Southern Nevada. There was no
19 UNLV then. That came later.

20 Q How long ago was that?

21 A I don't know when they did the changeover. I believe that
22 was sometime in the 70's.

23 Q Okay. Now how long ago did you go to college? It was in
24 the 70's?

25 A Well, I went one year and then the places I worked for gave

1 me college credits. So about two-and-a-half.

2 Q What did you study?

3 A Business. That was my major with a minor in psychology.

4 Q And what year did you get out of college?

5 A I just did the one year. I got out in -- that would have been
6 '69.

7 Q In '69?

8 A Yeah.

9 Q Okay. When you got out of college, did you go to work?

10 A Yes, I did.

11 Q What did you do?

12 A Well I did construction and then I also -- when I wasn't in
13 construction then I went to work for the bank.

14 Q Who did you do construction with?

15 A My father was a general contractor and a developer. He did
16 his own plans, et cetera, and we built homes.

17 Q And what did you do on the job site?

18 A On the job site doing forms, doing concrete, siding, roofing,
19 and anything for like electrical or plumbing. I just would assist because
20 those were subcontractors that were hired to do the plumbing, to do the
21 electrical for those residential homes that we were building.

22 Q Okay. And you said you did some -- you assisted with
23 electrical. Like what?

24 A Well I would help them pull the wire generally.

25 Q What do you mean by pull the wire?

1 A Well they'd have to run from where they have the brakers
2 and they'd have to the different rooms and to all of the gangs and leave
3 a certain amount of that wire. Like Roy, is there a little bit hanging out,
4 like about maybe six inches? Yes, sir. Okay, good. That was it.

5 Q Okay. Did you do any of the connecting of any of the
6 electrical fixtures or anything like that?

7 A No. No, I wasn't qualified for that.

8 Q Okay. And you're not a -- excuse me. Are you an electrician?

9 A No, sir.

10 Q Have you ever been an electrician?

11 A Have I ever been an electrician? No, sir.

12 Q Now -- okay, you worked for your father for a little bit then
13 what did you do?

14 A Yes. We --

15 Q How long did you work for your father in construction? How
16 about that?

17 A Yeah. A lot of construction for my father.

18 Q But how long? How long did you do?

19 A Oh, God. Well I came down here with him. I was 12 and I
20 was on a jobsite from 12 years old. The first thing my dad had me do
21 was pick up stuff. You know, get the lumber picked up. Get the scraps
22 off the floor. Clean up. That type of thing. And -- well off and on until
23 my father retired.

24 Q How many years do you think?

25 A A good 20 years easy.

1 Q Okay. And did you also have any other jobs?

2 A Oh, yeah. I had other jobs. I went to work for Valley Bank.
3 And I worked my way up to the head of collections there for the Master
4 Charge Department. And what they did is they just sent out a blanket
5 screen throughout the state and then there were a lot of folks that said
6 thank you very much but I'm not paying you back. So that's pretty much
7 -- I was there with them for a little over two years. I had to go to school
8 three nights a week learning the banking business.

9 Q How long did you work for that bank?

10 A A little over two years.

11 Q Okay. What did you do then?

12 A Well I went back into construction. I worked at putting -- a
13 company here in town, I don't remember the owner's name. But I did
14 vacuum cleaner installation. You know, you buy a home that has a
15 vacuum system in it. Okay, so I would install that stuff. And he had
16 speakers. If you wanted to have a speaker in the baby's room, right, and
17 then speakers at the front door. Somebody would push the button and
18 you had a speaker in your kitchen or wherever and you'd say yes, who's
19 calling, or whatever and talk to them. I did that too.

20 I also went to work -- I went to real estate school, and I went to
21 work for Castle & Associates. And I was the superintendent for --
22 maintenance for various -- they had several different types of businesses
23 besides real estate. They had construction. He had his own
24 construction company. So I wasn't a general contractor, but I was
25 his superintendents on the various facilities that they owned. So my job

1 was to, you know, see, okay, guys, how you doing? What's going on
2 over here? How's things going? Walked the property. Talked to those
3 guys. If they needed any help, let me know. Anything I can do? And I
4 was with them for five years.

5 Q Okay. And when what did you do right after that workwise?

6 A I finished the real estate school, and I went to the federal
7 bankruptcy court.

8 Q What did you do there?

9 A My job was to take businesses that had failed, they were in
10 bankruptcy, and they were assigned to Mr. Berkley Buckner [phonetic].
11 That's who I was working for, and he's a trustee for the federal
12 bankruptcy court. And my job was to take a look at the businesses and
13 find out how to make them viable. And I wasn't with them all that long.
14 I was with them about eight-and-a-half months.

15 Q Okay. And then what did you do?

16 A What did I do after that? There was a whole lot going on.
17 Right now, I don't remember. There was just too many jobs.

18 Q Okay.

19 A Oh, wait a minute. Wait a minute. I do. I went to work for
20 Becker -- the Becker family here in town. And I don't know if you have
21 any idea how much property they own, but just about every corner of the
22 Arizona casinos, they own those. They own their own construction
23 company. And my job was to go to the properties that they assigned me
24 and turn the units.

25 Q What does turn the units mean?

1 A Well I would find out first of all what was wrong with them.
2 If there was a big hole over there, then I needed to take care of the hole.
3 We had painters, just painting. That's all they did. Okay, we had
4 electricians and that's all the electrician did was electrical. Okay,
5 because I didn't do the electrical. My job was to clean it up, get it cleared
6 out, get the people organized that were going to assist me in turning the
7 unit. And they had quite a few people working for them.

8 Q Okay. And how long did you stay at that job?

9 A A little over a year, year-and-a-half, something like that.

10 Q Okay. At some point in time -- where do you work right
11 now?

12 A I work at College Park Rehabilitation Center.

13 Q What is College Park Rehabilitation Center?

14 A It's a skilled nursing facility.

15 Q Okay. Where is it located?

16 A It's located at 2856 East Cheyenne Ave in North Las Vegas.

17 Q Okay. And what is your title?

18 A I'm the director of the maintenance department.

19 Q And when did you begin working there?

20 A That's why I had a little confusion. 15 years ago.

21 Q 15 years ago is 2007?

22 A 2007, yeah.

23 Q All right. And so, you've been working there continuously
24 from 2007 to the present?

25 A Yes.

1 Q Okay. What is your job responsibilities?

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

8 Q What kind of vendors. What do you mean?

9 A Yeah. If I looked around and got bids on putting in the
10 parking lot, so I checked with various companies that do asphalt work
11 and get a bid from them on a parking lot if they'd like to do that. So they
12 come over. They send over their estimator, and we take a look at the
13 area, okay, where I'd like to have a parking lot. Now the reason I'd like to
14 have it there is because the administrator said that's where it's going to
15 be. So I wasn't the one to make that determination.

16 So I'm required by upper management to get three bids from three
17 different companies, okay. And then give my personal recommendation,
18 which one I like based on pretty much the character and how the people
19 talk to me, et cetera and show me some of the other jobs that they've
20 done. And then the management, the upper management will make the
21 final decision as to who is going to get the contract.

22 Q Okay. Do you have any responsibility to maintain the inside
23 of the building?

24 A Yes.

25 Q And how do you do that?

1 A The walls, the rails, the floors, the screens, the windows, et
2 cetera. Yeah, the overhead lighting. Yeah, all of that.

3 Q Do you have an assistant?

4 A I do have an assistant, yes.

5 Q Okay. In 2014, did you have an assistant as well?

6 A Yes.

7 Q Okay. Now what kind of like jobs do you do inside the
8 building?

9 A Well I would do -- say if we needed a -- and we had an area
10 where the floor was torn up. Okay, then I would put down the new floor.
11 I would order the materials and I would do that. If it needed to have
12 cold base, like you have here, that baseboard, okay I would replace that.
13 If we had a ceiling -- we had a leak from the roof and one of the areas
14 where that leak was -- the ceiling fell out in a room. Okay. Then what I
15 would do is cut out all the damaged material, okay. Make sure that
16 everything is molded so we're not going to get anything growing
17 anywhere, okay. Order the materials and put that ceiling back in with my
18 assistant.

19 Q When you began, did you get any training?

20 A Yes. I've done a lot of that type thing.

21 Q Okay. What kind of training did they give you when they
22 hired me?

23 A Oh, when he hired me. Yeah, what they gave me was more
24 or less the policies that we're supposed to follow. And, you know, this is
25 from the national -- NFPA National Fire Protection Association, right.

1 And that's stuff that the state uses, the federal government uses, CMS
2 and the CDC. I mean, all these things come from the state and federal
3 government.

4 MR. KUDLER: Objection, Your Honor. May we approach?

5 THE COURT: Yes.

6 [Sidebar begins at 2:23 p.m.]

7 MR. KUDLER: I do believe we had asked for policies and
8 procedures, and we were never even given any in response to request to
9 produce. This is part of the reason why we ended up with the adverse
10 inference instruction because is this stuff was never produced. Even by
11 request.

12 MR. A. GIOVANNIELLO: This was before my time. I have no
13 idea what he's talking about.

14 THE COURT: Well I'm going to sustain. If we're getting into
15 something that wasn't disclosed, and it sounds like we are, then the
16 objection is sustained.

17 MR. KUDLER: Thank you.

18 MR. A. GIOVANNIELLO: I'm not sure what the objection is
19 so I just don't know where to go with this.

20 THE COURT: As I understand it, you're heading in a direction
21 -- what are the policies and procedures within the business.

22 MR. A. GIOVANNIELLO: Actually, I was not going to follow
23 up with that at all.

24 MR. KUDLER: And he had never given an answer. The
25 question was still in the process.

1 THE COURT: Let's just clarify.

2 MR. A. GIOVANNIELLO: And that was before my time, so.

3 THE COURT: So if there was a demand, a motion to compel
4 on the policies and procedures that were never produced, then you can't
5 go in more.

6 MR. A. GIOVANNIELLO: I wasn't going to ask him anything
7 further on that.

8 THE COURT: Then at least we clarified that.

9 MR. A. GIOVANNIELLO: Okay. All right.

10 [Sidebar ends at 2:24 p.m.]

11 THE COURT: Next question.

12 BY MR. A. GIOVANNIELLO:

13 Q We're going to get back into what -- were you given like a
14 program, a training program at all?

15 A On how to?

16 MR. KUDLER: Your Honor, can we approach?

17 THE COURT: Okay.

18 [Sidebar begins at 2:24 p.m.]

19 MR. KUDLER: None of this stuff was ever produced. None of
20 this stuff was ever responded to.

21 MR. A. GIOVANNIELLO: This is -- no, this is --

22 THE COURT: Overruled. Let's see where we go.

23 MR. A. GIOVANNIELLO: I was going to say this is in his
24 deposition.

25 THE COURT: Overruled.

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[Sidebar ends at 2:25 p.m.]

BY MR. A. GIOVANNIELLO:

Q Getting back to the question. When you were -- were you given any kind of training program?

A Just the polices.

Q Okay. Other than that, what else?

A No. I wasn't -- it's not like we're going to train you on doing this or that. I already know all that stuff, so it was strictly the policies. This is what the company expects because this is what the CDC requires.

MR. KUDLER: Your Honor.

THE WITNESS: This is what the Center for Medications --

THE COURT: Mr. Comstock, I sustained the objection. Let's ask the next question, counsel.

BY MR. A. GIOVANNIELLO:

Q Okay. So you're employed by College Park?

A Yes.

Q Okay, great. Now you do not hold an electrician's license, right?

A No, I do not.

Q Do you have a handyman's license?

A No.

Q Okay. Do you consider yourself a handyman for the most part?

A Most part. You asked me about something. I can do it or tell you no and find somebody for you who can.

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

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

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

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

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

7 A Yeah. We have a 100 kilowatt generator. Yes, sir.

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

9 A No, sir.

10 Q Okay. Where are those panels located?

11 A On the northwest side of the building, there's three rooms.
12 And the one in the middle is electrical. The one south of that room is our
13 phone room. And the one north of that is our riser room.

14 Q Okay. And to give the jury some perspective, did we take a
15 video of the electrical room?

16 A Yes, you did.

17 Q And what did that video showed?

18 A Well the videos going to show you the work that was done
19 by the company that had been hired to put -- yeah, they were putting in
20 an automatic transfer system. What that means is this. Okay, if the
21 power were to fail, the generator would come on and the automatic
22 transfers is what that does.

23 Q Mr. Comstock, that's not what we're here about. What I'm
24 asking is the video. Is it depicting what the room looks like?

25 A Yes. The reason why I said that is because what you're

1 going to see in the video is the panel and you're going to see smaller
2 panels, okay, where all of the switches are.

3 MR. A. GIOVANNIELLO: And that's it. Can we show the
4 video?

5 MR. KUDLER: No objection, Your Honor.

6 THE COURT: So what's the number for the record?

7 MR. C. GIOVANNIELLO: It's Defendants' 231.

8 THE COURT: 231 is offered. Do we have 231 in evidence by
9 way of --

10 MR. A. GIOVANNIELLO: You have it by way of disc.

11 THE COURT: Of CD or thumb?

12 MR. A. GIOVANNIELLO: Thumb drive. That was dropped off
13 to the Court.

14 THE COURT: 231 is offered and accepted without objection.

15 [Defendants' Exhibit 231 admitted into evidence]

16 THE COURT: So my it's my general understanding that both
17 sides have examined what's in a manner of public record in 231 lodged
18 with the Clerk of the Court that you want to display it because it's already
19 in the guts of your machine right now; is that right?

20 MR. A. GIOVANNIELLO: That's fine.

21 THE COURT: Okay With the admonition that counsel will
22 provide the Clerk of Court a separate individual copy of 231, we can
23 move forward in its display.

24 [Whereupon, a video recording, Defendant Exhibit 231 was played
25 in open court at 2:30 p.m. and not transcribed]

1 BY MR. A. GIOVANNIELLO:

2 Q Thank you. Now, Mr. Comstock, in this panel room, you
3 don't want people going into that room, correct, who are unqualified?

4 A No. The doors locked. They'd have to get a key to get in.

5 Q Okay. Now do you recall an incident that occurred there in
6 2014 on July 6th?

7 A Well I was told because I wasn't there.

8 Q Right. Well let's talk about how this all came about to begin
9 this, okay.

10 A Okay.

11 Q What was the reason there was an electrical contractor on
12 the property?

13 A Well because you'd have to be a licensed contractor. So my
14 understanding was the state came out and we were going to take one of
15 our hallways and convert it over to vents, okay, for people who can't
16 breathe on their own and they need to have oxygen. So the electrical
17 wasn't adequate according to the state, right here in the State of Nevada.
18 And they said this has to be changed.

19 So contractors were consulted and then went out into this room
20 and the state said, no. This is not acceptable. All of this is together out
21 here. And they call it convoluted is their term. So they said it has to be
22 separated into life safety, critical, and then just regular power. It's like
23 minor stuff. But it all had to be separated.

24 So that's how this came about with that room being set up like it is
25 right now. And Mr. James Andrew and his crew were there. I

1 understand that they were a subcontractor to the general contractor, so.

2 Q Is that something you could do yourself?

3 A No. No way.

4 Q Who needs to do that?

5 A I beg your pardon?

6 Q Who would need to do that electrical?

7 A Oh, they'd have to be an electrical contractor.

8 Q Okay. And have you worked with Industrial Light and Power
9 before?

10 A No. Never met them before until they came on the property.

11 Q Okay. And what was the purpose of them being on the
12 property?

13 A Well they would go out and review, take a look at that room
14 the way it was before they started their work to change it over and they'd
15 have to have approval from the general contractor for that to occur and
16 from -- and permits that they pulled, so.

17 Q Okay. And who was doing the work? They were, right?

18 A They were, yes.

19 Q Is there a phase one to this project?

20 A You mean steps that they would go through? I have no idea.

21 Q Okay.

22 A I would imagine so.

23 Q Okay. And what was your involvement in this process?

24 A I wasn't involved in it. This was done from the administrator.

25 These gentlemen showed up. I understood why they were there and that

1 they were going to take care of it, and it had nothing to do with me
2 except when they were finished, okay. Then they would have a
3 separation of the electrical and a critical, life safety, and regular. And
4 then we would -- I'd talk with the administrator. We'd call the state.
5 They'd come take a look. Say okay, now you're ready for what you'd call
6 a second phase.

7 Now we would get into the administrator and people above, the
8 regional people. They wanted this -- one of our halls to be vents. And it
9 didn't meet the standard of the state, so that had to be fixed also with the
10 electrical. There wasn't enough electrical in the rooms to handle the
11 equipment to keep the people safe. So that was the next step.

12 Q Okay. Now have you ever gone -- there's a big panel in that
13 room, correct?

14 A Uh-huh.

15 Q Is that a -- don't say uh-huh. You have to say yes.

16 A I'm sorry, yes.

17 Q And there's a big panel in there?

18 A Yes.

19 Q Have you ever gone into that panel yourself?

20 A No, sir.

21 Q Okay. Did you ever brag -- do you know who Andrew James
22 is?

23 A I didn't know his last name. I called him Andy.

24 Q Is he the man sitting right there?

25 A Yeah.

1 Q Okay. Did you ever brag to him about that you've been in
2 that panel many times?

3 A No, sir.

4 Q Okay. Are you qualified to go into that panel?

5 A No, I'm not.

6 Q Okay. Have you ever gone into that panel?

7 A No, sir.

8 Q Well let me ask you this. You started there in 2007?

9 A Yes.

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

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

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

16 A No, sir.

17 Q Okay. Have you ever had to change any of the breakers in
18 the facility?

19 A No. I've been very fortunate. No.

20 Q Is that something you could do?

21 A I beg your pardon?

22 Q I mean, is that something you would do, or would you call an
23 electrician?

24 A Well, no. I have other companies besides this gentleman
25 here that would do work. One of the ones that I use is TRC. And I

1 received the information how to get ahold of these people from our
2 regional construction manager. And the guy's name is Ralph that owns
3 that. I don't know Ralph's last name. But anyway, they're really, really
4 good. They're licensed, more than qualified, and just boom, right now.
5 They know what the problem is, how to correct it. And they always set
6 up time schedules.

7 Q Okay. Let's talk about this case though. All right, now
8 getting back to this. Did you learn that there was an incident?

9 A Yes, I did.

10 Q And how did you learn about that?

11 A Well I was quite surprised. Now when this incident occurred,
12 I wasn't there. It was the weekend. So I came into work Monday
13 morning and Andy met me right in front of the shop coming in from
14 outside. And he was pink-flushed. So I just took a look and said wow,
15 you know, been out at the lake, hu? And he said, no. That he got the
16 burns that he had which were -- I considered minor, from the flash burn
17 from the electrical room.

18 Q Did he tell you what happened?

19 A No. He just said that they got a flash burn, and they were in
20 the hospital, or they went to the hospital, the emergency ward.

21 Q Okay. Why were they in that room to begin with?

22 A They're the ones that are changing over the system, all the
23 electrical. That's what all that conduit was that's up there.

24 Q Okay. As far as a -- were they putting any breakers into that
25 system, into that panel?

1 A I don't know if they were or not.

2 Q Okay. Did you supply them with breakers?

3 A No.

4 Q Okay.

5 A I wouldn't know where to get them.

6 Q Okay. And did you -- you wouldn't know where to get them
7 you said?

8 A No, I wouldn't.

9 Q So if they would have said you gave them three breakers, is
10 that -- in your opinion is that true?

11 A No.

12 MR. KUDLER: Your Honor, that is not consistent with the
13 testimony. They didn't have three breakers.

14 MR. A. GIOVANNIELLO: Well he can cross-examine, Your
15 Honor.

16 THE COURT: Yeah. Overruled. You can take it up on cross.
17 BY MR. A. GIOVANNIELLO:

18 Q Okay. Getting back to that, you said you wouldn't know how
19 to buy the breakers?

20 A No because I don't mess with that panel.

21 Q Okay. And you've never been in that panel?

22 A That is correct.

23 Q All right. After you spoke with Andrew-Andy, and you call
24 him Andy, you have to call -- I have to call him Mr. James, what
25 happened next?

1 A Well he was going in the direction of leading -- to go inside
2 the building for something. What I don't know. But he had mentioned
3 they went to the emergency ward, and I went yeah right. You know,
4 second Tuesday of next week. You got a little bit of sun. You were at
5 the lake. And now you're telling me that you got a flash burn. I didn't
6 believe him.

7 Q Okay. Regardless of whether you believed him or not, did
8 Mr. James go and finish the work?

9 A Yes, he did.

10 Q Okay. And how long were they on the property afterwards,
11 after that?

12 A Well I don't know the exact. Probably at least, I don't know,
13 three or four days, maybe a week.

14 Q Okay. And to your knowledge, did they finish what they had
15 to do?

16 A They did finish up. And I have to admit, they did a nice job
17 as far as everything worked correctly.

18 Q Okay. Did you yourself go and inspect their finished
19 product?

20 A Well the inspection that I went over it with Andy. He said we
21 have the two ATS's right here of these panels and here's the critical life.
22 Here's safety. And here's whatever. So yeah, he told me that. But he
23 had them labeled anyway. They were marked.

24 Q Who labeled them?

25 A I think he did.

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

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

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

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

9 Q So you were asked -- do you remember in your deposition
10 whether you kept any logbooks, any logs of inspections?

11 A Yes, sir.

12 Q Okay. Do you keep any logs of inspections?

13 A Just on our generator we have an inspection, a company
14 come every quarter and they go through the generator to make sure
15 everything there is working correctly. So that if we were to lose power,
16 the generator would function like it's supposed to. And they give me an
17 inspection sheet and it shows what they did and if there was a problem.
18 Then what we would do is schedule a correction of that problem and
19 then they would give you another sheet showing that the problem had
20 been corrected and that's all I have.

21 Q And that's for the generator, right?

22 A Yeah. It's on the generator.

23 Q Okay. What about the panels in the electrical room?

24 MR. KUDLER: Your Honor --

25 THE WITNESS: No.

1 MR. KUDLER: -- may we approach?

2 THE COURT: Yes.

3 [Sidebar begins at 2:41 p.m.]

4 MR. KUDLER: I mean, he answered no, so it's not a big deal.
5 But we're talking about the same thing. Stuff that was just never
6 produced and asked for.

7 THE COURT: The answers no, so.

8 MR. A. GIOVANNIELLO: You can cross-examine him.

9 THE COURT: Well the answers no, so.

10 MR. A. GIOVANNIELLO: You can cross-examine him.

11 THE COURT: Well the answer is no, so it's why there's no
12 objection. You can take him on cross.

13 MR. KUDLER: Thank you, Your Honor.

14 [Sidebar ends at 2:42 p.m.]

15 THE COURT: All right. Let's continue with the direct
16 examination please.

17 BY MR. A. GIOVANNIELLO:

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

21 A No. No, sir.

22 Q Okay. Do you keep any logs of anything you do inside the
23 building?

24 MR. KUDLER: Objection. Irrelevant, Your Honor.

25 THE COURT: Sustained.

1 BY MR. A. GIOVANNIELLO:

2 Q Okay. Afterwards, after this incident occurred, was there
3 any other work being done on that panel?

4 A No. Andy finished everything.

5 Q Okay.

6 A And I said he did a good job.

7 Q Did you call in another company?

8 A I actually had one of the breakers -- it kept tripping. So what I
9 did is I called Andy because I didn't know he was filing a lawsuit. I
10 called him and said he did a good job. I said listen, I got a breaker over
11 here that's tripping. Can I get you to come take a look at it? He said, no.
12 I'm suing you. So at that time, I called the construction manager Tom
13 and I said hey, do you have an electrical company I can use? I got to
14 have this breaker checked out. And said, yes. Call TRC. The owner is
15 Ralph. Give him a holler. And they're a great company.

16 Q Okay. And then did they come out?

17 A Yes, they did.

18 Q Okay.

19 A They came out and changed out three breakers.

20 Q Is there a company called Helix?

21 A No. Helix was an electrical company that was hired in order
22 to put the electrical in between the beds on B Hall for the vents. The
23 electrical was insufficient there. So what they did was they put in
24 electrical between the beds so that should the power fail, the generator
25 would continue to take care of all the equipment that was helping keep

1 those folks alive.

2 Q Okay. Let's go back to the panel.

3 A Yeah.

4 Q Was there a second incident? In other words, was there a
5 second arc flash?

6 A Say that again, sir.

7 Q Was there a second arc flash at the panel?

8 A Yes, there was. Yes.

9 Q Can you tell me about that? Were you there?

10 A Yes. I happen to be there.

11 Q Before we do that, let's just --

12 A Well, I called -- Helix was called.

13 Q One thing. You -- just getting back to Industrial Light and
14 Power. You were not there on the night of the 6th of June 6th, 2014,
15 correct?

16 A Correct.

17 Q How did they get into that room?

18 A Well I gave them a key.

19 Q Okay. And why did you give them a key?

20 A He wanted a key because the hours that I worked are
21 standard like 9:00 to 5:00, unless I'm called in from home. And I'm on
22 call 24/7. So I gave him a key because he said he couldn't match that
23 time and he needed to get the job done as quickly as possible. So he
24 needed access to the room because there was a lot of work that needed
25 to be done there. So I gave him a key to that room.

1 Q Was he going to work after hours?

2 A He did. I didn't. Yes.

3 Q Okay. Getting back to him. He was going to work after
4 hours, right?

5 A Yes.

6 Q Okay. Now was there a reason that he was working -- the
7 panel had to be energized?

8 A That I don't know. I would imagine that he would shut it
9 down to work on it.

10 Q Okay. That was not -- you were not involved in that?

11 A I was not involved in that decision. That was between him
12 and the general contractor and the administrator.

13 Q Okay. All right, so were you aware that he was working on
14 an energized panel?

15 A No, I wasn't.

16 Q Okay. Let me ask you this. Did you ever go in that panel and
17 leave screws up on top?

18 A No. I was never in the panel.

19 Q Okay. Do you know if anybody was ever in that panel and
20 left screws up top?

21 A No. Just them.

22 Q Okay. Let's go back now to where we were on the second
23 incident. Were you there during that time? The second incident, were
24 you there?

25 A Yes. I was standing right outside. The door was open. And

1 the electrician from Helix -- what Helix wanted to do was to see if they
2 were going to disconnect the generator and how to do it and still let the
3 rest of the building be operated by the generator. And they wanted to
4 shut the power down on B Hall to put in all that electrical work down
5 there.

6 So the man came over. He's got a shield on, a hardhat. He's got
7 rubber shoes. He's standing on rubber. And he goes to take out one of
8 the screws that holds this panel on that we're talking about, and it goes
9 boom. It arcs. And the guy stopped right there. He called one of his
10 coworkers to come over and be a safety man so he could take that screw
11 and get it out of that panel. And good thing because it was screwed into
12 the electrical wiring right behind the panel. And that was put in by these
13 folks here.

14 MR. KUDLER: Okay. I'm going to pass the witness to
15 counsel.

16 THE COURT: Cross-examination?

17 CROSS-EXAMINATION

18 BY MR. KUDLER:

19 Q Thank you. Mr. Comstock, the night of the incident on June
20 6th, 2014, you got there the next Monday?

21 A Yes, sir.

22 Q Anybody report to you that the power went out to the
23 building?

24 A No, sir.

25 Q Anybody report to you that the generator kicked on?

1 A No, sir.

2 Q Okay. When Helix was there, do you remember what year
3 that was?

4 A I don't right off hand, no. I know they came later because
5 they were the ones that got the contract, okay, to take care of the
6 electrical on B Hall for the vents.

7 Q Helix did?

8 A Helix did, yes.

9 Q Well Helix was there to change a breaker that day, correct?

10 A No. He was not there to change a breaker. Helix was there
11 to check out that panel to see what they had to do with regards to
12 keeping our generator running and how to handle the power down on B
13 Hall and that's what they did. They brought their own generator and
14 they disconnected ours out of that hallway so they could control the
15 power on that hallway in those -- the electrical they were going to do.
16 That would handle the equipment for the vents.

17 So they did it absolutely correct. That's why they took that panel
18 off and it blew up the guy's face because they had to see if they could do
19 that.

20 Q They were working on it hot, weren't they?

21 A Yes, sir.

22 Q Okay. Now they were working on it hot because that panel
23 needed to stay on?

24 A They were working on one screw. It was hot.

25 Q The panel was hot?

1 A Yes. They screwed it into the powerline.

2 Q Were you there that night?

3 A Yes. It went boom. I was standing right outside watching
4 the guy.

5 Q When Helix was there?

6 A Yes, Helix.

7 Q Okay. You weren't there the night that they were there?

8 A No.

9 Q You have no idea what happened that night?

10 A No. I have no idea.

11 Q You're just guessing?

12 A I'm not guessing. I told you I have no idea. I have no idea.

13 Q Okay. Well you said that they did something wrong.

14 A Yes.

15 Q Okay.

16 A They put the screw in that panel.

17 Q You have no idea what happened that night because you
18 weren't there?

19 A Well you're talking two different nights.

20 MR. A. GIOVANNIELLO: Objection. Asked and answered.

21 THE COURT: It's cross-examination. Overruled at this time.

22 BY MR. KUDLER:

23 Q You have no idea what happened that night because you
24 were not in the room?

25 A When these gentlemen got himself burnt, no.

1 Q Okay. Now you kind of make light of his injuries. Have you
2 seen the scar on his arm?

3 A No, sir.

4 MR. A. GIOVANNIELLO: Objection, Your Honor. That's
5 argumentative.

6 MR. KUDLER: Did you show him the scar on your arm?

7 THE COURT: That's sustained. That's argumentative.

8 THE WITNESS: I can't see that from here.

9 BY MR. KUDLER:

10 Q You decided you weren't going to believe him?

11 A I thought he was joking. That he was kidding, yes.

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

15 A No. the only maintenance that's done is when there's a
16 problem. That's correct.

17 Q No regular inspections had been done on that panel ever?

18 A Well I can't say ever. I don't know. There was people there
19 before me.

20 Q The entire time that you've been there?

21 A No. It's only if there's a problem. It isn't like somebody
22 comes out and does the inspection.

23 Q Let me ask the question again.

24 A The people who inspected it when it was --

25 Q Let me ask the question again.

1 A Yes, sir.

2 Q You do not do regular inspections on that electrical panel or
3 have somebody do them, do you?

4 MR. A. GIOVANNIELLO: Objection. Asked and answered.

5 THE WITNESS: Yes. I don't. That's correct.

6 THE COURT: Overruled.

7 MR. KUDLER: Thank you.

8 BY MR. KUDLER:

9 Q In fact, Helix was there, I believe, in 2017 or 2018?

10 A If you say so. I don't know.

11 Q Does that sound correct to you?

12 A I'd have to look at the records, their records.

13 Q Does that sound correct to you, 2017 or 2018?

14 A It's been a while. 2018, no. That's too soon, sir. It would
15 have to be before then.

16 Q 2017?

17 A No, before. '14, something like that.

18 Q '14 is when they were there.

19 A Okay. Then it would be probably a year after that, maybe a
20 year-and-a-half.

21 Q Okay. And there were no shorts in that year, year-and-a-half,
22 from the time they were there until the time Helix touched that screw?

23 A No. They did a good job on the work they did. The breakers
24 were fine. Helix was there in order to check out how to disconnect the
25 generator and put theirs in place over on B Hall for the vents.

1 Q In your maintenance department, do you have a ladder?

2 A Do I have -- yes, sir.

3 Q Aluminum ladder?

4 A Well we have a six foot, an eight foot, and then a couple step
5 ladders.

6 Q Okay. Aluminum ladders?

7 A I have an aluminum paint ladder. That's a six footer.

8 MR. KUDLER: Okay. Is Plaintiffs' Exhibit 4 in? Specifically,
9 Plaintiff 22?

10 THE CLERK: 4 is in.

11 BY MR. KUDLER:

12 Q Okay. Look at the screen. You can look at the one there too.
13 It's closer. Is that your paint ladder?

14 A It looks like it.

15 Q Okay. And there's a bunch of wires hanging out there?

16 A Yeah.

17 Q Thank you.

18 A So that paint ladder, how'd you get in there? And I don't
19 know if that's my paint ladder and the same kind of ladder.

20 Q The night that they were there, they were there to change a
21 breaker, correct?

22 A Who? No, sir.

23 Q These gentlemen. Andrew on June 6th, 2014, they were
24 there to change a breaker. That's what they were tasked to do?

25 A I don't remember how they got this ladder.

1 Q I'm not talking about the ladder anymore. The night that
2 they were there on June the 6th when the explosion occurred, they were
3 there to change a breaker?

4 A I don't know that. They were there to change -- to do
5 whatever they needed to do to separate the electrical. That's why they
6 were there.

7 Q That was the main job?

8 A That's correct.

9 Q The night that they were there on June 6th, 2014, they were
10 there for the sole purpose of changing a breaker. They were doing it at
11 night because you couldn't shut down the kitchen, correct?

12 A Correct.

13 MR. KUDLER: Okay. That's all I have. Thank you.

14 THE COURT: Redirect?

15 REDIRECT EXAMINATION

16 BY MR. A. GIOVANNIELLO:

17 Q Can you positively identify that ladder?

18 A It's the same type of ladder. It has a little arm that comes
19 down that you can set a can of paint on.

20 Q Can you say positively that that's your ladder?

21 A No. I cannot.

22 MR. KUDLER: Objection.

23 THE COURT: Overruled.

24 MR. A. GIOVANNIELLO: That's it, Your Honor. No further
25 questions.

1 THE COURT: Any more questions about the ladder on
2 redirect [sic]?

3 MR. KUDLER: No. Thank you.

4 THE COURT: Questions from the jury? Two? Three?

5 [Sidebar at 2:57 p.m.]

6 THE COURT: There's three, and they're all in the back. I
7 assume they'll be back up.

8 MR. KUDLER: I don't think we ought to.

9 MR. A. GIOVANNIELLO: I don't think so either. He won't
10 allow any of this. He didn't know any of this

11 MR. KUDLER: Also [indiscernible].

12 THE COURT: Well, this is the other one, I also could focus on
13 that. Which is fine.

14 MR. A. GIOVANNIELLO: Number 3, I wouldn't say you could
15 ask.

16 THE COURT: Okay.

17 MR. A. GIOVANNIELLO: I don't know if he's going to know
18 the answer to this, but I'm fine with that too.

19 THE COURT: Okay. So we're good on these, right?

20 MR. A. GIOVANNIELLO: Yeah.

21 THE COURT: These two?

22 MR. KUDLER: Just on [indiscernible].

23 THE COURT: Yeah, on the back, the other ones no. Those
24 seem factual.

25 MR. KUDLER: The answer to number 1?

1 MR. A. GIOVANNIELLO: I think he answered number 1.
2 Okay. I'm okay with all three of these, if he wants, I would just repeat
3 number 1.

4 THE COURT: Any concerns? This one seems factual.

5 MR. A.GIOVANNIELLO: Yeah. That's fine too.

6 THE COURT: Okay.

7 [Sidebar ends at 2:58 p.m.]

8 THE COURT: Thank you.

9 As head of maintenance, why weren't you informed from
10 management/administration that the Plaintiffs were working on a hot
11 panel? Is it part of your job to be aware of maintenance like that being
12 performed on the property?

13 THE WITNESS: I wasn't there. I wasn't told by them that this
14 was -- I had no idea what was going to be required for him to -- with his
15 people, to change overall of this, it was extensive, but I had no idea that
16 it was going to take that much work; I had no idea.

17 THE COURT: Was any work done on the electrical panel
18 between ILP [Andrew James] finished? Was there -- was any work done
19 on the electrical panel between when ILP finished their work, and when
20 Helix discovered the screw placed through the electrical wires?

21 THE WITNESS: No. No work was done by any other
22 electrical company. It was James, and then Helix.

23 THE COURT: To confirm, you didn't order the part for the
24 electrical panel work that ILP did, on June 6th, 2014?

25 THE WITNESS: That's correct. I didn't order anything for

1 this company.

2 THE COURT: Did you know who ordered the part for the
3 work ILP did to panel?

4 THE WITNESS: No, I'm assuming they did.

5 THE COURT: You testified that during the second incident
6 the Helix employee was wearing a face shield; did that employee receive
7 any burns or was injured?

8 THE WITNESS: He was not injured. He was not burnt. Okay.
9 The -- I think we had a picture of it when he went to -- he was screwing
10 this out, and it went [clicking sound] then -- and half of the screw blew
11 off; he wasn't hurt?

12 THE COURT: If the facility you work at is equipped with 100
13 kilowatt generator, could the generator have been turned on to power
14 the facility while the main power could be shut off, to change the breaker
15 in the box in electrical room?

16 THE WITNESS: To answer that question, that would be given
17 to that gentleman there. I have no idea that that can be done. So when
18 Helix came out, and they checked the -- the main power, what they
19 decided to do was to go rent a generator and disconnect the generator
20 that's for the building out of the system, so that our generator would
21 operate all the rest of the building and their generator would have
22 control over just the electrical on B hall, where the vents, the electrical
23 was going to be done.

24 THE COURT: Any additional questions from the jurors, as a
25 consequence of these questions asked and answered? Raise your hands.

1 Seeing no hands. Follow-up, Plaintiff?

2 MR. KUDLER: Thank you, Your Honor.

3 THE COURT: Excuse me, it's not your witness.

4 Follow-up Defense?

5 MR. A. GIOVANNIELLO: No, Your Honor, no follow-up.

6 THE COURT: No cross [six]. Plaintiff?

7 RECROSS EXAMINATION

8 BY MR. KUDLER:

9 Q You said that, when -- am I loud enough? Can you hear me?

10 A Well, yeah, go ahead.

11 Q Okay. You said that when Helix was there they were taking
12 out the first group?

13 A That's correct.

14 Q So that entire panel was still on?

15 A Yes, sir.

16 Q And it went puff --

17 A Yes, sir.

18 Q -- real quick.

19 A No, the arcing went right around the screw, because they
20 were -- he was taking the screw out, it went, puff. And the moment that
21 occurred, he stopped.

22 Q Did the light go out?

23 A No.

24 Q The lights didn't go out?

25 A No, sir.

1 Q But it was quick?

2 A Yeah, he stopped.

3 Q Okay. There wasn't a big fireball or anything?

4 A No, just an arcing, and whoa.

5 Q Okay. Just like a little short.

6 A Well, it's like a little short. The only problem is is there -- that
7 panel was alive with electricity?

8 Q Correct.

9 A Okay. So let's say somebody walked in the room by accident
10 and fell against it, they'd probably be electrocuted; that was not okay.

11 Q But what I'm saying is, it was a very quick event. You didn't
12 see a big fireball, or a big blue flame?

13 A No, no. It arcs and left black marks all over where the arcing
14 occurred, and that was it.

15 Q Okay. It was over real quick?

16 A Yeah. And it didn't cause the power in the building to go off.

17 Q How close were you when that happened, physically?

18 A Well, I was standing right outside the open door, watching
19 the gentleman.

20 Q A few feet?

21 A Oh no, no. I was probably a good, maybe 10 feet away.

22 Q You didn't feel any heat or anything?

23 A Oh no, there was none of that.

24 Q Okay.

25 MR. KUDLER: That's all I have. Thank you, Your Honor.

1 THE COURT: Please step down. The parties approach.

2 [Sidebar begins at 3:03 p.m.]

3 THE COURT: Do you have one additional witness --

4 MR. A. GIOVANNIELLO: Yeah.

5 THE COURT: -- for Monday?

6 MR. A. GIOVANNIELLO: For Monday, it's going to go fast.

7 THE COURT: So one additional witness, Monday, that will be
8 short?

9 MR. KUDLER: Very.

10 THE COURT: Okay. Any rebuttal, anyone anticipate, based
11 upon what you heard today, or will anticipate tomorrow?

12 MR. KUDLER: I have to talk to my client.

13 THE COURT: Okay.

14 MR. KUDLER: If there is, it'll be very short.

15 THE COURT: Okay. Fair enough.

16 So I'm going to let them go for weekend recess and bring
17 them back at 11:00. Let's keep pushing forward through argument,
18 Monday afternoon.

19 MR. A. GIOVANNIELLO: Okay.

20 THE COURT: Instruction --

21 MR. A. GIOVANNIELLO: Do you think we'll be ready for
22 Monday afternoon?

23 THE COURT: Pardon?

24 MR. A. GIOVANNIELLO: Monday afternoon, right?

25 THE COURT: Well, we're starting at 11:00. We've got a short

1 one, so -- all right. Thank you.

2 MR. A. GIOVANNIELLO: All right. Thank you, Your Honor.

3 [Sidebar ends at 3:04 p.m.]

4 THE COURT: All right. Ladies and gentlemen, at sidebar
5 Defense has indicated they have one additional witness that will be
6 called Monday morning. And they tell me right now, it should be a fairly
7 short witness, then we'll move to rebuttal, and counsel -- Plaintiffs'
8 counsel is not sure whether he might present limited rebuttal. That'll be
9 a choice they make when Defense resets their case in chief on Monday.

10 I still think Division is right, we're going to move to
11 instruction, right after close of evidence, and right into argument, and
12 then deliberative phase, Monday afternoon. And then it takes the time it
13 takes for you to deliberate the case.

14 So this will be our evening recess at this point. During this
15 recess you must not discuss or communicate with anyone, including
16 fellow jurors, in any way regarding this case or its merits, by voice,
17 phone, email, text, internet, or other means of communication, or social
18 media.

19 You may not read, watch, listen to any report of, or
20 commentary on the trial. You may not do any research, consult,
21 dictionaries, internet, use reference materials, make any investigation,
22 test any theory in the case, recreate any aspect of the case, invest the
23 case on your own, in any way. You may not form or express any opinion
24 on this case until it's finally submitted to you.

25 Again, this is our weekend recess. I'm calling for

1 commission on Monday at 11:00. 11:00, have a good weekend. Follow
2 the Marshal, please.

3 [Jury out at 3:06 p.m.]

4 [Outside the presence of the jury]

5 THE COURT: The record should reflect we're outside the
6 presence of the jury. Any additional record need be made by either side,
7 as a function of witness examination, this afternoon? Plaintiff?

8 MR. KUDLER: None in regards to that. I didn't know if
9 Defense counsel wanted to make a record on the jury instructions, or we
10 want to do that now?

11 THE COURT: No yet. We'll summon -- what I need to do is
12 to finish my second read on, there's just some minor changes. We're
13 going to email them to you as soon as that's done. I should have that
14 proofed and done this afternoon. And so they'll be in your box later,
15 probably a couple of hours.

16 And then I'd like to number up and settle instructions on the
17 record, on Monday, probably right after we finish witness examination.
18 So we could have a number and build your records on instructions then.

19 MR. KUDLER: And one thing we could do. I did not bring
20 out the deposition, so we could take that deposition and strike it out.

21 THE COURT: Well, I --

22 MR. KUDLER: I think we took something out, the video part.
23 But if there's anything else regarding the deposition --

24 THE COURT: All right.

25 MR. KUDLER: -- it could come out.

1 THE COURT: All right. Well, again, I'm going through it all.
2 If I see that one I'll pull it out, and you'll just have the raw copies,
3 unnumbered copies. When we get there we'll number up, and then I'll
4 let you build your arguments, if there's exhibits -- excuse me,
5 instructions that you want me to give, or wanted to me to give, that I
6 didn't, number them as P or D depending on perspective. We'll argue
7 and build a record, and then move forward. All right? Sounds good?

8 MR. A. GIOVANNIELLO: Yeah.

9 THE COURT: All right. Have a good weekend, all.

10 MR. KUDLER: Thank you, Your Honor.

11 THE COURT: Thank you.

12 [Proceedings adjourned at 3:08 p.m.]

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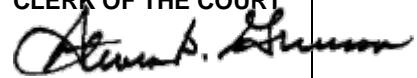
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio-visual recording of the proceeding in the above entitled case to the
23 best of my ability.

23

24 Maukele Transcribers, LLC

25 Jessica B. Cahill, Transcriber, CER/CET-708

EXHIBIT 5



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7 JEFFREY MYERS, ET AL.,

8 Plaintiffs,

9 vs.

10 THI OF NEVADA AT CHEYENNE,
11 LLC, ET AL.,

12 Defendants.

) CASE#: A-16-735550-C

) DEPT. XVII

13
14 BEFORE THE HONORABLE DAVID BARKER
DISTRICT COURT JUDGE
THURSDAY, JUNE 2, 2022

15 **RECORDER'S PARTIAL TRANSCRIPT OF JURY TRIAL - DAY 3**
16 **TESTIMONY OF JEFFREY MYERS AND ANDREW JAMES**

17
18 APPEARANCES

19 For the Plaintiffs: DONALD C. KUDLER, ESQ.

20 For the Defendants: ALEXANDER F. GIOVANNIELLO, ESQ.
21 CHRISTOPHER J. GIOVANNIELLO, ESQ.

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25 RECORDED BY: KRISTINE SANTI, COURT RECORDER

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Las Vegas, Nevada, Thursday, June 2, 2022

[Designation of the record begins at 11:02 a.m.]

THE COURT: Call your next witness.

MR. KUDLER: Jeffrey Myers to the stand, please.

THE MARSHAL: Please remain standing and raise your right hand to be sworn.

JEFFREY MYERS, PLAINTIFF, SWORN

THE CLERK: Please take a seat. Please state and spell your first and last name for the record.

THE WITNESS: Jeffrey Myers, J-E-F-F-R-E-Y M-Y-E-R-S.

THE COURT: Counsel, your witness.

MR. KUDLER: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. KUDLER:

- Q Jeff, where did you grow up?
- A In Pasadena, California.
- Q Okay. How long did you live in Southern California?
- A Well, I moved to Vegas in '97.
- Q Okay.
- A From Southern California.
- Q And how old were you when you moved to Vegas.
- A I'll have to do some math.
- Q What year were you born?
- A '62.

1 Q Okay. So from '63 to '97, 34 years?

2 A Yeah.

3 Q Okay. So you came to Vegas in '97. While you were living in
4 California, did you work as an electrician?

5 A Yes, I did.

6 Q When did you start working as an electrician?

7 A 1983 I was hired by an electrical contractor, and I did on-the-
8 job training there. After six years he retired so I went ahead and took the
9 electrical contractor's exam in California.

10 Q Okay.

11 A And got my own California license.

12 Q Did you work as an electrical contractor in California?

13 A Yes, I did for six years.

14 Q And when did you get licensed as an electrical contractor?

15 A It was '91, I believe.

16 Q And you did that for six years before coming to --

17 A To Vegas.

18 Q -- Las Vegas, correct?

19 A Yes, sir.

20 Q Okay. If you could explain to the jury how kind of you move
21 up in the ranks as an electrician and how you move your way in title.

22 A Okay. Well, when I started electrical, California had no
23 journeys license or anything -- or official apprenticeships so it was on-
24 the-job training. I started out crawling under houses like most kids do.

25 MR. A. GIOVANNIELLO: Could you speak up? I can't hear

1 you.

2 THE WITNESS: So I was an apprentice for the first several
3 years. I was able to progress pretty quickly in -- at that company. By my
4 third year I was doing TI remodels myself and --

5 BY MR. KUDLER:

6 Q What's a TI remodel?

7 A Tenant improvement.

8 Q Okay.

9 A It was for commercial office buildings, that kind of stuff. And
10 I was -- pretty much worked on my own after that -- the owner retired.

11 Q Okay. He'd assign a job to you, and you take care of
12 everything?

13 A Yes.

14 Q Okay. You would -- you were responsible for ordering parts?

15 A Oh, yes. I even -- when I had to leave the town, I'd go
16 downtown LA, and I'd even pull the permits for him.

17 Q Okay.

18 A And you know, order the materials, do all the muscle work,
19 get helpers if I need them.

20 Q Okay. So you supervised other workers.

21 A Uh-huh.

22 Q That was a, yes?

23 A Yes.

24 Q Okay. Then you come to Las Vegas in '97.

25 A Yes.

1 Q Why did you --

2 A Well --

3 Q -- decide to come to Las Vegas.

4 A I was -- I was -- had my own business but I really had no
5 business experience, you know, business management skills and I ended
6 up owing some money to the IRS and then I became sick without any
7 insurance. I had an emergency appendectomy and that pretty much
8 finished my business, so I decided to go back to work for another
9 contractor.

10 Q And then you came to Las Vegas?

11 A And then -- yeah, he -- I went to work for him when he was in
12 California. About a year into it he decided they wanted to open an office
13 in Vegas.

14 Q Okay.

15 A So me and a few other guys moved to Vegas.

16 Q And what company was that?

17 A Tri State Electric.

18 Q Okay. Now, did you ever reach, in California, a journeyman
19 status?

20 A Oh, I was a master electrician in California.

21 Q Okay. And what's a master electrician?

22 A It's just the highest -- to become a contractor, that's with the
23 testing when you pass.

24 Q You have a test you have to pass?

25 A Yes.

1 Q Okay. And you have to demonstrate your knowledge of
2 electrical?

3 A You have to have -- first of all, you have to have the work
4 experience. So the contractor I worked for had to sign off on the
5 application.

6 Q Okay. And how much work experience at that time did you
7 need to be a master electrician?

8 A Four years. Four years.

9 Q Four years? And then pass the test?

10 A Yes.

11 Q A written test. Any hands-on things that you have to
12 demonstrate during that test or is it all written?

13 A It's -- parts of the test you have to do the trade and then to
14 become a contractor you have to take the business law part -- test too.

15 Q Okay. So the master electrician and a general -- electrical
16 contractor.

17 A Yes.

18 Q You come to Nevada, kind of a reset, working for somebody
19 you knew.

20 A Yeah.

21 Q When you came to Nevada did you maintain a journeyman
22 status or what happened?

23 A Nevada doesn't require a journeyman's card so --

24 Q Okay.

25 A -- journeyman's license.

1 Q Do you have one?

2 A I currently hold one for the State of Alaska.

3 Q Okay. And how long have you held that one?

4 A About ten years.

5 Q Okay. And the only reason you don't have one in Nevada is
6 it's not required?

7 A Correct.

8 Q Okay. So you come in '97, you're working for -- what was the
9 name of the company?

10 A Tri State Electric.

11 Q Okay. You're working for Tri State. How long do you stay at
12 Tri State?

13 A I was there for about six years, seven years, I think.

14 Q And why did you leave Tri State?

15 A Well, the -- once they got the office established, they hired
16 some local management for the office, and they were not very honest
17 people. And so we had run into some run-ins with them. They let me
18 go.

19 Q Okay. And then where did you start working?

20 A I worked for several contractors.

21 Q Do you recall where you were working in 2014?

22 A Yes, for ILP, Industry Light and Power.

23 Q Now, for some time now you've been spending part of the
24 time here and part of the time in Alaska?

25 A Yeah, in 2012 I got an opportunity to go to Alaska and work,

1 which was really good. So I had to take the Alaska test and get the
2 Alaska journeyman's card because they require it.

3 Q How much time did you spend -- how much of your time --

4 A I would -- I would bounce back and forth but I'd work most of
5 the year, the summertime up there and I'd try to -- you can't -- you can't
6 work non-stop up there. So I would take time off, come down here. And
7 in 2014, I believe Andrew had contacted me while I was up there telling
8 me he had a project that he would like me to help with. So I decided to
9 leave Alaska, I think it was a year and a half.

10 Q And was that in part this project?

11 A That was to -- yes, work on the --

12 Q Okay.

13 A Well, he had got a contract for a nursing home, ground up,
14 and that's the main reason I came down here. When I got here, he asked
15 me to go with him to work on the -- do some service work on this
16 fundamental or College Park --

17 Q Okay.

18 A -- Nursing.

19 Q The night of the incident on June 6th of 2014, do you
20 remember when you got to the site?

21 A Yes.

22 Q And about what time was that?

23 A It was in the evening. I don't remember. It was eight years
24 ago.

25 Q Okay.

1 A It was getting dark.

2 Q What's your understanding of why it was being done in the
3 evening?

4 A Because they wanted to wait until the kitchen was closed.

5 Q Okay. Was anybody from College Park with you when you
6 were working -- doing the work?

7 A No. I mean, there was people around, but nobody in the
8 room with me --

9 Q Okay.

10 A -- except for --

11 Q When you say around you --

12 A -- ILP employees.

13 Q You're talking about with patients in the lobby and --

14 A Yeah.

15 Q Okay. Do you recall if you had ever been in this particular
16 box before?

17 A I had not been in that piece of gear before, no.

18 Q Okay. And who was with you while you were doing this
19 work?

20 A Andrew James.

21 Q Okay. Was there another employee of ILP that was around?

22 A Yeah, there was, Jason.

23 Q But he was not actually working on the unit?

24 A No. No at the same time I was.

25 Q Okay. So you go in -- into the room. What's the first thing

1 you do?

2 A Well, we may clear the room, all the stuff in the way out of
3 the rooms. It was a very small electrical room, more like a closet. So we
4 made some room in there and then we started pulling the covers off.

5 Q Okay. And as Mr. Gifford described, there's a front cover?

6 A It was several pieces to the cover, yeah. There's sides and
7 top and bottom and the dead front.

8 Q When he got there, was there already a breaker there?

9 A Yes, the maintenance man had supplied the breaker.

10 Q Okay. You didn't bring one with you?

11 A No.

12 Q Okay. The -- each breaker are -- they have different ratings?

13 A Oh, yes.

14 Q Okay. When you go to replace a breaker, how do you know
15 what type of breaker to get?

16 A You get the model number, type, and model number off of
17 the breaker itself.

18 Q Okay. And how do you get that?

19 A Well, it's got a sticker on it. But --

20 Q Okay. Is that visible from outside the box?

21 A No, it's not.

22 Q Okay, so the cover is on -- can I tell you what door?

23 A All you can see is the handle, the trip handle, and the
24 amperage rating.

25 Q The sticker that's there. Is it on the side? Is it on the back,

1 typically?

2 A It's on the front, but it's covered up by the dead front.

3 Q Okay. The dead front of the piece of metal?

4 A Yeah, where they breaker's poke through.

5 Q Okay. And in this case, you said that it was there?

6 A Yeah, so apparently, they -- he was able to troubleshoot and
7 determine what the problem was. I'm not sure how he did that without
8 looking.

9 Q What were you told the problem was?

10 A I was told the kitchen had intermittent power.

11 Q Okay. You take the covers off?

12 A Yes.

13 Q Now, the box is energized?

14 A Yes.

15 Q Why is it energized?

16 A Because they -- it's a nursing, and they wanted to leave it on.

17 Q Okay. Have you worked on energized panels before?

18 A Oh, yes. Many times.

19 Q Okay. Have you worked on energized panels before this
20 incident in 2014?

21 A Many times.

22 Q At that time in 2014, what was required to be worn if you
23 were working on an energized panel?

24 A Well, okay, the voltage of that panel was the lowest arc flash
25 rating -- well, I believe that it was a one. There's -- you can go zero but --

1 so you required to wear eye protection which I was wearing a clear pair
2 of safety glasses. Not -- no face shield, just the safety glasses. I has
3 some high-voltage gloves clipped to my forearms. I had a Carhartt T-
4 shirt, a fire retardant T-shirt and pants. So that -- and that's why the burn
5 -- you know, the shirt protected me to there [witness indicating] and the
6 gloves further on.

7 Q Okay. And that's -- you were showing where the burn
8 actually is?

9 A Yes. It's -- can you see that? [Witness indicating] That pretty
10 much goes -- yeah.

11 Q Okay.

12 MR. A. GIOVANNIELLO: Can you raise your arm again? I
13 didn't have my glasses on. Thank you. Thank you.

14 THE WITNESS: And -- uh-huh.

15 BY MR. KUDLER:

16 Q So you go -- we're going to go back to where we were? So
17 you go in, you take the front panel off. There's a breaker already left in
18 the --

19 A It was obvious once I uncovered the breaker that it had
20 burned up from a loose connection.

21 Q Okay. And when you say it "burned up from a loose
22 connection" what did you see?

23 A The conductors going into the breaker were not torqued
24 down properly and that -- the resistance creates a lot of heat when the
25 load, you know, comes -- it expands and contracts the wire and it just

1 works itself completely loose, basically eaten it. It was -- the wire -- end
2 of the wire was cooked and the breaker was burning up.

3 Q Is there a procedure to follow to make sure that the lug nuts
4 are torqued down enough --

5 A Yes. Oh, yes.

6 Q -- so that this doesn't happen?

7 A A breaker of that size, the wire, probably bigger than your
8 thumb. But you put it in the lug, and then you tighten it down. That's
9 what I do. You tighten in down as tight as you can get it and then you
10 move the wire around some. And you got to do that three or four times
11 because it'll work loose as it compacts the strands of wire in the lug. So
12 you have to do that repeatedly to all three phases --

13 Q Okay.

14 A -- before it's going to stay.

15 Q Okay. So just putting it in and saying it's good enough --

16 A You can put it in and tighten it down but it's not going to last.

17 Q Okay. Because this is a stranded cable?

18 A A stranded copper cable. Yeah. Any qualified electrician
19 knows this.

20 Q Yeah. So looking at that, did you have an opinion as to how
21 long that thing had been in there?

22 A It -- I'd be amazed if it lasted a year like that. I doubt it would
23 -- could go that far, let alone years and years. No way.

24 Q Because of the heat that builds up?

25 A Yes.

1 Q Okay. So it physically burned itself out because somebody
2 didn't tighten the wire.

3 A It wasn't installed properly, yes.

4 Q Okay. Did you have to loosen the nut to pull the wires out.

5 A I'm -- no, the wires just came out by themselves. I mean, I
6 unbolted the breaker to remove it.

7 Q And the wires just came right out?

8 A Yeah, I didn't have to -- those lugs wouldn't have turned
9 anyways, they were so burned up.

10 Q The -- you kept the wires separate so it didn't --

11 A Yes. I had to retrim the ends of the wires and re-strip them
12 to get back to the good copper.

13 Q Okay. Were the wires at the end of the wires burnt?

14 A Yes, they were.

15 Q Okay. So you removed the breaker.

16 A Uh-huh.

17 Q You put the new breaker in.

18 A Yes.

19 Q Okay.

20 A I had the new breaker -- it was a long time ago I was near the
21 end of installing it. I can't remember if -- you know, if I was tightening
22 the lugs or the -- or the bolts exactly.

23 Q Your procedure, just general procedure for safety --

24 A Well, when -- anytime you're working in energized gear, you
25 have to be very aware of what's around you. And make sure nothing --

1 you don't touch or bump into anything metal, obviously. And then you
2 need to stay hyper-focused on what you're doing, and you be very
3 methodical about what -- how you're doing it.

4 Q And what height was this at?

5 A It was probably chest high. The breaker. The gear was from
6 the floor to almost the ceiling.

7 Q Okay. And you said when you took everything off you
8 looked around?

9 A Oh, yeah. When you took the covers off, you make an initial
10 assessment and a -- that you --

11 Q Did you check the energized busses?

12 A Yes. The energized -- it's got three busbars going down the
13 middle. And then above the busbars there's this fiber insulating board,
14 and it's the neutral bus above that. So the energized stuff, I could clearly
15 see all of it and --

16 Q Okay. Are there any issues with clearance of the energized
17 busbars?

18 A No, no issues.

19 Q Okay. The piece of fiberglass, was that above your head?

20 A Yes, it was.

21 Q Okay. Were you aware of anything that was up there?

22 A Typically that wouldn't concern me to doing this procedure.

23 Q Is that something that's solid, or is it --

24 A It's like a panel, that piece of fiberglass for insulating
25 material. And it covers the whole -- pretty much the -- separates that top

1 section from the rest of it.

2 Q I mean, could you put tools up there?

3 A Well, you could but I wouldn't.

4 Q Would they stay up there or was it strong enough to hold
5 tools?

6 A A screwdriver or something, yeah.

7 Q Something small. Okay. When you took the front cover off --

8 A Uh-huh.

9 Q -- you took the screws out. What did you do with them?

10 A Oh, I passed them back to Andrew. He was collecting all the
11 screws.

12 Q Okay. And do you know where he put them?

13 A It was behind me somewhere.

14 Q Okay. And then you took the inside runners off?

15 A Yeah, the sides, the top and bottom, then you can access the
16 screws to the dead front.

17 Q Okay. What do you do with all those screws?

18 A They all went back to Andrew.

19 Q Okay. When you were removing the screws, were you using
20 an impact driver or a screwdriver?

21 A I was using my impact -- my cordless impact drill.

22 Q Okay. Was there any screwdrivers in the area where you
23 were working?

24 A I had my tool bag next to me or behind me.

25 Q On the floor?

1 A Yes.

2 Q Okay. And you're taking out the impact driver to use?

3 A Yeah, it's -- that's a better choice, I think, when you're
4 working on an energized gear like that because it's completely plastic.
5 So there's less chance of bumping something.

6 Q So it's insulated?

7 A Yes.

8 Q Okay. And then you're wearing gloves as well?

9 A Oh, yes. Yeah, the high-voltage gloves.

10 Q Okay. So now you said you were just about putting
11 everything back together. The first thing was to reinstall the breaker.

12 A Typically, you would bolt the breaker back in, the new
13 breaker, and then land the conductors. And I was somewhere in that
14 process when it just -- all hell broke loose.

15 Q Okay. Other than the impact driver, did you have anything in
16 your hands?

17 A No, I wouldn't.

18 Q Okay.

19 A I mean -- I mean, I would've had -- I would've put the breaker
20 installed with the bolts. It bolts to these busbar fingers. The come off
21 the main busbar have had to put the breaker installed with the bolts to
22 bolster these first four fingers to come off the main busbars so --

23 Q Okay.

24 A -- put three of those bolts in. And I probably would set the
25 drill down and start stripping the ends of the wires, prepared the wires,

1 then I would've impacted those down.

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

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

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

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

15 Q Were the lights on?

16 A The lights never went off.

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

18 A The breaker never tripped.

19 Q Okay. In your experience with a short like that, should the
20 breaker --

21 A Oh, absolutely. Especially there because the inrush current,
22 the transformer was sitting right outside the door in the sidewalk. And
23 the main breaker -- I know there was one question about the trip setting
24 on that breaker. And in order to calculate that, to know where to set it,
25 you would need to factor in all the length of the conductors, the size, and

1 number of conductors. It's quite a mathematical process. But
2 everything was so close together, the service, the transformer, the inrush
3 current would have been incredible. And that breaker, it should have
4 tripped for sure. No matter what that setting was set at.

5 Q Okay. And you're saying that that it was high because there
6 was no resistance because of no length of wire?

7 A It was very short runs.

8 Q Okay.

9 A So there would've -- yeah, it was very low.

10 Q So whatever is coming out of the transformer is not being --

11 A It just comes.

12 Q -- lowered because resistance?

13 A Which is why it created such a big fireball, I guess.

14 Q Okay. Any idea in your recollection how long this event
15 lasted?

16 A It seemed to me like a long time, but it probably wasn't more
17 than 10 or 15 seconds. The arc had to just -- it worked its way up that
18 side of the panel from the fingers behind the breakers. It just works its
19 way -- and once it got to the top it extinguished itself.

20 Q Okay. At that moment, do you know what caused it?

21 A I had no idea. Okay, I never saw any screws.

22 Q Okay. So you go from there, you go into the lobby. What
23 happens in there?

24 A There was nobody around. I just sat down in the waiting
25 room and waited for the ambulance. I mean there was -- there was a

1 janitor I think or somebody walking around.

2 Q Okay. At some point --

3 A They had no idea anything had happened.

4 Q Right. Because the lights never went off.

5 A Uh-huh.

6 Q Somebody called the 911?

7 A I believe, yeah, one of ILP employees.

8 Q Ambulance comes?

9 A Uh-huh.

10 Q You said you had skin hanging off your elbow?

11 A Yeah. I didn't feel that thing at that point. I must --

12 obviously, I was in shock.

13 Q Okay. Were they -- who greeted the ambulance?

14 A I think they gave me something for the pain and I just laid
15 down on the gurney and we went to the hospital.

16 Q Okay. Now, you get to the hospital. They take you to the
17 emergency room. What did they do for you there?

18 A The first thing they did was give me a big shot of morphine,
19 which made me sick to my stomach. And then they were just checking
20 me out the whole time. They were real concerned about if I had inhaled
21 at the time when that was in front of my face, which obviously, I didn't. I
22 held my breath or -- it wasn't long enough to really need to take in a
23 breath.

24 Q Okay. So as far as you know, there's no injury to your lungs?

25 A No.

1 Q That's correct?

2 A Apparently, they said some nasal hair was --

3 Q Okay. But other than that the --

4 A I had no problem breathing, no.

5 Q Okay.

6 A And the reason my eyes, you know, weren't -- weren't

7 injured was because of those safety glasses.

8 Q Where were the bad burns on your face?

9 A My neck and apparently my ears and my forehead. All my
10 hair was -- it was all around my face basically, just except for across here
11 so much [witness indicating].

12 Q Okay. Any burns on your hands?

13 A No, I had the gloves on.

14 Q Okay. There was a burn inside your shirt?

15 A Oh, there was one burn in my armpit. I guess some scrap
16 metal or something -- molten copper hit me in the armpit but -- and they
17 didn't notice it right away at that hospital because I guess it cauterized
18 itself or -- but later on I had problems with ingrown hairs and -- or
19 abscess in my armpit.

20 Q Let's go back to the -- you're in the emergency room. How
21 long are you in there?

22 A In the emergency?

23 Q Yeah.

24 A That night, that evening. I don't -- and then I went from there
25 right up to the burn unit.

1 Q Okay. And Dr. Ozobia treated you?

2 A I was -- I was, like, yeah, I don't remember anything until the
3 next day. And then, yeah, at some point he saw me. Mostly it was just
4 the nurses coming in and checking on me.

5 Q Okay. They were checking your breathing?

6 A Yeah. They were giving me breathing treatments and pain
7 medication. Then it's when it got really painful.

8 Q Okay. What was really painful?

9 A The burns. This one -- the skin was gone so it was extremely
10 painful. Worst pain I ever had in my life.

11 Q Okay. And how about the burn on --

12 A The face was --

13 Q Okay.

14 MR. KUDLER: May I approach, Your Honor?

15 THE COURT: Yes.

16 MR. KUDLER: Looking for the color copies. I don't know
17 why they're not colored in there. Looking at Exhibit 3.

18 MR. A. GIOVANNIELLO: Exhibit 3?

19 MR. KUDLER: Yes.

20 MR. A. GIOVANNIELLO: Will you give me a chance to get
21 there please?

22 MR. KUDLER: Certainly.

23 THE WITNESS: It's hard to tell anything from this.

24 MR. KUDLER: Yeah.

25 MR. A. GIOVANNIELLO: I'm on Exhibit 3.

1 MR. KUDLER: Thank you.

2 BY MR. KUDLER:

3 Q These are black and white, but do you recall having
4 photographs taken of your injuries?

5 A Yes.

6 Q Okay.

7 A I believe I took these pictures.

8 Q Were these after the hospital?

9 A Yeah, these were a couple of weeks after.

10 Q Okay. And those show the burns and the injuries?

11 A Yeah, I think it was when I was talking to you and I -- so I took
12 some pictures. So yeah, these are at least two weeks after, three weeks
13 probably. The skin had closed -- it took a long time for this skin to grow
14 back. It grows from the outside in, so it took several weeks for it to
15 finally close up.

16 Q How long were you in the hospital for?

17 A Nine days.

18 Q Okay. What did they do for you there?

19 A They just -- as far as cleaning and putting stuff on my
20 wounds.

21 Q Okay. Did they put some kind of a bandage or something on
22 your arm?

23 A Well after -- when I went to outpatient, they put this kind of
24 material on there that they left on there. It -- you know, it would absorb
25 the liquid or whatever and it got -- or like a scab and you would just trim

1 off the edges as it filled and closed in. It's a -- it was like -- it's like a scab
2 on there until it finally got so small that it was done.

3 Q How long did that take?

4 A Six -- five to six weeks maybe.

5 Q Okay. Did -- was there a time that they said once you meet a
6 certain criteria, we'll discharge you from the hospital?

7 A Well, yeah, the doctor -- basically after nine days, I asked him
8 when I would be able to go home. And he told me, well, when you can
9 handle a dressing change without the morphine, I'll let you go home.

10 Q Were they doing the dressing changes or were you?

11 A They were.

12 Q Okay.

13 A I went -- when I did leave, I went to outpatient and I was
14 going there, at first, every day and they were doing it every day.

15 Q They were changing your dressing?

16 A Uh-huh.

17 Q Was that painful?

18 A Oh, yes.

19 Q Okay.

20 A It was incredibly painful. And I was still taking some pills at
21 that time.

22 Q Okay. Before this, had you had any injuries or accidents or
23 any need to take morphine or anything of that nature?

24 A Oh, no, no. No.

25 Q How long did you take morphine for in total as a result of

1 this?

2 A Well, the morphine, that was while I was in burn unit. And
3 then they changed it to some -- one of the pills, some opiate pill, which I
4 took at -- I took those for -- until they discharged me from the outpatient.
5 And then I believe there was some period of time I was still taking those
6 but then I went to see the doctor again just a few weeks after at some
7 point and he said, well, as soon as you stop taking the pills, I'll let you go
8 back to work.

9 Q Okay.

10 A So that's when I stopped taking the pills.

11 Q Okay. Was that easy to get -- stop taking the pills?

12 A No, that was not easy.

13 Q Okay.

14 A It was another horrible experience.

15 Q Okay. What was horrible about it?

16 A Just coming off the opiates.

17 Q Okay.

18 A It's very addictive medication.

19 Q When you were taking them how many were you taking a
20 day?

21 A About three, or four, or five, something like that.

22 Q Did you quit cold turkey or how did you get off?

23 A Yeah, when he told me I can go back to work when I stop, I
24 told him, well, don't give me anymore.

25 Q Okay. And then you returned to your work.

1 A Yeah, a week, or something after.

2 Q Okay. Was that after the last time you saw the doctor in the
3 burn center?

4 A Honestly, the -- that series of events, eight years is a long
5 time to try and remember exactly how that went down.

6 Q Now there was a mention that in October 2014, the doctor
7 wanted you to come back.

8 A I don't remember that. Or I don't remember not showing up
9 for an appointment.

10 Q Okay. At that point, were you 100 percent?

11 A Obviously, he had already released me to go back to work at
12 that point and I was working with Andrew. You know, we -- in fact, were
13 working on a brand new nursing home from the ground up for the same
14 company.

15 Q Was that here in town?

16 A That was -- yeah, here.

17 Q Okay. The PPE that you were wearing at the time, goggles
18 gloves?

19 A Gloves.

20 Q Fire retardant --

21 A Fire retardant clothes, yep. That's what --

22 Q Where does the requirement for that equipment come from
23 in 2014?

24 A It was a OSHA -- it was arc flash rating. The number or the
25 rating determined what the level of PPE you're required to wear from

1 OSHA.

2 Q And this'll be the same PPE you wore when working on other
3 category one boxes that were hot?

4 A Yeah, if it was under 240 volts, yes.

5 Q Okay.

6 A 240 and under. Typically, if that breaker had worked the way
7 the manufacturer intended it to, there would have been no injuries,
8 nobody would have got hurt.

9 Q It would have been a loud noise?

10 A A loud noise, some smoke, and sparks and that was it. It
11 would've been over in an instant.

12 Q In your career, have you maintained breakers, done routine
13 maintenance on them?

14 A Me, not so much because I'm mostly involved in the new
15 construction. But there are -- yeah, I mean, I'm sure Andrew had some
16 maintenance contracts, maybe, with the customers afterwards. It's up to
17 the owner to put a maintenance and testing policy or plan in action, in
18 use.

19 Q Did you have problems after you were discharged with your
20 armpit?

21 A I believe it, yeah, I felt an abscess or something --

22 Q Okay.

23 A From ingrown hairs maybe, or I'm not sure why.

24 Q And where did you go?

25 A To the emergency room. I think it was actually twice. I went

1 for some in the emergency room. They told me not to come there
2 anymore. Or no, I went to the burn unit the first time and they told me to
3 go to the emergency, not -- that I was discharged and not to come there
4 anymore.

5 Q Did you go to UMC or another hospital?

6 A UMC Emergency, yeah.

7 Q You don't -- you don't recall going to Valley?

8 A That's Valley -- well, it's right next door to it or same.

9 Q Okay.

10 A Yeah.

11 Q And that's where you went twice?

12 A I believe I went there twice.

13 Q And that was just -- you were there just for a little bit?

14 A Just the guy lanced it.

15 Q Okay. Do you have any current symptoms with your arm?

16 A Well, yeah, there's the sensation of feeling in here is -- is not
17 normal anymore. So it's hard to tell. It's just different. If something
18 touches it or rubs here, it's - or kind startle -- if I'm working on
19 something, it startles me a little bit.

20 Q Okay.

21 A Because I can't tell what's going on.

22 Q Have you ever gotten a scratch or a cut and not really felt it
23 like that?

24 A Yeah.

25 Q Okay. During the time you were in the hospital, obviously,

1 you weren't working? Do you know how long it was you continued not
2 to work?

3 A It was until -- I went back to work for Andrew at the new job
4 site.

5 Q It was -- do you know --

6 A It's hard to remember the exact dates.

7 Q Okay. Was that when you last saw Dr. Ozobia, and he said
8 kick the drugs?

9 A Yes. It was some period or days after that, yes.

10 Q Okay. So sometime after that last time you saw him?

11 A Yes.

12 Q Okay. What were you making at that time?

13 A \$40 an hour, I believe.

14 Q Okay. And --

15 A I was a foreman for the --

16 Q Okay. Up until the 6th of June, how many hours a week
17 were you working?

18 A The 6th of June.?

19 Q Up until this injury were you working, how many hours a
20 week were you working?

21 A Full time, yeah.

22 Q Okay. Were you going to continue to work full time?

23 A Yeah.

24 Q Okay. And would you expected to continue to work 40 hours
25 a week?

1 A Yeah, they were already well into that project when I came
2 on to it. So yeah, I would have been there from the beginning.

3 Q Okay. That was the next project?

4 A Uh-huh.

5 Q Also for the same company?

6 A Yes, same company.

7 Q The -- do the burns on your face affect you at all?

8 A Well, I mean, one time I asked a girlfriend of mine -- she did
9 -- you know, she asked me if I was burned and then, I go, you don't
10 notice this, you know, the colored -- discoloration. And she told me she
11 thought, oh, I just thought you were dirty. That's kind of discouraging,
12 you know. So yeah, I was a little self-conscious about it all.

13 Q Okay. Are there times of the year that's it's more visible than
14 it is right now?

15 A Oh, yeah, when I was in Alaska it -- I mean, you get some
16 suntan here and it kind of hides it a little bit, but it's still -- I don't know if
17 you can see this but --

18 Q You want to go up a little closer and show them. And while
19 you're there, can you --

20 MR. KUDLER: Your Honor, can he approach the jury?

21 THE COURT: Any objection?

22 MR. A. GIOVANNIELLO: No objections.

23 THE COURT: You may.

24 BY MR. KUDLER:

25 Q And then -- if I show them your arm.

1 UNIDENTIFIED SPEAKER: Just make sure he's by a
2 microphone if he's going to talk.

3 MR. KUDLER: You got to speak up a little bit Jeff.

4 THE WITNESS: I was lucky they didn't do skin --

5 MR. A. GIOVANNIELLO: Objection.

6 THE COURT: Just demonstrate and don't narrate.

7 MR. KUDLER: Jeff, just show them.

8 MR. A. GIOVANNIELLO: Your Honor, objection to the
9 narration, Your Honor.

10 THE WITNESS: Huh? Okay.

11 BY MR. KUDLER:

12 Q Do you have any physical problems today as a result of the
13 injury other than the sensation and being startled?

14 A No, I'm -- I mean, they gave me a disability rating at the time.
15 I forget what it was -- a few percent. But that was mostly because the
16 scarring was pretty tight for a while.

17 Q Has it loosened up?

18 A It's loosened up a little bit, yeah.

19 Q Okay. You do -- you do --

20 A I can -- I can --

21 Q You did physical therapy or occupational therapy?

22 A Well, I had to wear a compression thing on my arm for
23 several months.

24 Q Okay. Do you do, like, stretching of your arm or been
25 working out your arm to make sure it stays limber?

1 A Not specifically, it's okay now.

2 Q Okay. Did you do that in the past?

3 A Yeah.

4 Q Okay. Was there a time that you weren't able to do things
5 around the house?

6 A Oh, for a long time.

7 Q Okay. Did this -- these injuries affect you personally?

8 A Yeah, at first, when I got out of the outpatient I -- it was
9 horrible. I couldn't -- it was weeks and weeks.

10 Q What couldn't you do around the house?

11 A I didn't -- I did as little as possible, just my own personal
12 hygiene and yeah, stayed inside because I couldn't go outside because
13 the sun -- they said to stay out of the sun.

14 Q Okay. And this was in the summer?

15 A Uh-huh.

16 Q Okay. So you had to stay out of the sun, so you stayed
17 inside? Other than personal hygiene, what things were you able to do
18 around the house?

19 A Turn the TV on.

20 Q Okay.

21 A I didn't -- I didn't really -- it was for a while before I was able
22 to return to a normal life.

23 Q Did the pain in your arm or in your face wake you up at
24 night?

25 A I'm sure at first, but I was taking the medication. The pain

1 pills and I was medicated pretty heavily for quite a while.

2 Q And how'd that make you feel?

3 A Tired.

4 Q Okay. And how'd it make you feel?

5 A It didn't -- yeah, I wasn't looking forward to stopping that's
6 for sure. But I knew what I had to do.

7 Q Okay. Stop the medications?

8 A Uh-huh.

9 Q Okay. How did it make you feel to have to rely on the
10 medications?

11 A It's an addiction like anything else. I mean, you try to -- you
12 start to rationalize why you need more or -- so I just stopped. I had my
13 girlfriend with me. She helped me through it.

14 Q Okay. Normally, before this, what things did you do around
15 the house?

16 A Oh, everything, fixed things. I did hobbies.

17 Q Did you cook?

18 A Yes.

19 Q Did you clean?

20 A Oh, yes.

21 Q Did you work on your car?

22 A Yes.

23 Q Wash your car?

24 A Yes. All that.

25 Q Okay. During this time that you were healing and on

1 medication --

2 A She was handling most of the cleaning and cooking.

3 Q Okay. Normally, before this and since you've healed what
4 kind of things do you do for fun, relaxation?

5 A I mostly work on things. Fixing cars, I like to fix my cars, fix
6 them up.

7 Q Okay.

8 A I got a metal detector. I like to go metal detecting. Hiking in
9 the mountains, stuff like that.

10 Q Did you do any of that during the time were recovering?

11 A Oh, no, no. I didn't.

12 Q Okay. You got back to all that stuff?

13 A Huh?

14 Q You got back to all that stuff?

15 A Somewhat. Yeah.

16 Q Okay. And what do you mean, somewhat?

17 A I don't have time for most of it now but --

18 Q Okay. You busy working?

19 A Uh-huh.

20 Q Okay. Do you have any issues currently or since this working
21 on panels?

22 A Well, it's something you never forget. And I just work and
23 got through it. You know, yeah, you get scared or fear or it makes you a
24 lot more aware of what you need to watch out for that's for sure.

25 Q Okay. When you went into the box that day, did you do

1 everything that you would normally do?

2 A Yes. I didn't -- I didn't do anything wrong.

3 Q Okay. You looked everywhere that -- should have been a
4 safety hazard?

5 A Uh-huh. It's -- yeah, it's pretty straight forward. It's much --
6 yeah.

7 Q Okay. Normally, how long would this take?

8 A Half an hour, 45 minutes.

9 Q Okay. Open, wrap up, and then go home?

10 A Put it back together and turn it on.

11 MR. KUDLER: Okay. That's all I have, Your Honor.

12 THE COURT: All right. Ladies and gentlemen, we're going to
13 take our lunch and recess at this time.

14 During this recess, you must not discuss or communicate
15 with anyone including fellow jurors in any way regarding the case or its
16 merits, by either voice, phone, email, text, internet, or other means of
17 communication or social media. You may not read, watch, or listen to
18 any reports of or commentary on the trial by any means. Do not do any
19 research, consult dictionaries, internet, use reference materials, make
20 investigations, test theories, recreate any aspect of the case or do any
21 investigation on your own.

22 Do not form or express any opinion regarding this case until
23 it's finally submitted to you. It's a quarter to noon. Let's come back to
24 work at 1:00 ladies and gentlemen. Have a good lunch. Follow the
25 officer, please.

1 [Jury out at 11:48 p.m.]

2 [Outside the presence of the jury]

3 THE COURT: All right. The record should reflect we're
4 outside the presence of the jury. Any additional record need be made by
5 either side on the witness' examination this morning. Plaintiff?

6 MR. KUDLER: None, Your Honor.

7 THE COURT: Defense?

8 MR. A. GIOVANNIELLO: Not at this time.

9 THE COURT: All right. Have a good lunch. We'll see you at
10 noon -- or see you at 1.

11 [Recess from 11:48 a.m. to 12:57 p.m.]

12 [Outside the presence of the jury]

13 THE COURT: We're on the record in A-735550, Myers v. THI.
14 The record should reflect the presence of the representatives of the
15 Plaintiff and Defense. Outside the presence of the jury.

16 Just as we're on the record I was, again, reviewing Judge
17 Villani's decisions regarding a prior -- an effort by the Defense to
18 examine on a prior felony conviction for Myers. Is that fair?

19 MR. A. GIOVANNIELLO: No.

20 MR. KUDLER: No, it was for James.

21 MR. A. GIOVANNIELLO: James.

22 THE COURT: It was for James? Okay. Then that's not
23 relevant here. But he ruled that you can't go there.

24 MR. A. GIOVANNIELLO: He ruled I can't, yeah.

25 THE COURT: Okay.

1 MR. A. GIOVANNIELLO: Yeah, I'm aware of that.

2 THE COURT: All right.

3 MR. A. GIOVANNIELLO: That's what Lee [phonetic] filed the
4 writ on.

5 THE COURT: Right.

6 MR. A. GIOVANNIELLO: Yeah.

7 THE COURT: We're ready.

8 THE MARSHAL: Stand for the jury.

9 THE COURT: Yes.

10 [Jury in at 12:58 p.m.]

11 THE COURT: Please be seated, ladies and gentlemen. We
12 are on the record in A-735550, Myers v. THI. The record should reflect
13 the presence of the representatives for Plaintiff and Defense. All
14 members of the jury panel do appear to be present.

15 Do the parties stipulate to the presence of the entire panel?
16 Plaintiff?

17 MR. KUDLER: Yes, Your Honor.

18 MR. A. GIOVANNIELLO: Yes, Your Honor.

19 THE COURT: Thank you. The record should reflect the
20 remaining case is the Plaintiffs' case in chief. Cross-examination of the
21 witness.

22 Mr. Giovanniello, you have the floor. Cross-examination.

23 MR. A. GIOVANNIELLO: Thank you, Your Honor. May I have
24 Mr. Giovanniello over here, go up there, and get a book for the witness?

25 THE COURT: Certainly.

1 MR. A. GIOVANNIELLO: Thank you.

2 Let's get 230 -- Exhibit 232.

3 MR. A. GIOVANNIELLO: Good afternoon, Mr. Myers. I'm
4 going to ask you a couple of questions here.

5 THE WITNESS: Okay.

6 CROSS-EXAMINATION

7 BY MR. A. GIOVANNIELLO:

8 Q I just want to put a couple of things in perspective first. I'm
9 going to show you some photographs of -- we've been talking about this
10 room, and we've been talking about this panel. I just want to show you
11 some photographs. Look at Exhibit 2 -- you're on Exhibit 232.

12 A Dash 1?

13 Q Yeah, Dash 1, but go to Dash 13.

14 THE COURT: Are these in?

15 MR. A. GIOVANNIELLO: I would put them in, Your Honor.

16 THE COURT: So let's make a formal record on what you're
17 offering.

18 MR. A. GIOVANNIELLO: Your Honor, I'm not going to offer
19 every single one of these, I'm just going to offer them piecemeal.

20 THE COURT: Well, with foundation or without objection. So
21 we're focused on your collection in Defense 232; is that fair?

22 THE WITNESS: It's a picture outside the electric room.

23 MR. A. GIOVANNIELLO: Oh, wait for the Judge.

24 THE COURT: 232. All right. And you're looking at which
25 232?

1 MR. A. GIOVANNIELLO: Number 13, Your Honor, first.

2 THE COURT: 13. Just don't publish it until its admitted or
3 decisions are made on admission. Are you offering --

4 MR. A. GIOVANNIELLO: I'm offering it, yes.

5 THE COURT: -- 13?

6 Offering 232 -- Defense 232-13, any objection?

7 MR. KUDLER: These were taken in 2021, but as long as they
8 verify that they represent the -- similar condition at the time of 2/14, I
9 have no issue.

10 THE COURT: So I'm hearing no objection to 13?

11 MR. KUDLER: As long as -- yeah, as long as they verify that
12 its similar to the condition --

13 THE COURT: Well, there is an --

14 MR. KUDLER: -- in 2014.

15 THE COURT: -- objection to verification or --

16 MR. A. GIOVANNIELLO: Well, Your Honor, Judge Villani
17 already ruled that these could come in.

18 THE COURT: Oh, so --

19 MR. A. GIOVANNIELLO: This was a prior ruling. These
20 pictures can come in.

21 THE COURT: Is that correct?

22 MR. KUDLER: I believe.

23 THE COURT: Then they're admitted.

24 MR. A. GIOVANNIELLO: Thank you.

25 THE COURT: All the photographs under 232?

1 MR. A. GIOVANNIELLO: All of them, but some of them are
2 not as relevant as others, that's why --

3 THE COURT: All right. So --

4 MR. A. GIOVANNIELLO: -- I want to do it piecemeal.

5 THE COURT: -- 13 is in. 232-13 is admitted based upon prior
6 ruling.

7 [Defendants' Exhibit 232-13 admitted into evidence]

8 BY MR. A. GIOVANNIELLO:

9 Q And Mr. Myers, I just want to put this in perspective really for
10 the jury, as well as you, and to show that -- what does this depict, this
11 picture?

12 A This is the -- outside the electrical room. The door that's
13 open, I believe, is the electric room.

14 Q Okay. That's the door that leads into the electrical room?

15 A Yes.

16 Q Okay. And that's the site where the arc flash occurred?

17 A That's correct.

18 MR. A. GIOVANNIELLO: Okay. Turn to Page 232-1. And I do
19 want to admit this one, Your Honor.

20 THE COURT: 232-1 offered on the same grounds. Any
21 additional record need to be made?

22 MR. KUDLER: No, the Judge has already ruled.

23 THE COURT: 232-1 is admitted.

24 [Defendants' Exhibit 232-1 admitted into evidence]

25 BY MR. A. GIOVANNIELLO:

1 Q And this is more of a closeup of the room, sir?

2 A Yes.

3 Q Okay. I'm going to show you 232-2. Is that the panel?

4 Electrical panel in question.

5 A I believe so.

6 Q Okay. And then this is more of a picture showing the size of
7 the room that you were in, correct?

8 A Yes.

9 Q Okay. And then the panel that we're talking about --

10 THE COURT: What's the exhibit number for the record?

11 MR. A. GIOVANNIELLO: I'm sorry, Your Honor. 232-3.

12 BY MR. A. GIOVANNIELLO:

13 Q And that's the panel right there that you were working on?

14 A That's the one to the right, yes. That I had the covers off.

15 Q That you had the covers off over there. Okay. I want to show
16 you 232-8. More of a close up of that panel?

17 A Yes.

18 Q Okay. And obviously, the panel is gone here, right? So this
19 is an open --

20 A Right.

21 MR. A. GIOVANNIELLO: Right? Okay. And that's it from that
22 exhibit, Your Honor. Do we have the photographs from the expert?

23 [Counsel Confer]

24 BY MR. A. GIOVANNIELLO:

25 Q I wanted to show you some photographs that I believe Mr.

1 Gifford -- Gilford? Gifford? That Mr. Gifford took on the inside of the
2 panel. But while we're looking for those, let me move on and ask you a
3 couple of other questions. How long -- you were at that job for about a
4 week, right, before this arc flash happened?

5 A Yeah, I was helping them. When I got there they were
6 already into correcting the -- separating the electrical systems, fire
7 safety, the critical care, and the regular power.

8 Q Right, because that was the initial job.

9 A Right.

10 Q That was the initial phase of the job --

11 A Correct.

12 Q -- right? To do that, to separate the live --

13 A This was just a service call that they -- we got after they were
14 done, I believe.

15 Q Okay. That was after the -- Phase 1?

16 A Yes.

17 Q Okay. And what -- and was the purpose to bring College Park
18 up to code?

19 A Well, the original work was, yes.

20 Q Right. It was to bring them up to code, right?

21 A Well, to correct the violations that the state inspector called
22 them on.

23 Q Okay. And correct me --

24 A It wasn't -- we couldn't do it and bring the whole building up.
25 That was just far too much work.

1 Q Right, but it was building -- bringing up what the State said
2 needed to be done?

3 A For the power, yes.

4 Q Okay.

5 A Power systems.

6 Q All right. Now, let me ask you about the breaker.

7 Oh, you know what? Before we get there, are you a righty or
8 a lefty?

9 A Righthanded.

10 Q You're righthanded? And it was your left arm that was
11 burned?

12 A Yes.

13 Q Okay. Talking about the breaker, how -- isn't it true that the
14 only way you would know a breaker is faulty is if it doesn't trip, right?

15 A Well, it depends on the breaker. Some of them have a trip
16 setting -- you know, a trip button on it.

17 Q Oh, you just go in and trip, right? And press? But you --

18 A Some of them. The larger ones you can.

19 Q Okay. Did these have that?

20 A I didn't inspect the main breaker.

21 Q No? But you were in there weren't you?

22 A Yeah.

23 Q Okay. You visualized the breaker though, didn't you?

24 A Well, I knew it was there, yeah.

25 Q Okay. Did you know whether or not that was one of those

1 breakers that you could press a button to see whether or not it tripped?

2 A No, because I didn't want to try and test it.

3 Q Why not?

4 A Because we were told not to shut the power off.

5 Q Okay. You're -- but you're --

6 A That wasn't in the scope of our job there that day.

7 Q Okay. But weren't you there working on an energized panel,
8 correct?

9 A Yes.

10 Q I think you said in your direct testimony that you want to be
11 hyper vigilant.

12 A I don't know if I said vigilant, but yeah, something like that.

13 Q Or maybe hyper aware?

14 A Aware, yes.

15 Q Okay. I'm going to use that word and maybe I'll use vigilant.

16 A Okay.

17 Q But you want to be hyper aware? Okay.

18 So isn't it true then that, you know, if you have an electrical
19 breaker, you're not going to know whether or not it trips until it does?

20 A You can count on them tripping if they were installed
21 properly.

22 Q Okay. So -- but if it doesn't, right, you're not -- the question
23 is, if it doesn't, you're not going to know it until it does -- until it doesn't,
24 right?

25 A Correct.

1 Q That's correct, yeah. Okay. Now, you know, this particular
2 breaker; do you know whether or not it had a manufacturing defect? You
3 don't, right?

4 A No.

5 Q Okay. Now --

6 A But I think you should -- I should have been able -- it's safe to
7 assume that it had been tested prior to that.

8 Q Do you regularly go and test breakers?

9 A If that's what they want us to do.

10 MR. A. GIOVANNIELLO: Okay. Do you have the pictures?
11 What exhibits are these, Chris?

12 MR. C. GIOVANNIELLO: I think they're Plaintiffs' 40.

13 MR. A. GIOVANNIELLO: Plaintiffs' 40?

14 MR. C. GIOVANNIELLO: P-40.

15 MR. KUDLER: 40 is Gifford's report.

16 MR. A. GIOVANNIELLO: Yeah, but these don't have numbers
17 on them.

18 MR. C. GIOVANNIELLO: That's what we have. That's what
19 you gave me.

20 MR. A. GIOVANNIELLO: Could you go up there and give him
21 the white book and Exhibit 40? And we'll see what numbers these are
22 for the Court. Show him the inside. I'm not going to show him that one.

23 MR. KUDLER: These ones are not taken by Gifford.

24 MR. A. GIOVANNIELLO: They're not?

25 MR. KUDLER: They may have been attached to the report,

1 but they were not taken by Gifford.

2 [Counsel Confer]

3 MR. A. GIOVANNIELLO: Let's look at Exhibit 5 as well.

4 MR. KUDLER: It's titled nine photos of the scene, I believe.

5 MR. A. GIOVANNIELLO: I'm sorry, Your Honor. This will
6 only take a second.

7 THE COURT: Just following along. I think you're headed for
8 Plaintiffs' 5?

9 MR. KUDLER: 4, Your Honor.

10 THE COURT: 4? Okay.

11 [Counsel Confer]

12 BY MR. A. GIOVANNIELLO:

13 Q Okay. So looking at -- this is Plaintiffs' Exhibit 4. And I'm
14 only going to show you four -- it looks like five pictures -- four pictures
15 from there. So looking at --

16 THE COURT: I just want to make sure. These are all already
17 in either by direct ruling on a previous effort or foundation laid or
18 objection addressed?

19 MR. KUDLER: No objection to Exhibit 4 coming in.

20 THE COURT: All right. So --

21 MR. A. GIOVANNIELLO: It's by stipulation.

22 THE COURT: -- 4 is in by stipulation.

23 [Plaintiffs' Exhibit 4 admitted into evidence]

24 BY MR. A. GIOVANNIELLO:

25 Q Okay. Let me show you the first one that we marked. This is

1 Exhibit 4-20, for the record, of Plaintiffs' Exhibit 4-20. Is this -- what does
2 this depict? Is that depicting the inside of the box?

3 A That's the inside of the panel, yeah.

4 Q Okay. And that's with the panel off, right?

5 A With -- yeah.

6 Q Obviously, see inside; there's no panels on it, right?

7 A Yes.

8 Q Okay. And these are the breakers?

9 A Yes.

10 Q Okay. Let me show you a bit of a better picture. 4-21, same
11 thing. That's what the inside of the panel looks like?

12 A Okay. Yeah.

13 Q Okay. 4-23. Is that the breakers?

14 A Sure.

15 Q Is the breaker that you say didn't go off located here
16 anywhere?

17 A Nope.

18 Q No? Where would that be located?

19 A In the next section over.

20 Q The next section over?

21 A The standup section over.

22 Q Okay. And that would not be this one either, right, 4-24?

23 A No.

24 Q Okay. But this is still the inside of the panel, correct?

25 A Yes.

1 Q Okay. You said you went back to work, you just don't
2 remember when, right?

3 A Not the exact date.

4 Q Okay. But you went back full-time?

5 A Yes.

6 Q Doing okay now?

7 A Yeah. Yeah.

8 Q Good. You're still working full-time?

9 A Yes.

10 Q You're still a, I guess, master electrician without the title?

11 A Sure.

12 MR. A. GIOVANNIELLO: Okay. One second. I think that's all
13 I have for you, Mr. Myers. Thank you very much.

14 THE COURT: Redirect?

15 REDIRECT EXAMINATION

16 BY MR. KUDLER:

17 Q Does it have a location of a backup electrical system?

18 A Yes, it has a backup generator.

19 Q Okay. And if the power goes off --

20 A It has emergency power to them, yeah.

21 Q Okay. If the power goes off --

22 A The generator will energize the life safety panel.

23 Q Okay.

24 A Which is lighting and -- basically, just exit lighting.

25 Q Okay. Would that also power the lifesaving equipment?

1 A Life -- I don't believe they had lifesaving equipment. They
2 weren't allowed to treat patients there.

3 Q Ventilators and things like that. Would it --

4 A That would be critical care power needs.

5 Q Okay. Would the generator power those?

6 A I don't really recall exactly.

7 Q Okay. You mentioned that these things should be tested?

8 A Yes.

9 Q Okay.

10 A There's several agencies that require it.

11 Q Okay. And when you went in, did you assume that these
12 people followed those agency requirements?

13 A Well, you have to.

14 Q Okay.

15 A You know, I can't check every panel of the building before I
16 start working on it.

17 Q And you didn't try and trip the main breaker?

18 A No.

19 Q Okay. Have you ever just gone in and as a part of changing a
20 breaker like in this -- in this here box, tripped the main breaker?

21 A Sure.

22 Q To test it?

23 A When it's -- when you're able to, yeah.

24 Q Okay. And in this case --

25 A You don't trip it; you just turn it off.

1 Q Right, but I mean I'm saying you didn't -- Defense counsel
2 was asking if you tested it to see if this thing would trip.

3 A There's really no way to do that.

4 Q Okay. Like, you know, when I'm in the bathroom of my
5 house and there's a little red button, I can push that and --

6 A A fire breaker, yeah.

7 Q Yeah.

8 A Certain breakers you can.

9 Q Right, and this doesn't have something like that?

10 A Like I said, I didn't inspect that breaker so I'm not really
11 familiar with --

12 Q Okay.

13 A -- exactly what it was.

14 Q Do those kind of breakers have a way of just testing them or
15 you just have to manually shut it down?

16 A Oh, most of the -- well, like, in Alaska for example in the
17 processing facility, yeah, most of those large breakers, you can trip them
18 to turn them off.

19 Q Okay.

20 A Or the lever will turn it off, but there is also a trip button to
21 test it.

22 Q You don't know if this particular breaker had a test button?

23 A I don't think it did.

24 Q Okay.

25 A It just had a trip rating setting on it.

1 Q Okay. And you don't -- you don't recall what that was set at?

2 A I didn't, no.

3 Q Okay. But it never broke?

4 A I wouldn't change it anyways because it should be set prior
5 to --

6 Q Okay.

7 A -- when it was installed.

8 Q That would be the manufacturer's standards?

9 A Well, the manufacturer -- they build it to have a certain range
10 of where you can trip it off at. It'd be an -- an engineer would do the
11 calculations for the -- the cascade of -- it's so the 20 amp breaker doesn't
12 trip the main breaker. It trips -- you know, the one -- they go in a certain
13 order.

14 Q Okay. So the --

15 A But it would be an engineer thing that's on the prints.

16 Q Okay. Not something an electrician would do?

17 A Not typically, no.

18 MR. KUDLER: Okay. That's all I have. Thank you.

19 THE COURT: Recross?

20 MR. A. GIOVANNIELLO: Yes, Your Honor.

21 RECROSS-EXAMINATION

22 BY MR. A. GIOVANNIELLO:

23 Q You had testified earlier that the way the to alter a breaker is
24 you had to look at the numbers on the breaker.

25 A To find the model number, yeah.

1 Q Find the model number? Couldn't you also find that in, say,
2 a manual for the panel?

3 A In the blueprints?

4 Q Yeah. Often the panel comes with a manual.

5 A The panels do come with manuals, but those typically get
6 lost pretty soon on in the building's life.

7 Q Yeah --

8 A But maybe -- yeah, maybe it had it.

9 Q Okay. You can't assume it was lost.

10 A Okay.

11 Q I'm just asking the question. If --

12 A Yeah, you could find it in the manual.

13 Q You could find it in the manual, right?

14 A Yes.

15 Q And obviously, you're familiar with the internet too, right?

16 A Sure.

17 Q It's been around for a long time. It was around --

18 A Yeah.

19 Q -- in 2014 --

20 A Right.

21 Q -- right? Could you also look on the internet and find the
22 breaker for that --

23 A I suppose.

24 Q -- particular panel? You suppose so?

25 A Well --

1 Q All right. So there's at least two different ways now we can
2 find it.

3 A -- now, the panel is made by a manufacturer, but there's
4 different types of breakers you can install in that, so --

5 Q But --

6 A -- knowing the difference between one or the other, I mean,
7 you would know which ones are able to go in there; you wouldn't
8 actually know which one that is of those ones that are able to go in there.

9 Q And you could look at the manual. So now we know there's
10 two ways to do it. You can look in the manual, you can go online, and
11 then the third way you said was to open the panel and look.

12 A Yeah.

13 Q Okay. So you don't necessarily have to open that panel
14 because you can look at the other two --

15 A Well, I --

16 Q -- ways as well, right?

17 A -- just explained to you that you won't be able to tell the
18 difference between two of them if -- they could be different model
19 numbers.

20 Q But the manual might have the right manual number though,
21 right?

22 MR. KUDLER: Your Honor, he's getting argumentative.

23 THE WITNESS: This -- the manual is not going to show the --

24 THE COURT: Sustained.

25 MR. A. GIOVANNIELLO: I'm done, Your Honor.

1 THE WITNESS: Okay.

2 MR. A. GIOVANNIELLO: No further questions.

3 THE COURT: Anything else for this witness? I see two,
4 three, four hands up.

5 [Sidebar begins at 1:22 p.m.]

6 MR. KUDLER: We knew there'd be questions.

7 THE COURT: [Indiscernible] quite a bit happening there
8 [indiscernible]. Factual as well. He might not know.

9 MR. A. GIOVANNIELLO: I'm fine with that as well.

10 THE COURT: No, I know. At least it's not legal or procedural;
11 it's factual. Any objection?

12 MR. KUDLER: No objection.

13 THE COURT: They're all coming in [indiscernible].

14 MR. A. GIOVANNIELLO: Some of these are pretty good
15 questions I should have asked.

16 THE COURT: Factual. This one we can't ask, I don't think.

17 MR. A. GIOVANNIELLO: Yeah, I agree.

18 MR. KUDLER: Yeah.

19 THE COURT: Okay.

20 [Sidebar ends at 1:24 p.m.]

21 THE COURT: As a master electrician, is working on a hot box
22 the most dangerous part of your job? If so, would it be prudent to check
23 all your surroundings, including what is above your head in line of sight?

24 THE WITNESS: I've been in much dangerous -- more
25 dangerous situations than that like falling from heights or something, but

1 yeah, typically, you should check the panel and I did. I didn't look above
2 that divider because typically that's a grounded section of the panel.
3 Those wires up there. So there shouldn't have been any hazard and I
4 didn't need to mess with those. I was looking at the section where I was
5 going to be working on it and I determined that that was safe to work on.

6 THE COURT: Was there an arc flash calculation or
7 assessment done?

8 THE WITNESS: Well, the arc flash rating is by the voltage of
9 the -- the panel and 208 volts is the lowest voltage a panel could be, so
10 you're required for the PPE, I assume, you're referring to -- is that arc
11 flash rating determines what the PPE you're required to wear. I don't
12 know. Did that answer it?

13 THE COURT: Were arc flash boundaries set?

14 THE WITNESS: Well, that -- the boundaries -- okay, the
15 different ratings have different distances from the exposed bus bars
16 that -- where you have to be wearing your PPE. And that room is so
17 small that, I mean, you can't -- anywhere in front of that panel you're
18 required to wear the PPE, which I had on.

19 THE COURT: Were there arc flash labels on the sub -- on the
20 switch gear?

21 THE WITNESS: You can see right here that they're not on
22 there, but when this gear was installed they probably weren't required.
23 But if -- but the code requires it now, so they -- they should have had
24 somebody do that already.

25 THE COURT: Is it part of your process to check maintenance

1 logs before you perform work on a breaker? Were those logs checked?

2 THE WITNESS: No logs were made available for me to
3 check.

4 THE COURT: You mentioned the breaker had not been
5 properly maintained. Are you required to continue working on
6 equipment if it hasn't been properly maintained?

7 THE WITNESS: Well, I can only say that I believe that it
8 wasn't maintained after that incident. Before that incident, all you can do
9 is assume that it had been.

10 THE COURT: The third employee on the job during the
11 event, his qualifications, duties or purpose?

12 THE WITNESS: Can you repeat that?

13 THE COURT: The third employee on the job during the
14 event, his qualifications, duties or purpose?

15 THE WITNESS: I believe that was Jason, and he was -- he
16 was an apprentice. And he was to keep people -- anybody from trying to
17 walk into that room while we were in there working.

18 THE COURT: Any additional questions from the jury as a
19 consequence of the questions asked? I see two more hands up.

20 [Sidebar begins at 1:27 p.m.]

21 MR. A. GIOVANNIELLO: I'm going to object to that one. It's
22 going to call into question some hearsay testimony.

23 MR. KUDLER: Not necessarily.

24 MR. A. GIOVANNIELLO: Oh, yeah.

25 THE COURT: How do we get to -- brief me on -- how do we

1 get the screws falling into the panel? Was it just -- was there a screw
2 recovered somewhere?

3 MR. A. GIOVANNIELLO: No.

4 MR. KUDLER: The screw -- the screw evaporated.

5 THE COURT: Evaporated. That's your theory of the case.

6 MR. A. GIOVANNIELLO: That's his theory.

7 THE COURT: And you're saying no screw ever existed?

8 MR. A. GIOVANNIELLO: I say no screw ever existed. I think
9 he --

10 THE COURT: So if I read this question to them, what hearsay
11 do you anticipate him using to try to answer the question?

12 MR. A. GIOVANNIELLO: He's probably going to say that after
13 the fact some fireman said that, oh, this is what must have caused it.

14 THE COURT: Is that all you have?

15 MR. KUDLER: No. Mr. James investigated after the fact the
16 next day and he found that there were two screws that had been up on
17 that ledge. One was still there, and one was gone.

18 MR. A. GIOVANNIELLO: But that --

19 THE COURT: And you're going to -- you anticipate getting
20 that? On the --

21 MR. A. GIOVANNIELLO: But that's not --

22 THE COURT: I'm actually going to -- I'm not going to read
23 this question, but I'll let you [indiscernible] Mr. James. All right. Let's
24 just go with the six. It's factual. See everybody is trying to get -- they're
25 all trying to get in front of the screw. It's really more of a -- it's not really

1 factual. Beyond the scope of the witness [indiscernible] to testify. So
2 that one's out.

3 Mr. Kudler, you'll have to go with your other witnesses,
4 okay?

5 All right. Let's just do this one then.

6 [Sidebar ends at 1:30 p.m.]

7 THE COURT: Were there any -- were there any recent testing
8 stickers on the main breaker indicating it had been tested recently?

9 THE WITNESS: I believe you can see a picture of it in here
10 and there was no stickers on it.

11 THE COURT: Any additional follow-up questions from the
12 jury?

13 Seeing no hands. Follow-up, Plaintiff, to jury questions?

14 MR. KUDLER: No, thank you.

15 THE COURT: Defense?

16 THE COURT: Please step down.

17 [Designation of the record ends at 1:30 p.m.]

18 [Matters continue]

19 [Designation of the record beings at 2:08 p.m.]

20 THE COURT: All right. Call your next witness.

21 MR. KUDLER: At this time, I guess, we have Andrew James.

22 ANDREW JAMES, PLAINTIFFS' WITNESS, SWORN

23 THE CLERK: Please take a seat. Please state and spell your
24 first and last name for the record.

25 THE WITNESS: Andrew James, A-N-D-R-E-W J-A-M-E-S.

1 THE COURT: Counsel, your witness.

2 MR. KUDLER: Thank you.

3 DIRECT EXAMINATION

4 BY MR. KUDLER:

5 Q Mr. James, let's talk about your electrical background. When
6 did you start -- first start working in the electrical field?

7 A Around 1986.

8 Q Okay. And in 1986, what -- how were you work -- what were
9 you doing?

10 A I was an apprentice electrician in New York.

11 Q In New York?

12 A Yes.

13 Q Okay. And in New York, how long did you continue to work
14 as an electrician?

15 A I journeyed. I got my first journeyman's license in 1989 and
16 continued on from there.

17 Q And how long did you continue to work in New York?

18 A On and off -- I was in New York. Then we moved to
19 Washington and then lived in California, lived here. So it was -- I worked
20 in New York probably for a total of two, two and a half years.

21 Q Okay. And then you worked in Washington as an electrician?

22 A Yes.

23 Q Also obtained a journeyman's status?

24 A Yes.

25 Q Anything beyond that in Washington?

1 A No.

2 Q How did you work in Washington?

3 A About three years.

4 Q Okay. And then to California?

5 A Yeah. I worked in California for about a year.

6 Q Did you work as a journeyman?

7 A Yes.

8 Q Okay. In all these, when you're talking about getting --

9 working as a journeyman, is this a test that you have to pass?

10 A Yes.

11 Q And you have to have a certain amount of hours?

12 A Correct.

13 Q And the hours from New York count to Washington and

14 those hours count to --

15 A Generally, yes.

16 Q Okay.

17 A Yeah. There -- there used to be a lot more reciprocity

18 between the states. Now there's more borders. Back then, it was a lot

19 more accepted to be -- if you were licensed in one state, you'd be

20 accepted in others. Federal government is one exception. You're

21 licensed in one state, you're licensed anywhere for the feds.

22 Q Okay. Now, when did you come to Nevada?

23 A 2003, I believe, 2004. Somewhere around there.

24 Q And did you start working as an electrician?

25 A Yes.

1 Q And where were you -- where did you start working?

2 A I can't remember the name of the company. That was a long
3 time ago, the very first company I worked for here. But I've worked for
4 Advantage Electric here, which went into Advantages Services here and
5 then obviously Industrial Light and Power.

6 Q Okay. Now, in California, were you a master electrician as
7 well?

8 A No.

9 Q Okay. How about here?

10 A Here I'm a master electrician. I'm an ICC master electrician
11 and a PEC master electrician.

12 Q Okay.

13 A PEC is -- Clark County used to recognize ICC, which is the
14 International Code Council as a master electrician and that's who
15 basically licenses all of building inspectors, electrical inspectors, that
16 kind of thing. They changed recently to Professional Electrical
17 Consultants, PEC, which is a whole other test. So I maintain master
18 electrician's licenses with ICC and with PEC.

19 Q Okay. Now, you said you started working for ILA,
20 Industrial --

21 A Yes.

22 Q -- Light and power. Tell the jury that company came to be.

23 A My father-in-law basically asked me one day what I wanted
24 to do, and I'd been working for other electricians and have electrical
25 contractors go out of business and just pack up in the middle of the night

1 and that kind of thing and been shafted on paychecks and that kind of
2 thing. So he basically said yeah, why don't we -- you know, you have the
3 skills, and he had the money. Said why don't we put together our own
4 company and actually start an electrical contracting business specializing
5 in commercial and heavy industrial. So that's my background. So that's
6 what we did.

7 Q Okay. And the company is in whose name?

8 A It's 100 percent my father-in-law.

9 Q Okay. Who runs the company?

10 A I do.

11 Q Okay. Where does -- and your father-in-law is Doug Smith?

12 A Yes. Yes.

13 Q And where does Mr. Smith live?

14 A He lives up in Spokane, Washington.

15 Q Okay. And he's lived up there the --

16 A Yes.

17 Q -- the whole time?

18 A Comes down here a couple times a year, but yes, he lives up
19 there --

20 Q Okay.

21 A -- full time.

22 Q Do you -- when you guys started, did you guys talk about
23 bids on jobs and things like that and was he involved in any of that
24 portion of it?

25 A Yeah. He still gets the final say on any financial decisions.

1 It's his name. We go -- we do a large project, you have to do what are
2 called payment performance bonds for municipalities in the federal
3 government, that kind of thing. And you have to have extremely good
4 credit and extremely good levels of liquid funds in the bank, so anything
5 like that, if it's a large expenditure for the company, if it's a cap ex, a
6 capital expenditure for the company, any kind of bonding issues, any
7 kind of large, municipal jobs that are, you know, hundreds of thousands
8 of dollars. Our bid limit is three million. But he has the final say in those
9 and he takes -- you know, he does like his own risk analysis and decides
10 whether or not we proceed.

11 Q So he wants to decide if he's going to put his --

12 A Correct.

13 Q -- his butt on the line?

14 A Correct.

15 Q Okay. When the company first started, you obtained a
16 contractor's license?

17 A Yes.

18 Q Electrical contractor's license. Are there any requirements
19 in -- for a person to act as the qualified employee for that?

20 A Yeah. You have to take the construction management course
21 for the State of Nevada, which is basically construction industry law,
22 rules on liens, that kind of thing. And then you have to take a qualified
23 employee test, which is -- so if you're a plumber, you have to take the
24 plumbing qualified employee test. If you're an electrical contractor, you
25 have to take the electrical qualified employee test. I took both and I am

1 the qualified employee for Industrial Light and Power. I'm the
2 construction management expert and I am the electrical expert for the
3 company.

4 Q Okay. And that's been the case since the company was
5 formed?

6 A Correct.

7 Q And when was it formed?

8 A 2010.

9 Q Okay. Doing that and -- as part of your job, do you keep track
10 of codes?

11 A Oh, yes.

12 Q Okay.

13 A Very much so.

14 Q Just -- if you can just name a few of those codes off the top
15 of your head.

16 A Well, the electrical industry is governed by the NEC, which is
17 the National Electrical Code, which is written and published by the
18 National Fire Protection Association, which is referred to as NFPA. The
19 specific section for electrical safety is NFPA 70(e). So we have NFPA
20 70(e), which basically publishes the NEC, the National Electric Code,
21 which every state in the United States has, you know, brought into their
22 understanding is that that's what they want to have their electrical
23 installations installed to. They've adopted it. Excuse me. And then
24 OSHA. There's various parts of OSHA that are requirements. And
25 there's -- obviously, for healthcare facilities, there's other certain

1 regulatory agencies that are dictating certain safety procedures.

2 Q Okay. What was your first contact with College Park?

3 A We were hired to build -- actually, we were invited to bid on a
4 65,000 square foot ground up brand new nursing home for the
5 Defendants. And we were solicited by a general contractor out of Tyler,
6 Texas, to submit a bid for this job. We submitted a bid. We won the bid.
7 You go through all the processes with requests for information, which
8 are called RFIs with the architect, the engineers, everybody.

9 And while we were waiting for all that to happen, they had --
10 because they worked for the Defendants, they had some work that
11 needed to be done at College Park, so they asked us to give them a quote
12 to do the electrical portion of the work at College Park. And there was
13 some other drywall work and some other, you know, ancillary things that
14 had to be done, but we gave them the bid to do the electrical work while
15 we were kind of waiting for the large ground-up nursing home facility to
16 stop.

17 Q The bid at College Park, what was the purpose of that work?
18 Initially, the first phase was they wanted to add ventilators in one wing of
19 the facility, so they wanted to add critical branch circuits in certain
20 rooms. There's three power systems, I think as Mr. Myers discussed.
21 There's life safety, critical branch and normal power. Those additional
22 circuits they wanted to add were on the critical branch circuit and they
23 were for -- basically for ventilation -- for ventilator equipment, because
24 they wanted to start offering ventilator service to one wing of the
25 patients in the facility. That was the very first phase of the job was to

1 add these critical branch circuits.

2 Q And that went fine?

3 A That went fine.

4 Q Okay. Was there some state requirement in regards to what
5 needed to be done in the complex to come up to code?

6 A So what happened is during phase two of the project, which
7 was an upgrade of the generator automatic transfer switches and a
8 couple of panelboards inside the facility, they -- and I don't believe that
9 was a state requirement. I think that was just something that College
10 Park wanted to upgrade, because the ATS, automatic transfer switches,
11 that switched the power over to generator was old. They were having
12 issues with it. And in the scope of that part of the job, we had an
13 electrical inspector come out to inspect what's called roughing electrical.
14 The one -- you know, just basically doing the initial inspection.

15 And while the inspector was there, he saw that they had what's
16 called intermingled, comingled life safety, critical branch and normal
17 power circuits were in the same junction box as panelboards and
18 conduit, raceways and that violates code. He would not give them any
19 inspections until that was corrected. And so I then went to SCI
20 construction and said we're -- here's where we're at. We can't get
21 anything done unless you guys fix this. And then they asked me for a
22 quote to fix that. We gave them a quote they signed it and we
23 proceeded and did it.

24 Q Okay. And was that done before June 6th?

25 A Yes.

1 Q Were you -- did you actually touch this kitchen breaker at that
2 time?

3 A Yeah. It was under the scope of that second job that they
4 then asked us to change a circuit breaker that they were going to supply.
5 And we -- it was just a change order under that job. I think it was
6 changer order number 3, because there were two previous change
7 orders. But I believe it was change order 3. And it was just a change
8 order just to install a customer supplied breaker.

9 Q Okay. And did they want that during the day or during the
10 night?

11 A During the nighttime, because of the kitchen. They didn't
12 want the kitchen shut down and they wanted it done at night.

13 Q Okay. Prior to that point, had either you or Jeff or any of
14 your employees touched that kitchen breaker?

15 A No.

16 Q Okay. Had you guys been in that box?

17 A I -- before that point, I don't believe so, no.

18 Q Okay. How much did you bid for that job?

19 A For the -- just changing the breaker?

20 Q Yes.

21 A \$345, I believe was the change order to install --

22 Q And --

23 A -- the breaker.

24 Q -- how much did the breaker itself cost?

25 A Around \$1,000.

1 Q So that \$345, what did it entail? I mean, what was it for?

2 A Installing their breaker. They supplied a breaker. We
3 installed it. That was the price for us to install it.

4 Q That was labor only?

5 A Yes.

6 Q Okay. So you went there that night. Were there other things
7 going on electrically that evening?

8 A Yes. Yeah. We had -- we got there. We finished up. There
9 was a couple of things in the attic that needed to be done from that day,
10 because we worked that day as well. There were a couple of things in
11 the attic that needed to be finished up. Those got finished up that night,
12 because they had a state inspection coming, I believe the following week
13 and they needed some emergency lighting repaired that hadn't been
14 working that the state inspectors called them on. So that got fixed that
15 night and then 11:00 rolls around and we start, you know, really getting
16 into changing the breaker.

17 Q Okay. What -- who was doing the actual work touching the
18 breaker?

19 A Jeff.

20 Q The panel itself?

21 A I mean, Jeff and I both worked on it, but Jeff was the one that
22 was actually changing the breaker.

23 Q Okay. What was your job while you were there?

24 A Oversee and just help Jeff, you know. Parts, you know, that
25 kind of thing and just make sure everything goes smooth and to make

1 sure that the keys got given back to the front desk.

2 Q Okay. And those were keys that were left for you, so that you
3 can get in the room at night?

4 A Yes.

5 Q Okay. Jeff mentioned that when he took the screws out, he
6 gave them to you. Where did you place them?

7 A So on the back -- on the complete opposite wall directly
8 ahead of -- in front of panel MSA where the arc flash incident happened,
9 there's a series of panels. They call them gutters. It's basically just an 8
10 by 8 square box, long box. Almost acts like a shelf. That's where the
11 screws were being set.

12 Q Okay. Take everything off?

13 A Uh-huh.

14 Q Okay. What happens next?

15 A Took everything off. Took the side panels off. Took the dead
16 front off. Start -- pulled off -- you know, saw the damage to the breaker
17 from the burned wires and Mr. Myers testified to. And Jeff started
18 removing the old breaker.

19 Q Okay. Did he get the old breaker out?

20 A Yeah.

21 Q Okay.

22 A He did.

23 Q During this time, was Jeff wearing protective equipment?

24 A We both were.

25 Q Okay. And what code set forth the requirement in 2014 for

1 the protective equipment that was necessary for this type of work on this
2 type of box?

3 A NFPA70 in the 2012 edition would be the -- the in full force
4 and effect code for the date that this happened.

5 Q Okay. What were you required to be wearing?

6 A Safety glasses, flame retardant shirt, flame retardant pants,
7 steel toed shoes and that's it.

8 Q Okay.

9 A And gloves. Sorry.

10 Q Were you wearing those?

11 A Yes.

12 Q Okay. Even though you weren't touching the box --

13 A Yes.

14 Q -- you were wearing them. And was Jeff wearing those?

15 A Yes, he was.

16 Q Okay. Anything else required under the NFPA to be worn --

17 A Not at --

18 Q -- for under 240 volts?

19 A Not at 240 volts or less, no.

20 Q Okay. You know, there was discussions with Jeff by both
21 myself and Defense counsel regarding identifying the proper breaker.

22 A Okay.

23 Q Okay. And Defense counsel said well, the manual is going to
24 show which breakers are which.

25 A Right.

1 Q Okay. How many different types of breakers can be put into
2 that particular box?

3 A Well, you have to go back a little further than that and you
4 have to say, okay, the brand of that panel was manufactured by a
5 company called challenger. Challenger shortly thereafter changed to a
6 company called Zinsco. Zinsco then shortly thereafter was bought by
7 Westinghouse. Westinghouse was then acquired by Cutler Hammer.
8 Cutler Hammer was no acquired by Eaton. That many companies have
9 breakers that'll go in that panel.

10 There's been multiple brands of breakers in that panel. They're not
11 all the original breakers. So if you had the original manual for that
12 challenger panel and looked at the model number of the breaker, it's not
13 the breaker you'll get, because you'll never buy that breaker right now,
14 because it's completely discontinued.

15 Q Were they discontinued in 2014?

16 A Yes.

17 Q Okay. So you would have to -- if you were replacing
18 something, you would have to know exactly what -- well let me ask this.
19 What are the variables on the types of breakers?

20 A Multiple. I mean, the easiest way to do that would be to look
21 at the front of the breaker, see if it's a, you know, F70SK, what -- you
22 know, whatever frame size the breaker is and you can quickly say, okay, I
23 know an Eaton, you know, F frame breaker fits in this panel. And that's
24 all you need to know.

25 Q Okay.

1 A But you have to take the dead front off to be able to find that
2 out.

3 Q Right. But are all Eaton breakers that fit the F70 panel the
4 same, or are there different breakers with different power loads and
5 capabilities?

6 A No, there's different breakers.

7 Q Okay.

8 A There's what are called KAIC ratings, which is the amount of
9 -- the amount amps that'll -- basically the breaker will withstand under a
10 dead fall.

11 Q Okay. Is that -- let's say if you did have the original manual --

12 A Uh-huh.

13 Q -- for that, would you be able to identify the breaker number
14 A or B or whatever it is, exactly what kind of breaker that was? Just by
15 looking at the manual?

16 A It would give you a part number. It would give you -- it
17 might. Okay. Challenger is old. It might give you a part number. It
18 might say this panel uses this Westinghouse breaker, but then you have
19 to go find that breaker and try to find a modern day breaker that fits
20 where that breaker goes --

21 Q Okay.

22 A -- you know. And it's a tricky thing to do. It's not something
23 -- when you get into these old Westinghouse, Zinsco Challenger
24 panelboards, they're just -- they're old. There's -- you know, that's the
25 only fault is that they're just old, you know. And technology changes

1 and all these old breakers are just -- they're discontinued.

2 Q Being an electrician, how would you -- if somebody had a
3 bad breaker --

4 A Uh-huh.

5 Q -- how would you determine which one to buy?

6 A Pull the dead front off. Get -- take a picture of the front of the
7 breaker and then go order that exact breaker. I mean, that's what would
8 I do. And then if I can't find it, you have to start doing the work, you
9 know, start to cross-reference it into something that'll fit in that panel.

10 Q Okay.

11 A But it's a drawn-out process.

12 Q Right. And getting the right amperage load?

13 A Yes.

14 Q Okay. And can you tell that from the dead front with the
15 dead front on?

16 A No. If the dead front is installed property and there aren't,
17 you know, components missing from the dead front, you can't tell that.

18 Q Okay. And the breaker was supplied by?

19 A Roy Comstock at College Park supplied the breaker.

20 Q Now during the time that you were there before this night --
21 because Roy wasn't there that night, correct?

22 A Correct.

23 Q Prior to this, had you had conversations with Roy?

24 A Yes.

25 Q Did you ever talk to Roy, did ever talk about the types of work

1 that he did there?

2 A Many times.

3 Q Did he ever say that he was in that panel?

4 A Many times.

5 Q Okay.

6 A More times that he can remember is -- were his exact words.

7 Q Okay. So he told you I've been in this panel more times than
8 I can remember?

9 A That's correct, sir.

10 Q Okay. What were your thoughts on --

11 A Eye roll. I mean, looked at the other guys and just be like,
12 you know, great, you know. But that was -- I mean, really, that's -- you
13 know, he shouldn't be in that panel.

14 Q Okay. So you opened up the panel. You were in your PPE.
15 Are you qualified to be in that panel with the power on?

16 A Absolutely.

17 Q Okay.

18 A For any code on planet Earth, I'm qualified to be in that panel
19 fully energized.

20 Q Okay. At that time, did you, along with Jeff, take a look at the
21 area you were going to be working in?

22 A Absolutely.

23 Q Did you look at the energized bus?

24 A Completely inspected the energized bus when the -- as soon
25 as the dead front was off.

1 Q And any issues with the energized bus?
2 A None.
3 Q Okay.
4 A Other than melted wires on this one breaker. That was the
5 only obvious sign of anything wrong.
6 Q And that was the breaker you were replacing?
7 A Correct.
8 Q Okay. And when Jeff was reinstalling it, he resolved that
9 situation?
10 A Correct.
11 Q Okay. When this actually occurred, when the flash occurred,
12 where were you looking?
13 A I was turning. He was on the last screw to install this breaker
14 and I was turning away from him to get the screw off the panel, off the
15 gutter that was right behind me when to quote Jeff, all hell broke loose
16 and that's when -- like it was like the end of the world in that room.
17 Q Okay. Did you see a screw fall?
18 A No, absolutely not.
19 Q Okay. At that time, where were your tools?
20 A In my tool bag.
21 Q Okay.
22 A They were sitting actually right outside the electrical room.
23 Q Okay. None of your tools were damaged?
24 A None.
25 Q Did you at some point after look at Jeff's tools?

1 A Yes.

2 Q Were any of --

3 A No.

4 Q -- his tools damaged?

5 A We did a full tool count. There was nothing damaged.

6 Q Nothing missing, nothing gone?

7 A No. Nothing.

8 Q Any of the screws that you guys had removed, were any of
9 those missing?

10 A No.

11 Q Okay. When this occurred, this flash, okay, you didn't know
12 exactly what happened?

13 A Correct.

14 Q Okay. You then went into the building?

15 MR. A. GIOVANNIELLO: I'm going to object. That's kind of
16 leading.

17 MR. KUDLER: Okay.

18 THE COURT: Sustained.

19 BY MR. KUDLER:

20 Q What did you do next?

21 A Went into the building.

22 Q Okay. What'd you do in the building?

23 A We went into the -- there's a side door right to the left of
24 where that pit photo was earlier, the evidence of the electrical room.

25 There's a side door that goes down a maintenance hallway kind of by the

1 janitorial services and the cafeteria. Make a right and you can go
2 straight down into like the main lobby where the receptionist is, the night
3 receptionist.

4 Q Okay.

5 A We went down there. And that's where Jeff had a seat in the
6 waiting room. And you know, we were trying to get somebody to call
7 911. It took a bit, but ultimately, one of my guys ended up calling 911.

8 Q Okay. And then ambulance shows up?

9 A Yes, sir.

10 Q What'd they do? What do you recall them doing?

11 A They -- I mean, they treated us. You know, they got us right
12 into the ambulance and gave us -- gave me -- I don't know exactly what
13 they gave Jeff in the ambulance. They gave me a shot of morphine in
14 the ambulance and --

15 Q Where were you feeling pain?

16 A In my arm.

17 Q Okay. Where in your arm?

18 A Right there. Elbow, right where I got burned.

19 Q Could you roll up your sleeve?

20 MR. KUDLER: And without saying anything, you know, if he
21 could approach the jury and show them.

22 THE COURT: Any objection?

23 MR. KUDLER: No objection.

24 BY MR. KUDLER:

25 Q Any other burning that you recall?

1 A I don't recall the ear, but not -- I was kind of out of it that
2 night, so I don't -- I didn't have any like lasting burns on my ear.

3 Q Okay. You get in the ambulance. Where do you go?

4 A UMC to the burn center, the trauma center at UMC.

5 Q Okay. How long were you there?

6 A I was there for several hours, I believe. They got me in.
7 They -- I called my wife and she came over from Pahrump. I started
8 getting treatment at the -- at UMC.

9 Q Okay.

10 A And they watched me for a little while and then they decided
11 to discharge me, as was testified to earlier.

12 Q Okay. You went home that night?

13 A Yes, I did.

14 Q Okay. Did you go back to the jobsite the next day?

15 A I did.

16 Q Okay. When you left the jobsite, you say you -- well, did you
17 close everything up?

18 A No.

19 Q Okay. What'd you do?

20 A Well, we had two other guys there with us that night,
21 actually. There was -- I mean, I know it was testified to there was three
22 guys there. There were four guys there that night. But they closed up
23 the electrical room, locked it up and took the key and then I came back
24 the next morning.

25 Q Okay. When you went back the next morning -- well, let me

1 ask you this. So at UMC there was a form that was shown that you filled
2 out that said you didn't know what happened --

3 A Correct.

4 Q -- but there was an arc flash?

5 A Right.

6 Q When you wrote that at UMC on the 6th, was that true?

7 A That was true. I did not know what happened.

8 Q Okay. Did you wonder what happened?

9 A Absolutely.

10 Q Okay. Did you investigate what happened?

11 A The next day, I did.

12 Q Okay. What did you actually do and what did you actually
13 see?

14 A I actually saw -- I was informed that --

15 Q I just want to know what you saw.

16 A Okay. I saw on the -- I -- it's kind of like a fiberglass slash
17 phenolic insulator under the neutral bus, got up on a ladder and saw
18 evidence. There was one screw laying up there and this insulator, this
19 panel, again, is old. It's from the 80s. Insulator is covered, you know,
20 eighth of an inch thick of dust on it. And you could see two outlines,
21 basically. And one is where one screw was still at and the other outline,
22 where another screw used to be wasn't there. So you could clearly see
23 that there used to be two screws laying there and one of them was not
24 there.

25 And then, when you hold that screw up to the fingers that Don

1 Gifford and others have talked about before, that screw was just long
2 enough to span the gap between two fingers in the -- between B and C
3 phase on this -- on this bus on the right hand side and cause the dead
4 short on B and C phase.

5 Q If you look in your book at Exhibit Number 4 and I want you
6 to look at the first picture. It's Bate stamped 19.

7 A Yes. Yes.

8 Q Is that your fingers?

9 A Yes.

10 Q Okay. Is that you holding the screw?

11 A Yes, it is.

12 Q And all of these pictures, these nine pictures in Exhibit 4 you
13 took?

14 A Yes, I did.

15 Q And these were taken the next day?

16 A Yes.

17 Q Okay. And this was documenting your investigation?

18 A Correct.

19 Q And so that first picture is one of the screws? The screw that
20 was still there?

21 A Yes.

22 Q Was that one of the screws you guys removed?

23 A No, it was not.

24 Q And then it's hard to see, but looking at the last picture there
25 that's marked 27 --

1 A Yes, sir.

2 Q -- that's the screw in the place where you found it?

3 A Correct.

4 Q And there was another kind of shadow where another screw
5 was?

6 A Correct.

7 Q And when you're talking about a shadow, you're talking
8 about where dust wasn't?

9 A Cor -- that is correct.

10 Q Okay. So dust had settled and left an area that --

11 A Right.

12 Q -- under the screws? Did you look for that second screw?

13 A Yes.

14 Q Did you ever find it?

15 A No.

16 Q Okay. The arc flash itself, do you know where in the panel
17 that occurred?

18 A From the evidence, I do.

19 Q Okay. And what evidence do you have that shows you
20 where it occurred?

21 A Well, just from when we were standing -- where we were
22 standing in front of the panel, the arc flash started roughly knee height,
23 because that's where the blast of energy came from was that low. And
24 then it propagated up the panel as it jumped bus to bus to bus between
25 these breakers. This panelboard has -- you know, as you've photos or I

1 don't know if the jury's seen them or not, but it has banks of breakers. In
2 the very bottom of the right side of the panel are what are called these
3 fingers, which is where the breakers mount.

4 There was an open position for a future breaker, where the fingers
5 are just -- there's just three fingers sticking out like this. I believe that
6 screw -- based on the fact that the tips of those fingers are completely
7 blown away and don't exist anymore, I believe the screw fell
8 miraculously all the way down through the center of the gears, where all
9 these other fingers hit these last two fingers, exploded and then the
10 plasma arc jumped breaker to breaker to breaker.

11 And the evidence of that is all the nuts -- all the fastening hardware
12 for those breakers within, I think the five breakers above the break, the
13 bottom part, where I saw the fingers burned, all of those breakers are
14 welded to the finger kits. You can't even tell it's a nut or a bolt. It just
15 looks like a glob of shiny metal, because the breakers are permanently
16 welded to the panel, because they all melted.

17 Q Okay. Were they like that when you inspected it before you
18 did the job?

19 A No. Absolutely not.

20 Q You said those fingers at the bottom. Had you looked at
21 those before this happened?

22 A Yes.

23 Q Were the tips of those blown off at that point?

24 A No. They were not deformed in any way.

25 Q Okay. Was anybody working on those bottom fingers?

1 A No. We had -- we weren't doing anything near the bottom.

2 Q And all the screws, are -- were they accounted for?

3 A Yes, they were.

4 Q Okay. And all the tools were accounted for?

5 A Yes, they were.

6 Q Okay. Was that the extend of the investigation you did into
7 the cause?

8 A Yeah. I mean, yeah. For the next day, yeah, just trying to
9 figure out what had happened, because like the night of -- the night that
10 it happened as I said in the UMC paperwork, I didn't know what
11 happened. So full inventory of all the tools. Nothing was burned.
12 Nothing was arced. No evidence of anything that we did was damaged
13 from any kind of arc or any kind of contact between energized buses or
14 anything. And therefore, just logic dictates to me that you know, it was
15 this one screw that was obviously on the neutral bus at one point fell and
16 caused this arc flash. And then screw completely vaporized.

17 Q Okay. When you say it was on the neutral bus, you're talking
18 about that --

19 A The insulate. I'm sorry, yes. The insularly right before the
20 neutral bus.

21 Q Okay. I want to look at -- it's in a different book. The third
22 book is Exhibit 39.

23 MR. A. GIOVANNIELLO: It was, yes.

24 MR. KUDLER: Thank you. And I was just checking to verify
25 that that's already been admitted into evidence.

1 BY MR. KUDLER:

2 Q Exhibit 39 is the energized electrical work permit?

3 A Yes, sir.

4 THE COURT: My clerk's indicating --

5 MR. KUDLER: Oh.

6 THE COURT: -- differently. Is it --

7 MR. A. GIOVANNIELLO: It's admitted as Exhibit 40?

8 MR. C. GIOVANNIELLO: I think it was admitted as one of our
9 exhibits, but let me look. One sec.

10 THE CLERK: We had 239 admitted yesterday.

11 THE COURT: If there's no objection, it's easy.

12 MR. A. GIOVANNIELLO: There's no objection.

13 THE COURT: Okay. 39 is offered. Is there any objection?

14 MR. A. GIOVANNIELLO: No.

15 THE COURT: Plaintiffs' 39 is offered. Hearing no objection,
16 Plaintiffs' 39 is in.

17 [Plaintiffs' Exhibit 39 admitted into evidence]

18 MR. KUDLER: And it's also in their book and that was the
19 issue.

20 BY MR. KUDLER:

21 Q So this -- who designed this?

22 A It's a template that we've used for a long time. There's
23 electrical companies that make electrical form templates, safety
24 meetings, weekly meeting sheets, that kind of thing and energized
25 electrical work permits.

1 Q And at some point, were you told that they didn't want the
2 power shut off?

3 A Yeah. Yes.

4 Q Okay. And then you generated this?

5 A Yes.

6 Q Okay. It's got your signature on there twice?

7 A It does.

8 Q Okay. It also has another person's signature. Do you know
9 who that is?

10 A It was sent to Darrin Cook, who was the administrator, I
11 believe, or the director at the time. I can't read what that says, so I'm
12 assuming that's his signature. It was emailed to him and emailed back
13 to us from him, so I believe that's his signature.

14 Q Okay. And was he the person who told you that it needed it
15 needed to stay hot?

16 A Yes, he is.

17 Q Okay. So that's why you sent it to him?

18 A Correct.

19 Q Okay. And it says here that you're supposed to check the
20 energized bus?

21 A Yes.

22 Q And you guys -- did you do that?

23 A Yes, we did.

24 Q Okay. It also notes on the second page there's a note under
25 evidence of completion of a job briefing, including discussion of any job-

1 related hazards?

2 A Uh-huh.

3 Q What does that say?

4 A It says, "12208 three phase gear has no existing arc flash
5 information. Boundary -- boundary unknown. Fault current unknown."

6 Q And is that something that should be available to a person
7 that goes into that room?

8 A It's required.

9 Q Okay. What is required?

10 A It's required. It's actually the property owner's responsibility
11 to label all equipment that's not in a dwelling with the available arc fault
12 current, the arc flash boundary, the system operating voltage. And I
13 believe that's it per the most recent NFPA.

14 Q Was that true also in 2014?

15 A Yes, it was.

16 Q Was there any labeling?

17 A No, there was absolutely no labeling.

18 Q Okay. You understood that it was a 110208 box?

19 A Yeah. Yes.

20 Q Okay. Had anybody advised you that none of the breakers
21 had been tested?

22 A No.

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

25 A Yes.

1 Q Why?

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

11 Q Were you ever offered a log book, a maintenance book?

12 A No.

13 Q Did you ever ask for one?

14 A No.

15 Q Do you know if anybody ever asked for one?

16 A That day?

17 Q At any time.

18 A I know you did.

19 Q Okay. Did you see their response?

20 A I did.

21 Q What was their response?

22 A We have no such log book.

23 Q Okay. So even if you had asked for one --

24 A They -- yeah, they wouldn't have been able to produce one.

25 Q Okay. In a normal event of this, where there is a short, what

1 should happen?

2 A Breaker should trip instantaneously. I mean, within less than
3 a -- far less than a second.

4 Q Okay. What's that breaker there for? I mean, what's the
5 purpose of having a breaker like that to trip?

6 A To protect against exactly what happened.

7 Q Okay. Did this breaker trip?

8 A It never tripped.

9 Q Okay. How do you know that?

10 A None of the lights went off in the building. We didn't have to
11 reset the breaker. Light in the electrical room itself that we were
12 standing in, after the arc flash happened never shut off.

13 Q Okay.

14 A Yeah, the main breaker for feeding panel MSA that should
15 have tripped to prevent the arc flash from really developing into a
16 plasma ball never did.

17 Q Did the generator ever go on?

18 A No.

19 Q Is the generator close to that room?

20 A Yes.

21 Q Okay. Did you check the generator at all?

22 A Not that night, no.

23 Q Okay. Did you hear it running?

24 A No.

25 Q Okay. That -- phase one of the work was making that

1 generator would function?

2 A Yeah. It was not -- it had nothing to do with the generator
3 itself. It had to do with the automatic transfer switches that were
4 mounted within that electrical room.

5 Q Right. So that if the breaker tripped --

6 A It would tell the generator to turn on and power critical
7 safety -- critical branch and life safety.

8 Q And did that ATS activate at any time on June 6th?

9 A No, it did not.

10 Q Okay. How do you know that?

11 A Power never went off. The power would have had to have
12 gone off with the ATS switches to sense loss of utility power and that
13 would have turned the generator on.

14 Q Okay. Now, Defense counsel asked Jeff if you guys tripped
15 the breaker by a switch --

16 A Right.

17 Q -- similar to a GFI in the bathroom. Did you guys do that?

18 A No.

19 Q Why not?

20 A That would have killed the power to the building, which we
21 were specifically told not to do.

22 Q Okay. After UMC, just the burns themselves, what treatment
23 did you get after that?

24 A I went back to UMC several times to their burn outpatient for
25 dressing changes and Silvadene and that kind of stuff. Seemed like that

1 went on for a couple of weeks. And then it could -- it might not have
2 been that long. It's been eight years. But it was -- you know, I went back
3 several times for treatment and dressing changes and that kind of thing.

4 Q Okay. And then you were released?

5 A Yes.

6 Q Okay. Tell the jury, in that time period -- so a few weeks after
7 the accident, what were you feeling in your arm?

8 A Pain. Not -- it's developed into a worse pain, but it was
9 constantly bothering me. It was a constant irritant all day long. Hard to
10 sleep.

11 Q Did that get worse over time?

12 A It did.

13 Q Okay. Did you seek treatment for that?

14 A Yes.

15 Q And who did you treat with?

16 A Dr. Patti, we just heard from. And subsequently, Dr. Taylor.

17 Q Okay. And for the -- do you recall how many times you saw
18 Dr. Taylor?

19 A I believe it was once or twice.

20 Q Okay. And you saw Dr. Taylor for other things unrelated?

21 A Yes, I did. That how I met him under another unfortunate
22 wrist fracture that I had, and I went to see him to get a second opinion on
23 the surgery that Dr. Patti had originally wanted to do.

24 Q Okay. And he looked at you?

25 A Uh-huh.

1 Q Checked you out?

2 A Yes, he did.

3 Q What was his recommendation?

4 A He concurred with Dr. Patti almost completely that I'm more
5 than likely a surgical candidate and that surgery may be required down
6 the road and that -- you know, he read the MRI basically said, I believe --
7 if I remember the report correctly, he basically said exactly the same
8 thing as Dr. Patti said.

9 Q Did you get that surgery?

10 A I have not gotten that surgery.

11 Q Why not?

12 A Well, because both Dr. Patti and Dr. Taylor -- Dr. Patti was the
13 first one that gave me this prognosis and confirmed it with Dr. Taylor. I
14 asked Dr. Patti flat out if I get the surgery done, is it going to fix it. And
15 he -- his exact response, which if I could have questioned him earlier, I
16 would have asked him is it I'll either get better, get worse or stay the
17 same. And he said it more than likely will get better. I can't imagine this
18 getting worse. And therefore, I can't risk having the surgery.

19 Q Okay. What about a friend of yours that had an issue?

20 A Well, that was -- yeah, that was the first reason why I did
21 cancel the surgery with Dr. Patti actually on the job that we were doing
22 the Defendants, the ground-up nursing home. One of the electricians
23 that we hired went in for a very, very minor back surgery from a
24 trampoline accident, left on a -- on like a Wednesday, needed to take a
25 week off and his wife called us the following Monday and said he died

1 on the table.

2 Q Okay.

3 A And that just scared me.

4 Q Okay. Prior to this explosion, would you have that same
5 reaction?

6 A I don't know.

7 Q Okay. At some point, did you start having anger issues?

8 A Yes, I did.

9 Q Okay. Your wife, how long have you known her?

10 A I've been with her for 28 years.

11 Q Okay. And how long have you guys been married?

12 A 28 years.

13 Q You better get it right? Prior to this accident, how was your
14 relationship?

15 A It was good. You know, ups and downs, like everything else,
16 I think. But you know, we're soul mates and we get along and it's -- you
17 know, we love each other.

18 Q Ever have any outbursts of anger?

19 A Yes.

20 Q Prior to this event, I'm talking about.

21 A Oh, no. Not prior to this event. I'm sorry.

22 Q Okay. You have a child?

23 A Yes, I do. We do.

24 Q Yeah. And tell us about the child.

25 A Twenty-five year-old daughter currently living at home

1 because my wife's going through a cancer recurrence right now and
2 COVID shut down her school in Arizona. She was going to ASU. Shut
3 down her job, because she worked at a gym, so timing, the stars all kind
4 of aligned and it was just easy for her to come home, help us, help my
5 wife going through chemotherapy. And you know, she lost her job and
6 got booted out of her school, so she came home and did schooling
7 online.

8 Q When you say booted, it's because it was cut down -- closed
9 down, not because --

10 A Yeah. Yeah. Exactly.

11 Q -- she did anything wrong.

12 A No. No. No. No. Yeah. She just couldn't attend campus
13 anymore.

14 Q Right. Do you have a family doctor out -- or did you mid-
15 2010s have a family doctor?

16 A Yeah.

17 Q And who is that?

18 A Well, I don't know -- I don't -- exactly what year I started with
19 him, but Dr. Craig was my primary care physician for --

20 Q Okay. And you continued to treat with him until he passed
21 away?

22 A Yes, I did.

23 Q Okay. What kind of things did you see him for?

24 A Anything from a cold to allergies to -- you know, to this,
25 PTSD stuff, mood disorder, elbow pain, basically anything. Checkups. I

1 got testosterone shots from him. Pretty much everything. He was my
2 PCP, my primary care provider.

3 Q Okay. Did you talk to him about mood disorders?

4 A I did.

5 Q Okay. When did you start noticing changes in your mood?

6 A Well, I think my wife noticed changes in my mood more than
7 I noticed it, but she started really bringing it up. It was maybe six
8 months, beginning to mid-2015. I started to have some outburst,
9 irritable outbursts. Started to kind of affect me with our, you know,
10 electricians that we work with and started to just be kind of just irritable
11 and just a jerk sometimes.

12 Q Okay. Ever be a jerk prior to this?

13 A Well, of course, but this was -- you know, I was just -- I was
14 just blowing up over simple things, you know, that's not like me.

15 Q Has that continued?

16 A Yes.

17 Q Okay.

18 A It's better with medication, but, it's still there, yes.

19 Q Are you medicated today?

20 A Yes, I am.

21 Q And what are you taking today?

22 A Depakote, gabapentin, and I took a hydrocodone this
23 morning when I got up, because I have to, because my arm is killing me
24 when I wake up in the morning.

25 Q The gabapentin, what does that do? What do you notice that

1 that does for you?

2 A It's a nerve -- it's a nerve pain medication, and you know, I
3 have hydrocodone, I have oxycodone, for -- for breakthrough pain they
4 call it, when I just -- like in the middle of the night, if I wake up and my
5 arm is killing me, and I'm half asleep, but I have to get up, oxycodone
6 works. I can't do anything else on oxycodone, because I just -- I can't
7 drive, I can't work, I can't do anything.

8 So I don't trust myself on the computer emailing people, I don't
9 trust myself on Amazon, you know, I just -- it's bad. Gabapentin is a
10 nerve pain medication, and it's even got to the point where I didn't know
11 if it was working or not, and I stopped taking it, only to realize within
12 maybe two weeks, that, oh, it was absolutely still working, because my
13 pain got dramatically worse.

14 Q Okay. So when you take it the pain in the elbow is down?

15 A Yes.

16 Q Okay. Is it gone?

17 A It's -- no, it's definitely not gone, it's been a life changing
18 event, it's 24/7.

19 Q Okay. The Depakote.

20 A Yes.

21 Q What does that do for you, what do you feel?

22 A It's a -- it levels me out a little bit. It just makes me not as on
23 edge, and not as irritable.

24 Q Okay.

25 A Not as quick to temper, is how my wife describes it.

1 Q Does it help with any anxiety or depression?

2 A No.

3 Q Okay. Do you take anything for those?

4 A No. I mean, I've tried a lot of stuff. I've tried a lot of PTSD
5 medications, and -- and either they don't work, or they give terrible side
6 effects, or, you know, it's -- I'm trying new therapy right now, but, you
7 know, it's just, you know, all experimental stuff right now.

8 Q Okay. For the elbow we talked about, Dr. Patti, Dr. Taylor
9 and Dr. Craig; anybody else give you any treatment for your elbow?

10 A I don't think direct treatment for my elbow, other than
11 therapy, you know,

12 Q Okay.

13 A Yeah. You know, I've gone to -- you know, had therapy and
14 working on a cold treatment, that kind of stuff after; that's what Dr. Patti
15 was referring to.

16 Q Okay. You have the elbow pain. Does that prevent you from
17 holding things in your arm?

18 A Not from holding things in my arm, no.

19 Q Okay. What kind of effect does that have on your left hand?

20 A Grip strength, primarily.

21 Q Okay.

22 A It's extremely diminished, and then pretty much exactly as
23 Dr. Patti described it, lifting, pulling, pushing, that kind of motion is what
24 really aggravates the nerve whatever it is, but it's -- that's what really
25 causes me the most pain.

1 Q Okay. You have seen, first, a psychiatrist -- well, that's a
2 psychiatrist second, but you've seen a psychotherapist?

3 A Correct.

4 Q And that was --

5 A Lindsey Coombs.

6 Q Okay. And that was the woman who testified earlier?

7 A Correct.

8 Q What kind of things did Lindsey Coombs do for you, what do
9 you do when you go in there?

10 A We -- well, I mean, she been just helping me deal with, you
11 know -- the worst thing about PTSD and -- I was having symptoms of
12 PTSD long before I even told my wife about it, because I'm just -- I was
13 kind of embarrassed and ashamed about it, because I just think that
14 PTSD is something you get when you go to war, you know.

15 And I've since learned that's not the case, but Lindsey has been
16 helping me, you know, trying to help me deal with getting through
17 nightmares and trying to find out triggers, and things like that that, that
18 affect me, and trying to find out patterns, and why I have the nightmares
19 some days and why I don't have them other days. So that's really what
20 we've been working on.

21 Q Okay. Have you worked in panels like this, since then?

22 A No.

23 Q Why not?

24 A Apprehension, avoidance, just you know -- just don't feel -- I
25 just don't feel safe doing it.

1 Q Have you worked on these kind of panels while they were
2 cold?

3 A Not since the -- no, not -- no. Not since the incident in 2014.

4 Q Other than Ms. Coombs, who have you seen for the PTSD?

5 A Dr. Craig was the original provider that -- that first diagnosed
6 me, who suggested PTSD to me. Then I started seeing Lindsey Coombs,
7 for therapy, and then I started getting more concerned that there might
8 be something deeper going on, so I started to see a clinical psychiatrist
9 and psychologist, a Dr. Zand.

10 Q Okay. And Lindsey Coombs doesn't prescribe?

11 A No, she does not.

12 Q Okay. Has Dr. Zand prescribed medications for you?

13 A Yes.

14 Q What kind of medications has he prescribed?

15 A All psychotropic, you know, PTSD, based-medications, I
16 couldn't even tell you the list. I'd have to look at my phone to tell you
17 even a list of medications that we've tried. But they've ranged from, you
18 know -- they've all just had really, really undesirable side effects for me,
19 or -- or they did nothing; one of the two.

20 Q What was your most recent medication attempt?

21 A I am -- I am taking Lyrica right now, which is a pain
22 medication, but also has some, you know, I don't know how -- I'm not a
23 psychiatrist, I don't know what the word is, but it has some, you know,
24 mental affecting properties. And then I'm doing a Ketamine Therapy
25 right now, which has been recently approved by the FDA, to treat combat

1 PTSD and PTSD from explosions, and stuff like that, so --

2 Q That Ketamine Therapy, it's in like little groups?

3 A Yeah. I know, I do it -- I do it once a week, and it's just an
4 oral dissolving tablet, and it's designed to -- again, I'm not a psychiatrist,
5 I'm just telling you what I was told, but it's designed to basically --

6 Q Well, just tell me, what do you experience, when you -- when
7 you do the treatment?

8 A When I take Ketamine?

9 Q Yeah.

10 A Oh, on another planet. It's an intense, out of this world, out
11 of your body experience.

12 Q Okay. Are there visions, or something like that, that you see?

13 A Yes.

14 Q Can you describe those to the jury?

15 A A lot of it for me, for some reason is in space. I don't know
16 why, I'm not -- I'm not a big space nut, I'm not a big fan of, you know,
17 but a lot of times for me, once it starts to kick in I'm in outer space
18 floating, seeing things, a lot of waves, a lot of levels of darkness.

19 It's pretty intense, and it's just designed to try to erase
20 neuropathways that have been created in my mind, due to this arc flash
21 explosion, that's causing the PTSD and the nightmares. It's trying to
22 reset my brain and get my brain away from going back to those bad
23 memories, that's what the whole process -- that's the -- that's the goal.

24 Q And how long have you been doing that?

25 A I've been doing it for about four months maybe, five months.

1 Q Okay. Once a week?

2 A Yes.

3 Q Okay. Do you do that at home?

4 A Yes. I would, yes.

5 Q Okay. Is that something you do, let's say in the evenings,

6 or --

7 A Yes.

8 Q Okay. Are you capable, when you're taking the Ketamine, of
9 doing anything else?

10 A Absolutely not.

11 Q Okay.

12 A I wouldn't be able to even stand up.

13 Q Does it seem to be helping you?

14 A It's -- that's a complicated question, because it seems like,
15 like for a day or two after I take it, I don't have as intense nightmares, or I
16 don't have nightmares at all, but then they come back. So Dr. Zand, the
17 people at Dr. Zand's office that do these Ketamine, you know,
18 treatments, they seem to think that that means that it could be working,
19 it could be helping, but I'm still having nightmares.

20 Q Okay. And you're still on that program?

21 A Yes, I am.

22 Q Before the Ketamine, how often were you having
23 nightmares?

24 A If not every night, you know, three times a week, four times a
25 week.

1 Q What are those nightmares like? Is it a recurring nightmare,
2 are they typical?

3 A It's -- it's 99 percent of the time a recurring nightmare at the
4 Defendants' facility, in the electrical room slight variations of what's
5 going on. Sometimes -- it's just weird. Sometimes there's, you know,
6 kids playing soccer outside the room, so it's just -- it's -- but it's always
7 around -- not always, 90 percent of the time it's based around that
8 electrical room.

9 Q Okay. And what happens in the nightmares?

10 A Explosion.

11 Q Okay. Do the nightmares wake you up?

12 A Yes.

13 Q Okay. So now you've had a nightmare, you've woken up,
14 what happens?

15 A It depends on the severity of the nightmare, because
16 sometimes I just wake up, and it's like, oh, thank God, you know, that's --
17 I'm in bed, and that's not really happening, and I just get up. I might
18 have to watch TV for a few minutes, or something, and I'll go back to
19 sleep.

20 Other times I wake up, and I'm completely soaked in sweat,
21 and I have to actually change my clothes, and I have to go out and sit in
22 the sofa in our living room, turn the TV on, get something to drink, and
23 just basically just calm down, and then I go back to sleep. And all of this
24 happens, of course, when I have to get up at 4:30, 5:00 in the morning.
25 So it's been, like I said, life changing, because I'm exhausted all the time

1 and it just sucks.

2 Q After this incident, did you limit or change your duties on the
3 work -- at work?

4 A Yes.

5 Q Okay. What did you do, what did you change?

6 A I completely stopped working in the field. I mean,
7 completely -- a total change of job duties from an active in-field master
8 electrician doing, you know, master electrician level work in the field,
9 bending conduit, you know, installing switch gear, installing
10 transformers, whatever, to a senior project manager position, which
11 basically means I'm in the office 90 percent of the time, go to job sites for
12 job visits, but that's it, I don't work in the field.

13 Q Why did you do that?

14 A A couple of reasons. One, I couldn't, my arm hurts too
15 much. I can't -- I don't -- I mean, I can't even barely, you know, hold a
16 tool for very long in my left hand. I definitely can't pull wire, and I can't
17 lift anything, heavy tuggers, that kind of thing. And apprehension of,
18 you know, working around energized or non-energized electric
19 equipment, it just -- it just -- it's a trigger; I don't, what else to say.

20 Q Did you try and work in the field after this incident?

21 A Yes.

22 Q How'd that go?

23 A Not good. I mean, it was just a couple of times we tried to
24 work, when I just had to kind of have the realization that I can't do this.

25 Q Were there any incidents where there were safety issues

1 because of your limitations?

2 A No. There was no, because I knew my limitations, and
3 I just knew I just couldn't -- I couldn't push myself to like, you know,
4 install a new switch gear that weighs, you know, four, 500 pounds or,
5 you know, do something like that, because my left hand's -- my left arm
6 is just not up to it.

7 Q Okay. If you could look at the third book, at Exhibit 33, and --

8 A Okay. I'm there.

9 Q Without saying what it is, do you recognize Exhibit 33?

10 A I do.

11 Q Okay. Is that something that -- it is produced for or by ILP?

12 A Yes.

13 Q Okay. And, and who instructs the creation of these?

14 A Our payroll company.

15 Q Okay. And they do that at your -- at your request?

16 A Yeah. Actually my wife is who submits time to our payroll
17 company, and the payroll company processes it, does the tax
18 processing, and takes out taxes and then issues payroll. We've gone
19 through a couple payroll processors, but, you know, that's -- it's never
20 been to us directly.

21 Q Do these indicate your wages for the years, throughout the
22 years?

23 A For 2014? Yes, it does.

24 Q Okay. And it goes through to -- through 2021?

25 A Yes. It does.

1 MR. KUDLER: Okay. I'd offer these for admission, Your
2 Honor.

3 THE COURT: Any objection, Plaintiffs' 33?

4 MR. A. GIOVANNIELLO: No.

5 THE COURT: So received.

6 [Plaintiffs' Exhibit 33 admitted into evidence]

7 BY MR. KUDLER:

8 Q In 2014, even with some missed time following this injury,
9 limited, missed time, what did you make, for that year?

10 A That's -- that's one, the gross wages, \$88,029.25.

11 Q Were you able to keep that up after 2014?

12 A No, I was not.

13 Q Okay. And 2015, what did you make?

14 A \$55,068.75.

15 Q And 2016. Was that because of the job change?

16 A Yes. It was.

17 Q Okay. And how about 2016?

18 A 2016 was \$32,070.80.

19 Q Was that solely because of the job change, or was it related
20 to other things?

21 A No. That was because of the job change, sir.

22 Q And for 2017?

23 A 52,000.

24 Q Okay. And that's on a salary?

25 A Yes.

1 Q Okay.

2 A 2017 was when I transitioned into full, like, you know,
3 salaried, just, you know, senior project manager.

4 Q Okay. And, and the same for 2018, 2019?

5 A Yes. 2018, 2019, 2020, 2021 are all exactly the same. Exactly
6 the same wages.

7 Q And that's the salary position, because you're no longer
8 working in the field?

9 A Correct.

10 Q Okay. When you were doing both jobs did you get paid for
11 the administrative duties, as well?

12 A No.

13 Q Okay. So that was just -- the 88,000 was just -- this is my
14 hourly wage?

15 A Right.

16 Q And the other part you don't get paid for is --

17 A Right.

18 Q Okay. Part of your agreement with your father-in-law?

19 A Correct.

20 Q Okay. And then after this, you are getting paid a salary for
21 running the company --

22 A Correct.

23 Q -- and being a project manager? Did this accident, first we're
24 going to talk about, physically affect you around the house?

25 A Yes.

1 Q How so?

2 A Yeah. I'm just -- my body can't except, it's just a different
3 life. I mean, I, you know, from chores to playing with my dogs, to
4 washing my hair, I mean, it's affected just about every aspect of my life.

5 Q Okay. Before this accident you guys lived in a home?

6 A Yes.

7 Q How much property?

8 A It's on a quarter of an acre.

9 Q Okay. How big a home?

10 A It's 2,000 square feet.

11 Q Okay. You took care of -- what were your duties, what did
12 you actually do?

13 A Pull weeds. I mean, we live in an HOA, so, you know, if you
14 let weeds grow in the front of your house, you get a nasty letter in the
15 mail. So, you know, I pull weeds, take the garbage out on Wednesday
16 night for Thursday pickup. You know, we have a decent size, you know,
17 backyard for an HOA in a, you know, community. And play -- you know,
18 we have two fairly large dogs and play with the dogs and, you know, just
19 maintain the house.

20 Q Okay. How many cars did you guys have then?

21 A Two.

22 Q Okay. Who took care of the cars?

23 A I would do the small repairs on them before, I don't -- I don't
24 anymore.

25 Q Okay. Any problems doing that before the accident?

1 A No.

2 Q Why don't you do them anymore?

3 A It's just uncomfortable getting under a car, like the arm pain,
4 and --

5 Q Before this incident, what did you do outside of the house,
6 other than work?

7 A The, you know, the general stuff, go to movies, dinner with
8 friends, you know, that, that kind of stuff, support my wife and her
9 fundraising. You know, she was a member of Rotary and did events for
10 Rotary, and I would support her fully and go to events and go to
11 fundraisers and stuff with her, and that kind of thing.

12 Q Okay. Any issues doing that before the accident?

13 A No.

14 Q Did you continue to do that, support your wife and go to
15 rotary events after?

16 A She was already pretty much out of -- well, not out of rotary
17 after, but she was kind of slowing down, but I lost pretty much all
18 interest in doing any major social activity. It just started going away. I
19 just -- I just started to not want to do things out. It wasn't an immediate,
20 like one day I was doing it and the next day I wasn't. But when you're in
21 constant pain and, you know, you've got -- I've got this irritability thing
22 going on, I just didn't want to be with anybody.

23 Q Okay. But did you attend events?

24 A Yes, I did.

25 Q Okay. Did you smile?

1 A Yeah.

2 Q Okay. Were you having a great time?

3 A No.

4 Q Okay. You said you were there to support your wife?

5 A Yes.

6 Q Okay. Did you, before this, do any physical activities, sports?

7 A I'm not a big sports guy, but, you know, walk, you know, that

8 kind of stuff. But, yeah, it's kind of -- it's -- well, not kind of, it's affected

9 that as well.

10 Q Okay. Do your motions always show?

11 A I would have to say now more than -- now, more than before.

12 Q Okay. They show?

13 A Yeah.

14 Q Okay.

15 A I mean --

16 Q Can you --

17 A -- I hide them, you know, if I'm, you know, bummed out or in

18 pain, I put on a good face and, you know, and I don't -- I don't want

19 people feeling sorry for me, you know.

20 Q Okay. You say that you were having mood issues, but you

21 didn't know where it was coming from originally?

22 A Correct.

23 Q Okay. And eventually you were told where it came from?

24 A Correct.

25 Q Knowing where it was coming from, just being told, hey, this

1 is what it is, how did that make you feel?

2 A Honestly, it would piss me off, because I didn't do anything
3 wrong.

4 MR. KUDLER: That's all I have, Your Honor,

5 THE COURT: Ladies and gentlemen, we're going to take our
6 afternoon recess at this time. During this recess you must not discuss or
7 communicate with anyone, including fellow jurors, in any way regarding
8 this case or its merits, by voice, phone, email, text, internet, or other
9 means of communication, or social media.

10 You may not read, watch, listen to any report or commentary
11 on the trial by any medium, or do any research consult, dictionaries,
12 internet, use reference materials, make investigation, test theories,
13 recreate any aspect of the case, or in any way invest the case on your
14 own. You may not form or express any opinion regarding this case until
15 it's finally submitted to you.

16 This is a 15-minute afternoon recess. Ladies and gentlemen,
17 follow the Marshal, please.

18 THE MARSHAL: Stand for the jury.

19 [Jury out at 3:15 p.m.]

20 [Outside the presence of the jury]

21 THE COURT: All right. The record should reflect we're
22 outside the presence of the jury, any additional record need be made by
23 either side, as a function of the witness examination?

24 MR. KUDLER: The Defendant has something we've
25 discussed, and we wanted to talk to you before we went into cross-

1 examination. Yes.

2 THE COURT: Okay. Noting for the record again, the witness
3 is on the witness -- remains on the witness stand. You have a record you
4 need to build, or a question we need to answer?

5 MR. A. GIOVANNIELLO: No, Your Honor. We just have a
6 photograph that we disagree on, whether or not it's going to be
7 admissible, and I think that's something that we might need your ruling
8 on.

9 THE COURT: All right. Show me the picture. Tell me what
10 you --

11 MR. KUDLER: We did come to one agreement, on one of the
12 two photos that were at issue.

13 THE COURT: Okay. Are we assuming foundation is going to
14 be met, but it's a relevance -- more of a relevance or analysis?

15 MR. KUDLER: It being a disclosure issue.

16 MR. A. GIOVANNIELLO: It's more of when it was disclosed.
17 We disclosed this at an ECC, the same as he did, with but a bunch of
18 records after discovery cutoff. So I'm thinking what's good for the goose
19 is good for the gander, if he could do it, so could I.

20 THE COURT: Do you have a goose or a gander in the fight? I
21 don't understand?

22 MR. KUDLER: I mean, you know, there's a difference
23 between disclosing continuing treatment of medical records, which is
24 what we disclosed after the discovery cut-off, and probably should have
25 disclosed more than we wouldn't have had a problem this morning,

1 but -- and something that was available. That's it. I mean, they really
2 think it's vital to their case, you know.

3 THE COURT: I don't see it. In terms of balancing, it's just a
4 picture of the Plaintiff engaged in a social action. I'm going to let in.

5 MR. KUDLER: Thank you.

6 THE WITNESS: Oh, can I get down? Sorry.

7 THE COURT: Yes, sir.

8 THE WITNESS: Okay.

9 THE COURT: About 15 minutes, for this recess.

10 [Recess taken from 3:17 p.m. to 3:27 p.m.]

11 [Outside the presence of the jury]

12 MR. A. GIOVANNIELLO: Your Honor, just to bring up I guess
13 some points for scheduling?

14 THE COURT: Or we can talk about it now, I don't want to
15 rush the jury, any more than I rush everybody else.

16 We're off the record, folks.

17 [Off the record at 3:27 p.m./On the record at 3:29 p.m.]

18 THE MARSHAL: All right. They're back in.

19 [Jury in at 3:29 p.m.]

20 THE COURT: Please be seated, be comfortable. I'm counting
21 to ten, and I'm not there yet, but we will be.

22 All right, ladies and gentlemen. We're back on the record in
23 A-735550, Myers v. THI. The record should reflect the presence of
24 representatives, Plaintiff and Defense. All members of the jury panel do
25 appear to be present. Will parties stipulate to the presence of the entire

1 panel? Plaintiff?

2 MR. KUDLER: Yes, they're here.

3 THE COURT: And Defense.

4 MR. A. GIOVANNIELLO: Oh, yes, stipulated. Yes.

5 THE COURT: Thank you. The record should further reflect
6 we remain in Plaintiffs' case in chief, cross-examination of the witness.

7 Mr. A. Giovanniello, you have the witness on cross.

8 MR. A. GIOVANNIELLO: Thank you.

9 CROSS-EXAMINATION

10 BY MR. A. GIOVANNIELLO:

11 Q Mr. James, do you remember in 2017, you were given some
12 interrogatories to respond to?

13 A Yes.

14 Q Okay. And you responded to those interrogatories, right?

15 A Yes.

16 Q And you signed the verification that -- under oath, that these
17 are true and correct responses?

18 A Correct.

19 Q Okay. Now you gave us -- on direct you told us a story about
20 how you did an investigation --

21 A Correct.

22 Q -- after the fact, and found the screw and divined that that's
23 what caused the accident?

24 A Correct.

25 Q Do you recall saying something completely different when

1 you responded to your interrogatories?

2 A No.

3 Q Do you want to turn to exhibit -- look at the black book, the
4 black book.

5 A Oh, I'm sorry.

6 Q Exhibit 238.

7 A Okay.

8 Q Okay. When you look at Exhibit 238, and you have a long
9 response, but interrogatory number 5, asked: "Please describe the time
10 at which you arrive" -- are we there?

11 A Yes.

12 Q It says, "Please describe the time at which you arrived at
13 College Park on the date of the subject incident, the reason why you
14 were performing electrical services at College Park, by whom you were
15 contracted to perform electrical services at College Park. Your activities
16 from the time you arrived at College Park to the time of the subject
17 incident occurred, and a detailed description of how the subject incident
18 occurred."

19 A Right.

20 Q It was a really compound question, but you did answer it.

21 A Okay.

22 Q Okay. Let's everything here. I want you to go to page 6.

23 A Okay.

24 Q Which is Exhibit 238-6.

25 A Okay.

1 Q Okay. And I know you were sitting in court when I read that
2 part that said, "on line 4"?

3 A On page 6?

4 Q Yeah. On page 6, line 4.

5 A Oh, yes.

6 Q Where it says: "Jeff was in the corner of the room. His face
7 was blackened by the explosion, and we did not have any idea at that
8 time" --

9 A Yes.

10 Q -- "what exactly had happened."

11 A Right.

12 Q Correct?

13 A Correct.

14 Q Then if you go down to line 11.

15 A Uh-huh.

16 Q All right. Now if you read line 11, down to line 20; can you
17 do that for us?

18 A Okay. Okay.

19 Q Can you read that for us out loud?

20 A Oh, read line 20?

21 Q No read line -- I want you to read line 11 to line 20, out loud.

22 A Okay. "As the medics were taking care of myself and Jeff,
23 the other two guys working that night, finished talking with the fire
24 department, they all, the other electricians in the firemen, located two
25 long wood screws laying on the fiberglass insulator at the top of the

1 panel by the neutral bar, and the fire department agreed that one of
2 these screws likely had fallen and shorted out two phases on an empty
3 breaker mounting bracket at the lower right side of the panel; which is
4 agreed where the arc was started.

5 The empty fingers for a future breaker were not insulated with heat
6 shrink as they should have been. The screws that were found in this
7 neutral bus fiberglass insulator, after the event happened, were just long
8 enough to short the distance between the two phases, and it is clear one
9 of them must have rolled off the fiberglass insulator while we were
10 installing the new breaker, as the impact drill vibrated the panel."

11 Q Okay. Thank you. That's a little different than what you
12 testified to, isn't it?

13 A No. It's not at all.

14 Q Here, it says that the fire department was the ones who
15 found it, and you testified that it was you who went the next day.

16 A No, I said I had some information regarding it, and I looked
17 the next day. I was told that night that the fire department guys found
18 screws.

19 Q Okay. You didn't testify to that on direct either?

20 A I wasn't asked.

21 Q No. Okay. Look at Exhibit 4. No, go to the -- no, now I'm
22 going to jump over to the white book.

23 A Which white book?

24 Q The one that has Exhibit 4.

25 A Okay.

1 Q Look at Exhibit 4-22, which is the actual -- does it show the
2 ladder?

3 A Yes.

4 Q That ladder was on the jobsite?

5 A That ladder was the maintenance man's ladder at the job
6 site.

7 Q Oh, it was the maintenance man's ladder at the job site?

8 A Yes. It's not our ladder.

9 Q Okay. You took this picture; you said the next day?

10 A No. I don't know when that picture was taken.

11 Q Okay. This is not your pictures?

12 A These are our -- these are my pictures, but I don't know if this
13 picture was taken. I don't buy it, it's eight years ago. I have no idea
14 exactly the date that that picture was taken.

15 Q Okay.

16 A This is when the work was in process.

17 Q Right.

18 A So --

19 Q And you were shown some pictures on direct that were part
20 of this exhibit; weren't they all taken on the same day?

21 A I don't remember. I don't recall.

22 Q Okay. There's a ladder present. Did you think about using
23 that ladder to -- well, you said you couldn't look at the top of that, it was
24 too high. Did you think about using a ladder to go up and look at that?

25 A No. There'd be no reason to do that.

1 Q Okay. No reason to check all clearances?

2 A We did check all clearances around the energized bus. The
3 screw was nowhere near the energized bus.

4 Q Except you didn't check the clearances up top, correct?

5 A There's not an energized bus up top.

6 Q But you didn't check anything up top, correct?

7 A There's not an energized bus up top.

8 Q Well, the question is, did you check anything up top?

9 A Didn't need to.

10 Q Okay. But you didn't do it?

11 A We didn't need to, it wasn't required.

12 Q Is that a yes, or no, sir?

13 A I answered the question.

14 MR. A. GIOVANNIELLO: Your Honor?

15 THE COURT: It's cross-examination, he answered it to his
16 satisfaction. Whether you agree or disagree is up to you.

17 MR. A. GIOVANNIELLO: Oh, okay. It was an exhibit, so I take
18 it, it's a yes or no question, that's why I'm not getting a yes or no.

19 THE COURT: Your objection as non-responsive is overruled.

20 MR. A. GIOVANNIELLO: Okay.

21 BY MR. A. GIOVANNIELLO:

22 Q Now you also testified that Roy Comstock bragged that he'd
23 been in that panel more times than he could remember?

24 A That is correct.

25 Q Correct. Now, if that was -- and you said you rolled your

1 eyes?

2 A Oh, yeah. This is just a typical maintenance man trying to be
3 cool amongst the electricians.

4 Q Right. And the maintenance man, and you're the master
5 electrician, and it's not really his field, right?

6 A Correct.

7 Q Okay. So anyway, if he said that to you, right, wouldn't you
8 think he'd be -- wouldn't you be a little bit more careful when you went
9 into that panel? Wouldn't you have some apprehension about going into
10 that panel, if Mr. Roy, or somebody who's not qualified said, "I've been
11 in it so many times"?

12 A Well, yeah. I mean, yeah, we have a apprehension going into
13 any energized panel, that's why we wore PPE; that's required for the
14 voltage, and that's why we check around the energized components.

15 Q Sure. Now, you also testified that there was no labeling?

16 A Correct.

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

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

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

1 A Evidence in this case, yes.

2 Q But what's that?

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

5 Q Well, Roy will testify, so we'll see what he says --

6 A Oh, yeah, we will.

7 Q -- about that. Well, let me ask you, how did you know the
8 price of the breaker? You said it was a thousand bucks, how do you
9 know, that?

10 A A fair -- a fairly standard frame, breaker size; that breaker's
11 around a thousand bucks.

12 Q Okay. Did you question at all -- well, who gave you the
13 breaker?

14 A Roy.

15 Q Okay. Did you question him at all, on how he got apparently
16 the correct breaker?

17 A No.

18 Q Okay. Why not?

19 A He just -- it was a customer supplied breaker and we gave
20 him a price to install it, that was it.

21 Q You said that you work with Industrial Light and Power,
22 correct?

23 A Correct.

24 Q Now that is a business started by your father-in-law?

25 A Correct.

1 Q Is your father -- and you said father-in-law is a hundred
2 percent owner?

3 A He is.

4 Q What part did you play in that business?

5 A I'm a senior project manager, right now.

6 Q Okay. So would you be an employee?

7 A I'm an employee.

8 Q You always have been an employee?

9 A Always have been an employee.

10 Q Okay. You don't own any part of the business at all?

11 A I own no part of the business.

12 Q Okay. When you were working in the field as a master
13 electrician you were being paid how much?

14 A About \$73 an hour, I believe, somewhere around there.

15 Q Who was paying you that?

16 A Industrial Light and Power.

17 Q Okay. And then after you had your -- after you had this
18 incident --

19 A Twenty-five dollars an hour.

20 Q Okay. I was about to ask you that.

21 A Okay. I'm sorry, I didn't --

22 Q That's right. I'm not trying to be hostile here.

23 A Okay. No, I'm not trying to be either.

24 Q All right. Okay. So then you went down to \$25 an hour.

25 A That's correct, sir.

1 Q So essentially your father-in-law demoted you?

2 A He absolutely did.

3 Q Okay. And did you have any, you know, qualms about that?

4 A I mean, no, he was faced with the -- with the choice of
5 shutting down the company, or continuing on to be in a lower role, and
6 you can ask him tomorrow when he does his testimony.

7 Q Right.

8 A But, no. He -- he did it, and that was it.

9 Q Okay. Now at the time, were you the only -- well, it was you
10 and -- it was you and Jeff, were you and Jeff the only electricians?

11 A Licensed electricians?

12 Q Yes.

13 A At that time, yes.

14 Q Yeah. Okay.

15 A Yes.

16 Q And then would you have some apprentices?

17 A Yes.

18 Q And those are the other two guys who were on the --

19 A Yes.

20 Q -- job site?

21 A Uh-huh.

22 Q You know what, do me a favor? Let me finish my question
23 before you --

24 A I'm sorry.

25 Q -- respond.

1 A I'm sorry. I'm sorry, right.

2 Q Because what you're doing is, you're jumping in, and she has

3 to take everything down.

4 A Okay. I'm sorry.

5 Q And she's going to yell at us.

6 A Right.

7 Q Okay. All right. So Jason and I forgot his last name --

8 A Robert --

9 Q -- Jason what?

10 A Jason Farris --

11 Q Jason.

12 A -- and Robert Cory, yes.

13 Q And Jason Farris. When you two were working in the room,

14 was Jason Farris supposed to be outside the room?

15 A Yeah, he -- yeah. Well, Robert Cory was outside the room

16 basically the entire time.

17 Q Uh-huh.

18 A Jason was going back and forth inside and outside, but he

19 was -- he happened to be outside the room, right when the explosion

20 happened, and he's the one that actually called 911 for us.

21 Q Okay. And where was Robert?

22 A Outside. Outside the room.

23 Q So both of them were out there?

24 A Yes.

25 Q Okay. And did you know if they witnessed anything?

1 A Jason witnessed the bright light and the flash, and heard the
2 explosion himself, so --

3 Q Okay. Now after the incident, you started to go to some
4 physicians, correct?

5 A Correct.

6 Q And you went to doctor -- Dr. Craig, you said was your PCP?

7 A He was, yes, sir.

8 Q Okay. I'll just look at his records. It's Dr. Patti. Dr. Craig, is
9 Reflections Healthcare, right?

10 A Correct.

11 Q For '16. How long have you been seeing Dr. Craig?

12 A 2015, '16. I don't exactly recall the start date with my
13 treatments with him, or when he started to be my PCP, up until the date
14 of his death. Well --

15 Q Which is --

16 A -- a little before -- it was September of last year. Well, a little
17 bit before that, because he was in the hospital with COVID.

18 Q Now Dr. Craig was the one that I guess diagnosed you with
19 mood disorder?

20 A He did, yes, sir.

21 Q Okay. And he's the one who gave you the Depakote? He did,
22 yes, sir.

23 A Okay.

24 Q And that was in 2016?

25 A I believe so, yes.

1 Q Okay. And at the time when you were treating with Dr. Craig,
2 did you ever tell him that your medication was working, you don't have
3 depression, medication successful?

4 A Not that I recall,

5 Q No.

6 Okay. I'm going to show you some photographs that were
7 taken, and this is going to be Exhibit 225.

8 A In -- oh, in the black book?

9 Q In the black book.

10 A I'm sorry. Okay. I've got it.

11 BY MR. GIOVANNIELLO:

12 Q You shared this first photograph? It looks like it was taken
13 November 7, 2014, Rotary Club?

14 A Yes, sir.

15 Q Okay. And is that you in the photograph?

16 A That is me.

17 Q And is that your wife in the photograph?

18 A That is.

19 Q Okay. And is that you smiling in the photograph?

20 A Smirking? Yes.

21 Q Smirking?

22 A Yes.

23 Q Okay.

24 THE COURT: Just so we're clear here, 225 is in by stipulation
25 or agreement, correct?

1 MR. A. GIOVANNIELLO: Sorry, Your Honor. I'm offering 225
2 as evidence.

3 THE COURT: 225 is admitted.

4 [Defendants' Exhibit 225 admitted into evidence]

5 MR. A. GIOVANNIELLO: And it's 225? Yes. Just 225. Okay.
6 And I believe 226 is okay, as well.

7 THE COURT: 226 is offered, any objection?

8 MR. KUDLER: Your Honor, just making things simpler, 26,
9 27, 28 were the ones that are subject to the prior order and are already
10 in.

11 THE COURT: Then they are admitted by prior order?

12 [Defendants' Exhibit 226 to 228 admitted into evidence]

13 BY MR. GIOVANNIELLO:

14 Q Okay. And this is you in the photograph, as well, right?

15 A It is correct.

16 Q I'm going to assume the lady kissing you, is your wife?

17 A You would be correct.

18 Q Okay. Otherwise I think you'd be in big trouble?

19 A I definitely would, yes.

20 Q And that's taken on a beach somewhere?

21 A Yes. I don't know what year this is. I mean, I look thinner,
22 but I don't know, I can't tell what year it is.

23 Q Okay. You don't know whether that's after 2014?

24 A Honestly, I don't know.

25 MR. A. GIOVANNIELLO: Okay. I'm going to offer that into

1 evidence, Your Honor. I think I already did.

2 THE COURT: They're all in.

3 BY MR. A. GIOVANNIELLO:

4 Q I'm showing you another picture. This is 227, offered it into
5 evidence. You're sort of on the side of that. Is that you, can you identify
6 yourself?

7 A That is me, on the right hand side, yes.

8 Q Right. And that's you clapping?

9 A Yes.

10 Q Okay. And is that your wife?

11 A That is, yes.

12 Q Is this taken at the Rotary Club?

13 A I believe it is, yes.

14 Q Okay. This is one of the events you talked about on direct?

15 A Yes, it is.

16 Q Okay. Thank you. Finally, I'll show you the last picture. This
17 is Exhibit 228.

18 A Yes, sir.

19 Q Now to me, this looks like you all the way at the end?

20 A That is me all the way at the end, on the right hand side of
21 the table. Yes, sir.

22 Q And that's your wife there too?

23 A That is correct, sir.

24 Q Okay. And that's also at the Rotary Club?

25 A That is a Rotary Club event? Yes, sir.

1 Q Okay. And that's after 2014?

2 A Yes. It is.

3 Q Okay. And you know the guy right over here up front, looks
4 like an actor?

5 A Right in the very front?

6 Q Yeah.

7 A Oh, he would be pleased, you said that.

8 Q He would be pleased?

9 A He would be pleased. Yes.

10 Q I forgot the name of the actor, but I know who it is. As far as
11 the PPE you were wearing, that you testified to?

12 A Yes.

13 Q The shirt was short-sleeved, correct?

14 A Correct.

15 Q Okay. Should you have been wearing long sleeves?

16 A It depends on the CAL rating of the of the -- of the panel
17 you're working on, but, yes. If it's -- if it's above calorie, which is how
18 they count thermal units for the PPE ratings --

19 Q Uh-huh.

20 A -- you would wear a long sleeve; you would sometimes wear
21 a full arc hood. Sometimes -- it just all depends on -- on the available
22 fault current.

23 Q Okay. Now, as far as the physician is concerned, Jeff Myers
24 was the one who was in front of the panel, right, with the impact?

25 A Correct.

1 Q Okay. Did you -- and he was actually putting in the third
2 screw when the flash happened?

3 A Correct.

4 Q Okay. Was there any markings on that impact driver at all?

5 A No.

6 Q Should there have been, if he was the -- if he was right there
7 when it happened?

8 A No.

9 Q Why not?

10 A Because he moved out -- he had it in his hand, and he moved
11 out of the way. I mean, it didn't burn anything, like didn't burn the tool,
12 you know? There was no arcs to the tool.

13 Q Okay. You were showed some pictures and you also, I think,
14 testified that some of the rods were molded together?

15 A The fingers that hold --

16 Q Yeah, the fingers.

17 A -- the breakers are actually -- are actually welded to the actual
18 tab of the breaker, yes, sir.

19 Q Okay. Did you take a picture of that?

20 A I believe there's pictures of that, yes.

21 Q And haven't been produced here yet, no, right?

22 A I've provided them. I don't know.

23 Q Okay. But none were shown to you yet.

24 A No, no. None of them was shown to me yet.

25 Q Okay. Just want to look at some records here. Hold on one

1 second.

2 A Yes, sir.

3 Q Do you recall -- you said you saw Dr. Craig up until 2021,
4 right?

5 A Correct.

6 Q Okay. Did you ever tell Dr. Craig that you were not having
7 any delusions, hallucinations?

8 A I don't think I've ever had any hallucinations.

9 Q No? What about delusional thoughts, or compulsive
10 behavior?

11 A Compulsive behavior, I've had more recently, yes.

12 Q More recently, okay. Did you ever tell Dr. Craig that you did
13 not have any compulsive behavior?

14 A Not that I recall.

15 Q Okay. Now, as far as you said you were having nightmares
16 at night?

17 A Yes.

18 Q Do you have them every single night?

19 A No. Multiple times a week.

20 Q Just multiple times a week? And it's always sort of the same
21 nightmare, but a little variation of the sort?

22 A Variation of the same thing.

23 Q Okay. When did that start?

24 A It started in early to mid-2015, and I just kind of buried it, was
25 embarrassed about it, like I'd testified to earlier in direct.

1 Q Sure.

2 A And, so it was 2015, early to mid.

3 Q Okay, but you didn't -- you didn't tell any -- you were seeing
4 a lot of physicians at the time. Did you tell that to any of the physicians
5 that you saw?

6 A No.

7 Q In 2015?

8 A Not until I started talking about the mood disorder with Dr.
9 Craig in 2016.

10 Q Excuse me a minute, I'll get some water.

11 A That's fine.

12 Q I'm doing a lot of talking [indiscernible]. Okay. You waited
13 until 2016 because you were embarrassed?

14 A Yeah, I was -- yeah. I've never been around anybody that's
15 been to war, that's had PTSD. I always heard it. Vietnam, that kind of
16 thing. Didn't really relate PTSD to being involved in an explosion, so I
17 just didn't -- it never even crossed my mind. The nightmares, I thought,
18 was just something I was telling myself, I got to get over this, I got to get
19 past this. But now, of course, I've learned through mental health
20 professionals, that's not exactly what happens.

21 Q Now, you said your income, and we've looked at that,
22 decreased.

23 A Yes, sir.

24 Q From 2014 to 2015?

25 A Yes.

1 Q Is that because you were not being paid by the hour?

2 A Oh, no. I was being paid by the hour.

3 Q Okay. And that's when you were making \$25 an hour.

4 A No, that's when I was making \$73 an hour.

5 Q In 2015?

6 A No, in 2014 --

7 Q Yeah, I know that.

8 A It reduced down, but I was working less hours because of

9 this injury.

10 Q Okay, let me just get this straight so I understand it. In 2014,

11 you were still out there working as a master electrician, correct?

12 A Correct.

13 Q Making \$75 an hour.

14 A 73 something an hour, yes, sir.

15 Q Something like that.

16 A Yeah.

17 Q Okay, that's fine. And then, in 2015, you had a marked drop

18 in your income.

19 A Yes.

20 Q Okay. Why was that?

21 A Less hours worked.

22 Q Less hours worked?

23 A Yes.

24 Q But you were still working as a master electrician?

25 A I was still trying to in the field, yes. But working less because

1 I couldn't do as much.

2 Q Okay. Are you right-handed?

3 A Yes, I am.

4 Q Okay. Were you working in the office at the time?

5 A Yes and no. I mean, yes.

6 Q Yeah, we -- then --

7 A Not -- not -- not to the capacity that I am now.

8 Q No. Now you're completely in the office.

9 A Now I'm completely in the office.

10 Q Yeah, okay. So at the time, though, you still working outside
11 of the -- as an electrician, you were working a little bit in the office?

12 A Just a little bit in the office, just still working outside as an
13 electrician, but with limited hours.

14 Q Okay. Any reason why you were not being compensated by
15 your father-in-law for working in the office at that time, in 2015?

16 A That was all just part of, you know, doing the day-to-day stuff
17 of the business, you know? Have to -- someone has to order materials
18 and that kind of thing, and, you know, I was the guy running the job, so
19 I'm the guy goes back to the office, gets on the email, and orders
20 materials.

21 Q Okay.

22 A Pretty standard part of an electrician's job.

23 Q Okay. But, that still is an administrative function.

24 A Yes. I was being --

25 Q And what --

1 A -- paid for it. That was all -- that's all included in my hourly
2 wage. I was -- not like I just did that for free. That was still part of my
3 hourly wage.

4 Q Okay, but he reduced your hourly wage from 70-something
5 to 25.

6 A Correct.

7 Q Even though you were still doing that same function in the
8 office?

9 A He reduced it down to 25 when I decided I could not work in
10 the field any longer in any capacity.

11 Q Wasn't that in 2015?

12 A That was in 2016.

13 Q 2016.

14 A I believe, yes.

15 Q Okay. And now you're making \$52,000 a year?

16 A Correct.

17 Q Okay. Do you have any income from any other source?

18 A I do not.

19 Q And --

20 A Well, COVID relief, I mean, you know, that's the only thing
21 that I've received, like everybody else, you know, just the stimulus, you
22 know?

23 Q Whatever that stimulus package was --

24 A Yeah, yeah, yeah, yes.

25 Q -- you got from the government?

1 A Yes.

2 Q Okay. Hold on one second. They've also had some other
3 issues, too, other than, I guess, other medical issues, other than what
4 we've discussed, right? Like, you broke your arm?

5 A I broke my wrist.

6 Q You broke your wrist. Okay.

7 A Broke my right wrist, yes.

8 Q You break your finger, too?

9 A No.

10 Q Oh, you didn't have a finger fracture?

11 A Oh, I -- yeah, oh, yeah, actually the tip of one finger, yes.

12 Q Okay.

13 A But that was not -- it was nothing that I had treated for
14 anything other than I had a suture on a -- on the side of my finger.

15 Q Okay. How did that happen?

16 A Working on a -- on something at the house. Piece of metal
17 landed on the tip of my finger.

18 Q Okay. And then how did you fracture your wrist?

19 A Stepping off the bottom rung of a ladder at my house. I just
20 stepped down, rolled my ankle, and went right down onto my right wrist.
21 Tried to grab onto the ladder, couldn't do it, and went right down on my
22 right wrist, and just did a complete dislocation and fracture. My wrist
23 was like an inch this way. It was disgusting.

24 Q And you're not claiming that as part of the damage in this
25 case, right?

1 A No, sir.

2 Q Okay. Same thing with the finger?

3 A Yes. Oh, yes. Yeah, yeah, no. Yeah.

4 Q Okay. And then I think you've rolled your ankle a couple

5 times?

6 A Yes. Yes, sir.

7 Q Not claiming that either?

8 A No, sir.

9 Q Okay. All right. I think I'm just about done. Hold on one

10 second. One second, let me just --

11 A Sure.

12 Q I kind of did some checking on you. Did you used to go by a

13 different name?

14 A Yes.

15 Q Andrew James Hensley [phonetic]?

16 A Yes.

17 Q That was you?

18 A That was disclosed in my interrogatory, yes, sir.

19 Q Okay. Is that your given name?

20 A That's my given name, yes.

21 Q Okay. And then you changed it?

22 A Yes, sir.

23 Q Any reason?

24 A I was always known by Andy James. That was just my

25 middle name. And then when our daughter was born, we actually

1 named her Indiana Elizabeth James. So, we -- we just preferred that last
2 name, so we legally had it changed. My wife had her name legally
3 changed last name to James. I had mine legally changed last name to
4 James. My daughter's birth certificate from birth was last name was
5 James.

6 Q Okay. All right. Mr. James, I think I'm done. Thank you so
7 much.

8 A Thank you, sir.

9 THE COURT: Redirect?

10 MR. KUDLER: Yes, Your Honor. I want you to look at 238-6
11 in the black book.

12 MR. A. GIOVANNIELLO: What are you looking at? 238?

13 MR. KUDLER: 238, yeah.

14 THE WITNESS: Okay. Yes, sir.

15 REDIRECT EXAMINATION

16 BY MR. KUDLER:

17 Q You remember yesterday when Mr. Gifford was being
18 questioned?

19 A Yes.

20 Q Okay. And you remember he was asked about the part
21 where it says "This time, Jeff's face was black. I had a large flap of skin
22 hanging on my left elbow. Jeff was in the corner of the room. His face
23 was blackened by the explosion. We did not have any idea at the time
24 what exactly happened."

25 A Yes.

1 Q You remember Defense counsel reading that?

2 A Yes. Yes, sir.

3 Q You remember me trying to read the rest of it in?

4 A Yes.

5 Q And was I allowed to do that?

6 A No.

7 Q Okay. The -- what -- the Judge upheld objections that I can't
8 ask you about that stuff, because it's hearsay?

9 A Yes.

10 Q Okay. Did I ask you, you know, what prompted your
11 investigation?

12 A Yes.

13 Q No. Did I ask you to tell the jury what prompted your
14 investigation?

15 A Oh, no. No.

16 Q Okay. And if I had asked you what prompted, you would
17 have given that description?

18 MR. A. GIOVANNIELLO: Well, objection.

19 THE COURT: What's the basis?

20 MR. A. GIOVANNIELLO: Well, one of the basis is leading.

21 THE COURT: It's foundational. I'll rule on that -- on leading.
22 So, overruled. Counsel, you can ask the question.

23 BY MR. KUDLER:

24 Q Thank you. And so were you -- is it listed in your actual
25 investigation as compared to what prompted it?

1 A No.

2 Q Okay. Just want to make sure I -- the jury is clear. When you
3 had the incident with the ladder, where you're twisted your ankle, or
4 your ankle rolled, and you broke your wrist. Which wrist was it?

5 A It was my right wrist.

6 Q Okay. Was your left hand injured at all in that incident?

7 A It had already been injured in this arc flash incident, but it
8 didn't get injured further in that incident, no.

9 Q Okay. It was strictly your right wrist, not your left arm?

10 A Correct.

11 Q Okay. The ladder that's in the photograph that you were
12 shown --

13 A Uh-huh.

14 Q Was that in the room the night of the explosion?

15 A No.

16 Q Okay. That picture showed a lot of wires out.

17 A Uh-huh.

18 Q Was that picture taken prior to the explosion?

19 A I believe it was, because that was when we were still -- we
20 were still changing out panels. You could tell in that picture that the
21 conduit is not even ran for the ATS switches that are in the back of the
22 room, and it's -- it's still underway. Construction's still underway.

23 Q Okay.

24 A And there is an access door in the ceiling of that room that
25 goes into the attic, that Roy goes into quite often, and that's why that

1 ladder was there. That ladder's directly underneath the access door that
2 goes up through the attic.

3 Q Did you guys use that ladder in your job?

4 A No, we don't use aluminum ladders at all.

5 Q Because?

6 A They conduct electricity.

7 Q Okay. When you got the panel open, before you installed the
8 new breaker, did you verify that it was the correct replacement?

9 A Yes.

10 Q Okay. And how did you verify that?

11 A Visually.

12 Q Why do you prefer the name Andy James as opposed to
13 Andy or Andrew Hensley?

14 A I just think it sounds better. I mean, I -- you know, I was
15 younger, too, you know. It was one of those things. Age. You know? I
16 was -- 20 some years ago, you know? So, it was just one of those things
17 where I thought it sounded cooler, and that. Silly, I know.

18 Q The photograph that's in the black book, 225?

19 A Yes, sir.

20 Q Okay. What are you doing with your arms?

21 A I'm actually holding my left arm.

22 Q Okay. Why?

23 A Because it hurts.

24 Q Okay, thank you.

25 MR. KUDLER: That's all I have, Your Honor.

1 THE COURT: Recross?

2 MR. A. GIOVANNIELLO: Nothing, Your Honor.

3 THE COURT: Anything else for this witness?

4 [Sidebar begins at 4:05 p.m.]

5 THE COURT: Don't trip. I'm going to take my glasses off so I

6 can read these. Both factual. Any objection?

7 MR. A. GIOVANNIELLO: No.

8 THE COURT: Okay. Next one appears factual. And no

9 objections?

10 MR. A. GIOVANNIELLO: Hang on, so I can read it.

11 MR. KUDLER: I'm sorry.

12 THE COURT: [Indiscernible] 10, same direction.

13 MR. A. GIOVANNIELLO: I'm okay with it if you are.

14 MR. KUDLER: I don't think they -- union is.

15 MR. A. GIOVANNIELLO: I don't do that.

16 MR. KUDLER: Well --

17 THE COURT: Your objection [indiscernible].

18 MR. A. GIOVANNIELLO: I agree with that -- him, not to use

19 that.

20 THE COURT: Oh, okay.

21 MR. A. GIOVANNIELLO: We just both agreed.

22 THE COURT: Okay. Good to know. 13. That one, please.

23 MR. A. GIOVANNIELLO: I'm okay with that, too.

24 MR. KUDLER: Good?

25 MR. A. GIOVANNIELLO: You're good? It's amazing we agree

1 sometimes.

2 THE COURT: You guys are just trying to an answer, I know.
3 That question, I think, factual.

4 MR. A. GIOVANNIELLO: Yeah, I'm fine with that, too.

5 THE COURT: Good?

6 MR. A. GIOVANNIELLO: I should have asked some of these.

7 THE COURT: This one works, too, I think. Unless you guys
8 can change my mind. This is duplicative of the others.

9 MR. A. GIOVANNIELLO: I'm okay with this. You okay with
10 this?

11 MR. KUDLER: Yeah.

12 THE COURT: This one, I think.

13 MR. A. GIOVANNIELLO: All right, that's fine. I'm just
14 thinking about it.

15 THE COURT: This one, I'm thinking we already got in
16 another questions.

17 MR. KUDLER: Yeah, he's already answered that one.

18 MR. A. GIOVANNIELLO: He's answered that, yeah.

19 THE COURT: Yeah. So we're just going to -- not going to ask
20 that again, because it's already asked and answered. And, okay. All --
21 they all appear to be factual.

22 MR. KUDLER: Yeah, I mean other than one was a repeat of
23 another, so you don't ask the same question.

24 THE COURT: Which one?

25 MR. KUDLER: Number 3 is a repeat of it.

1 MR. A. GIOVANNIELLO: Yeah, it is.
2 MR. KUDLER: It's the same as [indiscernible].
3 THE COURT: It was?
4 MR. KUDLER: Yeah.
5 THE COURT: So I just marked out --
6 MR. KUDLER: Just number 3.
7 THE COURT: I just marked out number 3, because we don't
8 need to do it twice.
9 MR. KUDLER: Right.
10 THE COURT: But the balance, no objection?
11 MR. A. GIOVANNIELLO: No objection.
12 MR. KUDLER: I just wanted to see the Court -- I just wanted
13 the Court --
14 THE COURT: No, I appreciate that catch.
15 MR. A. GIOVANNIELLO: Did you see 4?
16 MR. KUDLER: I'm fine.
17 MR. A. GIOVANNIELLO: Do you want to look at it?
18 MR. KUDLER: No.
19 THE COURT: What's wrong?
20 MR. KUDLER: I just wanted to see 4 real quick.
21 THE COURT: 4, I'm sorry.
22 MR. KUDLER: Yeah, I got to 3 and stopped.
23 THE COURT: You got it.
24 MR. KUDLER: Okay.
25 THE COURT: What kind of direction are you taking with? I

1 don't know about it.

2 MR. KUDLER: Yeah, you assume a risk part.

3 MR. A. GIOVANNIELLO: I mean, I like it, but I don't think he
4 would do.

5 THE COURT: Which part?

6 MR. A. GIOVANNIELLO: The assumption of the risk.

7 MR. KUDLER: We don't object to [indiscernible]. Just want
8 to take a look. I just got the first part.

9 MR. A. GIOVANNIELLO: I might want to object to that.

10 THE COURT: Andrew, is it a conflict of the law?

11 MR. A. GIOVANNIELLO: Yeah.

12 MR. KUDLER: Yeah, I mean, the first part is fine. The second
13 part isn't.

14 THE COURT: So, if I edit just the first -- I stop here?

15 MR. KUDLER: Yeah.

16 THE COURT: And not do two?

17 MR. KUDLER: Right.

18 MR. A. GIOVANNIELLO: I -- yeah. I agree with that.

19 THE COURT: Okay, so no two, just one.

20 MR. A. GIOVANNIELLO: Yeah.

21 THE COURT: Because the other part arguably question of
22 law.

23 MR. A. GIOVANNIELLO: Yes.

24 THE COURT: Okay. All right.

25 MR. KUDLER: Thank you.

1 [Sidebar ends at 4:10 p.m.]

2 THE COURT: When was the original electrical inspection
3 done to identify the breaker at issue? Strike that. Let me try this again.
4 When was the original electrical inspection done to identify the breaker
5 was an issue, open paren, for change order, close paren?

6 THE WITNESS: I'm not sure exactly. We were approached
7 by College Park to change a breaker on a change order basis. I can't
8 remember the exact date of that change order, but it was brought to our
9 attention there was a problem with the kitchen panel. We knew what it
10 was from Roy. He had already bought the breaker, and we went there
11 that night to replace it, so I'm not exactly sure, if I understand the
12 question fully, but it's -- that's to the best of my recollection, that's all I
13 can tell you, is that it was done on a change order basis for the scope of
14 the job, probably sometime in May of 2014.

15 THE COURT: Juror question number 2. I heard the fire
16 department found screws atop the box that night shortly after incident,
17 period. You said you went back June 7th, 2014 to look at the panel. You
18 found one screw, an outline of another screw. Why would fire
19 department leave them there the night before, if you know?

20 THE WITNESS: I do not know. They saw it, they identified it,
21 they agreed with the other two electricians, so their two guys that were
22 there, that thought that that -- there was a screw laying in the shadow of
23 the dust, and that more than likely that screw fell, and they did not touch
24 the screw that had been -- that remained.

25 THE COURT: The day of the event, how many hours did you

1 -- did both you and Jeff work, question mark?

2 THE WITNESS: We worked that afternoon at the facility and
3 left and came back around 9:00 that night.

4 THE COURT: Did you provide the breaker spec to College
5 Park for purchase, question mark?

6 THE WITNESS: No, we did not.

7 THE COURT: Would the blast be strong enough to shake or
8 dislodge screws on the buffer?

9 THE WITNESS: Potentially, yes.

10 THE COURT: When working on electrical panels, do
11 electricians normally ask to see past maintenance records prior to
12 conducting work on panels?

13 THE WITNESS: No, they do not.

14 THE COURT: Was anyone else with you when you went back
15 to the panel the next day and found the screw and outline of the screw in
16 the dust at the top of the bus?

17 THE WITNESS: Yes, employee Jason Farris was with me.

18 THE COURT: Were any photos taken to confirm findings?

19 THE WITNESS: Yes, those photos are in evidence that we've
20 seen.

21 THE COURT: Would it have been typical to do this type of
22 inspection prior to doing the work to identify any risks?

23 THE WITNESS: The energized bus area was inspected when
24 the panel board was open, and that's the standard process. You don't
25 go, you know, seven feet above the panel to look for screws because

1 screws shouldn't be there, especially in a healthcare facility that has such
2 stringent codes for inspection and maintenance. So, no, that's not
3 something that would normally be done.

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

6 THE WITNESS: So, as I was explaining earlier, so the main
7 breaker in this panel is a -- is -- I'm just going to go into a little bit of geek
8 talk, but it's a Westinghouse Celtronic 1600AT, and it is a manual trip
9 breaker, meaning you can manually turn it on, you can manually turn it
10 off. But there's some breakers, and I'm not sure if this breaker has this
11 feature or not, because it all depends on the trip plug that's in it, if it has
12 a push button to actually test the breaker to see if it'll trip.

13 The reason why they do that is because it takes -- it takes a
14 lot of pressure to actually turn that breaker off. It's much easier to push
15 a button and have the breaker automatically trip to the off position. If
16 you do that, you interrupt power to the building. We were specifically
17 told not to do that. So that's why we didn't do it. Does that answer the
18 question? You could re-read that question for me.

19 THE COURT: Can you hand that one back, please?

20 THE WITNESS: I'm sorry.

21 THE COURT: The witness is requesting a re-read.

22 THE WITNESS: I just want to make sure that I answered it.

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

25 THE WITNESS: So the only real way to test a breaker is to do

1 a manual reset. So, Eaton Manufacturing, who now owns the
2 subsequent companies that bought Westinghouse that manufactured
3 that breaker, they have maintenance requirements that are required, you
4 know, under Medicaid, Medicare, under the NFPA, under the NEC, under
5 OSHA -- it all refers to manufacturer-recommended maintenance
6 intervals. Eaton, who now owns the company that built that breaker,
7 their manufacturer's inspection intervals are every three years, that
8 breaker is supposed to be manually tripped, manually turned off,
9 manually turned back on.

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

20 MR. A. GIOVANNIELLO: Your Honor, I'm going to object.
21 Move to strike. It's speculation.

22 THE COURT: Overruled. Next question. Since you hold all
23 of this up, all of the licensing, do you not receive additional
24 compensation for being a quote, qualified employee, end quote, for ILP?

25 THE WITNESS: I do not.

1 THE COURT: You testified that you were -- there were no arc
2 flash labels on the equipment indicating a safe PPE level. Given this,
3 wouldn't it have been prudent to wear long-sleeved, fire-retardant shirts,
4 balaclavas, and face shields for working on energized electrical
5 equipment regardless of the voltage level?

6 THE WITNESS: No. Balaclavas, face shields, that kind of
7 thing are only required above a certain voltage. There's been many
8 white papers written on it. There's -- arc flashes below 240 volts are
9 extremely rare, based on the fact the main breaker's supposed to trip,
10 and eliminate the arc flash. The higher the voltage, the greater the
11 incident energy, even if the breaker trips quick, the plasma ball could
12 have already started, because the voltage is higher. And even with the
13 power turned off, the plasma ball can -- can actually continue, because
14 it's burning up material as it develops.

15 On a 120/208 panel, we were wearing exactly the PPE we
16 were supposed to be wearing. Wearing a balaclava and wearing a full
17 face shield, and wearing long-sleeved shirts is not required under the
18 NFPA, under OSHA, under the NEC, or any other safety regulation that's
19 published, and we were wearing exactly what we were supposed to be
20 wearing for the voltage level.

21 THE COURT: Would it be reasonable to assume that the burn
22 injuries could have been reduced or prevented had you been wearing a
23 long-sleeved, fire-retardant shirt?

24 THE WITNESS: It's possible. It's absolutely possible, but
25 again, not required.

1 THE COURT: Any additional questions from the jury as a
2 consequence to these questions asked and answered by the witness?
3 Seeing no hands, follow-up jury questions, Plaintiff?

4 MR. KUDLER: Thank you, Your Honor.

5 FURTHER REDIRECT EXAMINATION

6 BY MR. KUDLER:

7 Q Prior to going there that night, prior to doing the change
8 order, did you or anybody at ILP determine the cause of the issue with
9 the kitchen power?

10 A No.

11 Q Okay. You were told what the cause was?

12 A Yes.

13 Q Okay. And who told you what the cause was?

14 A Roy Comstock.

15 Q Okay. And he told you the cause was?

16 A That there was a burn conductor on that breaker. That
17 breaker needed to be replaced, and he had the breaker.

18 Q Could there be another place that would be causing similar
19 problems, other than that breaker?

20 A It could have been on the kitchen side, because then, you
21 know, on the -- in -- it could have a lug in the kitchen panel, but he
22 seemed to know exactly where the issue was.

23 Q And the change order and request were to change the
24 breaker, not to inspect or examine or --

25 A No, it was strictly a change order, just to install breaker. We

1 do them all the time.

2 Q Okay. But that you were not asked to diagnose the issue?

3 A No.

4 Q Okay. You were told what the issue was.

5 A Correct.

6 Q And then once you opened the box, did that confirm?

7 A Yes.

8 Q What you were told?

9 A Yes, it did. Sorry.

10 Q Thank you.

11 A Yes, sir.

12 THE COURT: Follow-up jury questions to those? None?

13 MR. A. GIOVANNIELLO: None, Your Honor.

14 THE COURT: Please step down.

15 THE WITNESS: Thank you, sir.

16 THE COURT: Parties approach.

17 [Sidebar begins at 4:19 p.m.]

18 THE COURT: Do you think -- is there anything else we can do
19 in the next 40 minutes? All right, so we take our evening recess? We're
20 looking at the follow-up for the RN tomorrow morning at 9, and then
21 what?

22 MR. KUDLER: Douglas Smith in the morning, then we can
23 work on jury instruction in limine two in the afternoon.

24 THE COURT: Okay.

25 MR. KUDLER: One and three.

1 THE COURT: So, you'd need to get a couple hours in the
2 morning, and then extended lunch break, and then back. When do you
3 have your afternoon witnesses lined up for?

4 MR. KUDLER: One and three.

5 THE COURT: One and three.

6 MR. KUDLER: Or one and two, actually.

7 THE COURT: One and two.

8 MR. A. GIOVANNIELLO: If his options don't show up, I'm
9 going to have Roy Comstock come in.

10 THE COURT: Tomorrow afternoon?

11 MR. A. GIOVANNIELLO: Yeah, just in case.

12 THE COURT: That's fine.

13 MR. A. GIOVANNIELLO: I mean, if he doesn't get on it
14 tonight.

15 THE COURT: All right. I'll just tell them that they're going to
16 get an extended lunch, however, tomorrow, so if they want to make -- I
17 don't know, reservations somewhere.

18 MR. A. GIOVANNIELLO: That's funny.

19 MR. KUDLER: Thank you, Your Honor.

20 THE COURT: Thank you.

21 [Sidebar ends at 4:20 p.m.]

22 THE COURT: All right, ladies and gentlemen, we're going to
23 take our evening recess at this time.

24 During this recess, you must not discuss or communicate
25 with any individual -- anybody, including fellow jurors, in any way

1 regarding this case or its merits by voicemail, phone, text, internet, other
2 means of communication or social media. You may not read, watch,
3 listen to any reports and/or commentary on the trial. You may not do
4 any individual research, consult dictionaries, use the internet regarding
5 this case. Use reference materials, investigation, or test theories
6 recreate any aspect of the case, or in any way investigate the case on
7 your own, or form or express any opinions on the case until it's finally
8 submitted to you.

9 Now, we're going to do a 9:00 call for tomorrow. The
10 witnesses -- you know why we're doing 9:00 or who we anticipate, or
11 who they anticipate having first. It's represented to me that in terms of
12 scheduling, you're probably going to have an extended lunch, so it's
13 probably going to be a few hours instead of an hour and 15 minutes, so
14 if you want to bring work or something to fill that time so it's not just
15 dead time for you, I'd suggest that would be a very good idea. Then
16 we'll pick up in the afternoon with the witnesses that remain. Have a
17 good evening.

18 THE MARSHAL: Stand for the jury.

19 [Jury out at 4:22 p.m.]

20 [Outside the presence of the jury]

21 THE COURT: All right. Record should reflect we're outside
22 the presence of the jury. Any additional record need be made by either
23 side as a function of witness examination this afternoon, Plaintiff?

24 MR. KUDLER: No, thank you, Your Honor.

25 THE COURT: Defense?

1 MR. A. GIOVANNIELLO: No, no, thank you, Your Honor.

2 THE COURT: All right, good. I have been doing a little work
3 towards answering questions in my own mind regarding how I'm going
4 to instruct the jury. There was efforts made early in the discussion on
5 those OSHA regs that are already matter of component of evidence that
6 come in, been read, but they're also physically in evidence.

7 There's not a heck of a lot of authority I cannot find on
8 whether an OSHA -- other courts across the country have reduced a
9 OSHA reg to a specific instruction. There's discussion out of Colorado
10 that talks about OSHA in context of an independent cause of action
11 under negligence per se, and they said no. But I can't find any authority
12 where I'm turning that instruction -- that reg into an instruction.

13 So, I don't remember which of you was wanting it, but at this
14 point, I'm headed -- it's a component of evidence, and it's arguably in
15 evidence, and as a consequence you're able to argue that regulation, but
16 in terms of an actual instruction that identifies it uniquely as a point of
17 law on -- you're going to have to do better. And I've looked around, but
18 at this point, I'm not finding anything that pushes me that direction. And
19 I just wanted to -- whoever it was, I wanted to give you a heads up.

20 MR. A. GIOVANNIELLO: That was me. Okay.

21 THE COURT: All right.

22 MR. A. GIOVANNIELLO: I'll see if I can find some authority.

23 /////

24 /////

25 /////


1 THE COURT: Have a good evening. We'll see you tomorrow
2 morning at 9 a.m.

3 MR. A. GIOVANNIELLO: See you 9 a.m.

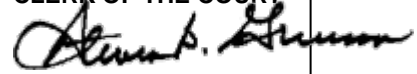
4 THE MARSHAL: Court's adjourned.

5 [Proceedings concluded at 4:24 p.m.]
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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio-visual recording of the proceeding in the above entitled case to the
23 best of my ability.



24 Maukele Transcribers, LLC
25 Jessica B. Cahill, Transcriber, CER/CET-708



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FUNDAMENTAL ADMINISTRATIVE

SERVICES, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

JEFFREY A. MYERS and ANDREW
JAMES, individually,

Plaintiffs,

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 1-XXX; and
ROE CORPORATIONS 1-XXX, inclusive,

Defendants.

) Case No.: A-16-735550-C

)
) OPPOSITION TO PLAINTIFFS MOTION
) FOR NEW TRIAL BY DEFENDANT THI
) OF NEVADA AT CHEYENNE, LLC dba
) COLLEGE PARK REHABILITATION
) CENTER

) DEPT: XVII

) Complaint filed April 16, 2016

) Trial scheduled May 31, 2022

OPPOSITION TO PLAINTIFFS MOTION FOR NEW TRIAL BY DEFENDANT THI
OF NEVADA AT CHEYENNE, LLC dba COLLEGE PARK REHABILITATION
CENTER

COMES NOW Defendant THI OF NEVADA AT CHEYENNE, LLC dba COLLEGE

1 PARK REHABILITATION CENTER (hereinafter referred to as “College Park”), by and through
2 its counsel of record, Alexander F. Giovanniello and Christopher J. Giovanniello of
3 GIOVANNIELLO LAW GROUP, hereby file this Opposition to Plaintiffs’ Motion for New Trial.

4 This Opposition is based upon this Notice, the accompanying Memorandum of Points and
5 Authorities, the documents and evidence on file herein, and upon such oral and documentary
6 evidence as may be presented at the hearing on this matter.

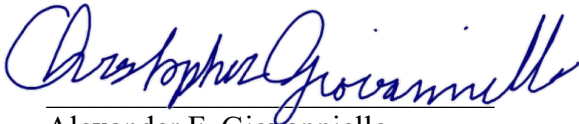
7 Plaintiffs are missing a major point here—the jury simply did not believe Plaintiffs or
8 Plaintiffs’ expert Mr. Gifford.

9 Defendants were handicapped from the outset of its current counsel’s assumption of the
10 defense of this case—no experts permitted, no depositions, limited to no discovery. Plaintiffs
11 simply did not prove their case to the eight people in the jury box.

12 One of the jurors was a professional electrical engineer—he had intimate knowledge of
13 electrical systems, arc flashes, and circuit breakers. He found in favor of Defendants. The jury
14 verdict was unanimous.

15
16 Dated: August 1, 2022

GIOVANNIELLO LAW GROUP

17
18 By: 

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THI OF NEVADA AT CHEYENNE, LLC dba

COLLEGE PARK REHABILITATION CENTER

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF FACTS**

3 This is an action filed by Plaintiffs Jeffery Myers and Andrew James (hereinafter referred
4 to as “Plaintiffs”) for negligence against Defendants THI of Nevada at Cheyenne, LLC dba
5 College Park Rehabilitation Center (hereinafter referred to as “College Park”); Healthcare Realty
6 of Cheyenne, LLC (hereinafter referred to as “Healthcare Realty”); and Fundamental
7 Administrative Services, LLC (hereinafter referred to as “FAS”) (hereinafter collectively referred
8 to as “Defendants”). Plaintiffs allege that employees of College Park negligently left a screw in
9 an electrical box, causing an arc flash while Plaintiffs were performing repair work on the
10 electrical box, with the arc flash causing Plaintiffs’ alleged injuries.

11 We first note that College Park’s current counsel replaced its previous counsel at a very
12 late stage in the litigation. Upon College Park’s current counsel taking over its litigation strategy,
13 College Park’s previous counsel had done considerable damage to College Park’s ability to
14 defend itself. The court denied College Park’s motion to reopen discovery so that it could retain
15 experts, depose the Plaintiffs and Plaintiffs’ expert witness, and later denied its ability to proffer
16 its own previously approved damages expert witness.

17 On May 31, 2022, the matter came on for trial. After the close of Plaintiffs’ case-in-chief,
18 Defendants’ case-in-chief, and Plaintiffs’ rebuttal, Defendants moved for a Judgment as a Matter
19 of Law regarding Defendants Healthcare Realty and FAS, arguing that Plaintiffs failed to prove
20 a prima facie case against those two defendants. The Court granted the Motion for a Judgment
21 as a Matter of Law and adjudicated in favor of Healthcare Realty and FAS from the suit.

22 After five days of testimony, the case went to the jury. Included in this jury panel was a
23 professional electrical engineer, who noted during voir dire that he was aware and accustomed to
24 the electrical systems at issue, including breakers. The jury returned a unanimous verdict in favor
25 of College Park, finding no negligence. While College Park notes Plaintiffs have failed to proffer
26 any affidavits from any of the jurors noting any malfeasance or misapplication of the jury
27 instructions. College Park notes that the jury had multiple avenues in which it could determine
28 that College Park was not negligent, such as: the jury did not believe the testimony of Plaintiffs;

1 the jury did not believe the testimony of Plaintiffs' expert's testimony; the jury determined the
2 Plaintiffs were negligent and caused their own injuries; or the jury determined the Plaintiffs were
3 not wearing proper protective gear ("PPE") in completing their work; and that College Park
4 properly maintained its premises. Despite these likely determinations, Plaintiffs nevertheless
5 filed their Motion for New Trial, arguing that the jury manifestly disregarded three jury
6 instructions of the court, promptly requiring College Park to file the instant opposition.

7 **II. ARGUMENT**

8 **1. NRCP Rule 59(a)(1)(E) Is Inapplicable Because There Was No Manifest**
9 **Disregard by the Jury of the Instructions of the Court**

10 NRCP 59(a) states, in pertinent part:

11 (1) Grounds for New Trial. The Court may, on motion, grant a new trial on all or
12 some of the issues—and to any party—for any of the following causes or
grounds materially affecting the substantial rights of the moving party:

13 (E) Manifest disregard by the jury of the instructions of the court.

14 Here, Plaintiffs rely upon a variety of cases to support their position that the jury in the
15 instant matter disregarded jury instructions (the majority of which held that a new trial was *not*
16 warranted), even though the jury was unanimous in its decision finding no liability on behalf of
17 Defendant College Park.

18 First, Plaintiffs rely upon *Weaver Bros. v. Misskelley*, 98 Nev. 232, 645 P.2d 438 (1982).
19 In *Weaver Bros.*, an action was brought to recover damages for alleged breach of construction
20 contract. *Id.* The jury returned a verdict for the plaintiff, and the judge granted a new trial, which
21 plaintiff appealed. *Id.* On appeal, the Supreme Court of Nevada determined the main issue was
22 whether the district court erred by granting a new trial on the ground that the jury disregarded the
23 instructions regarding prevention of performance. *Id.* at 234, 439.

24 In *Weaver Bros.*, the defendant hired a subcontractor to clear the property and prepare the
25 dirt pad upon which the building was to be constructed. *Id.* at 234-5, 439. The plaintiff presented
26 evidence that the defendant did not properly supervise the subcontractor. *Id.* According to the
27 plaintiff, there was a delay in the excavation and the specifications were not being followed,
28 causing the plaintiff to fire the defendant. *Id.* at 235, 440. In concluding that the jury instructions

1 regarding prevention of performance had been misapplied, the district judge apparently reasoned
2 that, by failing to file a financial statement and by terminating the defendant's employment, the
3 plaintiff had prevented the defendant's performance. *Id.*

4 The Supreme Court of Nevada did not agree with the district court judge's reasoning,
5 holding that the jury may well have found that the plaintiff's failure to file a financial statement
6 was a minor breach which did not prevent or affect the defendant's ability to perform because it
7 was ignored by the parties. *Id.* The court also held that the jury may have further concluded that
8 the defendant's failure to supervise the subcontractor properly was a breach of sufficient
9 magnitude to warrant his dismissal and termination of the contract. *Id.* Therefore, the Supreme
10 Court of Nevada was unable to declare that it was impossible for the jury, correctly applying the
11 instructions, to have reached the verdict they reached. *Id.*

12 Similarly, here, Plaintiffs argue that College Park had a duty to maintain its breakers, that
13 College Park failed to do so, and that the main breaker failed. [Plaintiffs' Motion, pgs. 3-9]
14 Plaintiffs base these allegations upon testimony of Plaintiffs Andrew James and Jeffrey Myers,
15 Plaintiffs' expert witness, Don Gifford, and College Park employee Roy Comstock. What
16 Plaintiffs have seemed to conveniently leave out of this testimony, is the various questions the
17 jury asked each of the above-noted witnesses. The jury was permitted to ask follow-up questions
18 of each witness who provided testimony at trial. Each witness received follow-up questions from
19 the jury, which only proves that jury was more than attentive and received and processed the
20 entirety of each witnesses' testimony.

21 Plaintiffs also conveniently leave out the possibility that the jury simply did not believe
22 the testimony of Plaintiffs or Plaintiffs' expert, and that they did in fact believe the testimony of
23 Mr. Comstock. Like in *Weaver Bros.*, there are more likely instances for the jury's unanimous
24 verdict that simply ignoring jury instructions—the probable reason for the jury's unanimous
25 verdict was that they simply did not believe the testimony provided by Plaintiffs and Plaintiffs'
26 expert and put more weight behind the testimony of Roy Comstock. It is also more than possible
27 that the jury could have simply determined that College Parks' evidence that Plaintiffs were the
28 cause of the arc flash at issue in this case was the more likely scenario. The jury simply

1 disregarding or not putting weight into expert testimony does not equate to a “manifest disregard”
2 of the jury instructions as Plaintiffs would like this court to believe. In fact, a fact finder
3 determines the facts, not the experts. *In re Scott*, 61 P.3d 402, 424. Indeed, fact finders may even
4 reject the unanimity of expert opinion. *Id.* Here, the jury rejected Plaintiffs’ expert opinion that
5 College Park was at fault and determined that College Park was not negligent.

6 Like in *Weaver Bros.*, there is clearly no “manifest disregard” of the jury instructions
7 because Plaintiffs simply failed to prove that the breaker was not properly maintained or that that
8 the breaker failed. Even further, Plaintiffs fail to note the testimony from Plaintiff Andrew James,
9 who testified that an inspector arrived at College Park before Plaintiffs began their work, who
10 noted that there was an issue with the main panels (where Plaintiffs would be working) and
11 provided information that the breaker needed to be replaced. In fact, Plaintiff Andrew James
12 testified that Plaintiffs work at College Park included replacing the breaker at issue, and further
13 testified (without any evidentiary support) that College Park was to provide said breaker to
14 Plaintiffs prior to their beginning work. It simply does not follow that College Park failed to
15 maintain its premises if an inspector notified College Park and Plaintiffs of an issue with the
16 breaker, and Plaintiffs work at College Park included replacing that same breaker.

17 Next, Plaintiffs rely upon *Town & Country Elec. Co. v. Hawke*, 100 Nev. 701, 692 P.2d
18 490 (1984). In *Hawke*, a tenant plaintiff brought action against a seller and installer of a light
19 fixture (defendants) after the fixture fell from the ceiling of the plaintiff’s apartment and struck
20 her on the head. *Id.* the district court granted the plaintiff a new trial after the jury returned a
21 verdict in the defendants’ favor, and the defendant appealed. *Id.*

22 In *Hawke*, plaintiff argued that there was no locknut in the fixture apparatus and that about
23 one-half of the threaded pipe which formerly held the glass diffuser had been threaded up into the
24 socket base on the ceiling and that the lowest three or four threads of the pipe had been stripped.
25 *Id.* at 702, 490. The plaintiff’s theory at trial was that the lack of a locknut in the apparatus had
26 been a substantial cause of the light fixture’s fall, contending that the absence of the locknut was
27 the result of negligence by the installer defendant, marketing of a defective product, or both. *Id.*
28 The jury heard testimony during trial on the function of a locknut as a safety device to prevent

1 the threaded pipe from being screwed so far into the socket that there was insufficient pipe on
2 which to attach the ornamental knob holding the diffuser in place. *Id.* The jury also heard
3 testimony, however, on the stripped condition of the threaded pipe. *Id.* The jury returned a
4 general verdict finding neither defendant liable causing the plaintiff to appeal. *Id.*

5 On appeal, the plaintiff argued the jury disregarded the jury instructions under NRCP 59.
6 *Id.* at 702, 491. The court noted that it “strictly construes” NRCP 59, and that the jury was
7 instructed on negligence, proximate cause, and strict products liability. *Id.* Given the testimony
8 at trial, the Supreme Court of Nevada held that the jury may have concluded that the missing
9 locknut was not the proximate cause of the accident; or inferred that the condition was caused by
10 a previous tenant; or that the fixture was not unreasonably dangerous as manufactured; or that the
11 light was not negligently installed. *Id.* The Nevada Supreme Court concluded that **it need not**
12 **determine how the jury reached its conclusion that neither defendant was liable; it need**
13 **only determine whether it was possible for the jury to do so.** *Id.* (emphasis added). The Court
14 determined it was indeed possible for the jury to reach a defense verdict on the evidence, and thus
15 the trial court erred by granting a new trial. *Id.* at 703, 491.

16 Similarly, here, there are multiple avenues for which the jury could have reached its
17 unanimous verdict in favor of College Park. As noted above, the jury could have disregarded
18 Plaintiffs’ testimony; the jury could have disregarded Plaintiffs’ expert testimony; or the jury
19 could have determined that the Plaintiffs were the cause of their own injuries. Based on the ruling
20 in *Hawke*, the Nevada Supreme Court essentially held that if there are any other possibilities for
21 the jury to have reached its conclusion—other than a “manifest disregard” for the jury
22 instructions—than there is no ground for new trial under NRCP 59(a)(1)(E). *Id.* at 703, 491. In
23 fact, the Court specifically noted it “strictly construes” NRCP 59, which again supports the notion
24 that for NRCP 59(a)(1)(E) to apply, there must be no other possible reason for the jury to have
25 reached its verdict without disregarding the jury instructions. *Id.* at 702, 491. Clearly, that is not
26 the case here, and NRCP 59(a)(1)(E) inapplicable to the instant matter.

27 Next, Plaintiff cite *Jaramillo v. Blackstone*, 101 Nev. 316, 704 P.2d 1084 (1985). In
28 *Jaramillo*, a pedestrian plaintiff was struck and injured by an automobile and brought action

1 against the driver and driver's employer. *Id.* After the jury returned a verdict indicating the
2 plaintiff had been 63% negligent and that the driver was 37% negligent, the district court granted
3 the plaintiff's motion for new trial, and the driver and driver's employer appealed. *Id.* The
4 Supreme Court of Nevada held that it was not impossible for the jury to conclude that plaintiff
5 was more at fault than the driver. *Id.*

6 The jury was instructed on contributory negligence, and the right of way of the pedestrian.
7 *Id.* at 319, 1086. From the evidence presented at trial, **the Supreme Court of Nevada noted that**
8 **it was possible** the jury concluded that the plaintiff suddenly left the center turn lane, a place of
9 safety, and walked into the path of the vehicle when it was so close that it was impossible for the
10 driver to stop the vehicle to yield to the plaintiff. *Id.* (emphasis added). The Court additionally
11 noted that the testimony at trial indicated that it was not impossible for the jury to conclude that
12 the plaintiff was more at fault than the driver and reach their verdict. *Id.* at 319, 1087.

13 Again, here, like *Jaramillo*, there are multiple avenues wherein the jury could have
14 determined that College Park was not negligent in the instant matter. Plaintiffs simply fail to
15 realize that they failed to prove a prima facie case, and the jury either disregarded Plaintiffs'
16 expert testimony, or believed that Plaintiffs were the cause of their own injury. Instead, Plaintiffs
17 place blame on the jury, instead of themselves, for failing to prove their theory of the case. Here,
18 the jury was properly instructed, Plaintiff Andrew James specifically testified that there was an
19 inspector on scene prior to Plaintiffs beginning their work who noted there was an issue with the
20 breaker, and Plaintiffs work included replacing the breaker that the inspector noted was an issue.
21 Despite Plaintiffs argument, College Park must have properly determined that the breaker needed
22 to be replaced and hired Plaintiffs to replace said breaker—which is assuredly what the jury
23 determined. Plaintiffs' argument that the only way the jury could come to their verdict was by
24 determining College Park had no duty to maintain the breakers is clearly misplaced and can only
25 be viewed as Plaintiffs sour grapes that they failed to prove their theory of the case.

26 Next, Plaintiffs rely upon *Rees v. Roderiques*, 101 Nev. 302, 701 P.2d 1017 (1985). In
27 *Rees*, the plaintiff brought action against the defendant doctor claiming the defendant was
28 negligent in her medical treatment of the plaintiff and, as a result, the lower portion of the

1 plaintiff's leg required amputation. *Id.* The district court granted the plaintiff's motion for new
2 trial on the basis that the jury misapplied and/or misunderstood instructions dealing with standard
3 of care and proximate cause, causing the defendant to appeal. *Id.*

4 In *Rees*, the plaintiff visited the defendant doctor with her right leg in severe pain,
5 exhibited difficulty walking, and her lower right leg was swollen. *Id.* at 303, 1018. The defendant
6 examined the plaintiff, diagnosing her with varicose veins, instructed the plaintiff to wear an
7 elastic stocking to support the veins and reduce the swelling, and scheduled another appointment
8 for the plaintiff two days later. *Id.* When the plaintiff returned to the defendant's office, she
9 exhibited a black right foot with red streaks, causing the defendant's office to send the plaintiff
10 to another doctor, who diagnosed the plaintiff with early gangrene of the right foot. *Id.* at 303-4,
11 1018. The plaintiff received surgery on the right leg, but the leg could not be saved and required
12 amputation below the knee. *Id.* Upon conclusion of the trial, the jury found for the defendant,
13 causing Plaintiff to move for a new trial. *Id.* The district court granted the motion for new trial
14 on the basis the jury had misapplied and/or misunderstood the instructions of law dealing with
15 standard of care and proximate cause. *Id.* at 304, 1019. The defendant's appeal followed. *Id.*

16 The instant case is distinguishable from the facts of *Rees*. Clearly, there was no alternative
17 theory as to why the jury reached its verdict in *Rees*—no fault could be attributed to the plaintiff,
18 and multiple experts testified that the defendant breached the standard of care. *Id.* at 304-5, 1019-
19 20.

20 Here, however, as noted above, there are multiple possibilities as to why the jury reached
21 its verdict, namely that they simply did not believe (and thus disregarded) Plaintiffs' expert's
22 testimony (which is not grounds for a new trial pursuant to *In re Scott, infra*), or that the jury
23 believed the Plaintiffs were the cause of their own injury. Further, Plaintiff Andrew James' own
24 trial testimony reflects that there was an inspector present prior to Plaintiffs beginning their work
25 that noted the breaker at issue required replacement, and Plaintiffs were hired to replace the same
26 breaker. As such, whereas in *Rees* the defendant had no evidence to contradict the testimony
27 provided by Plaintiff, here College Park had evidence to contradict Plaintiffs' testimony with
28 testimony of Roy Comstock, and with Plaintiff Andrew James' own testimony that an inspector

1 had inspected the area prior to his beginning work at College Park. Therefore, *Rees* is inapplicable
2 to the instant matter.

3 Further, Plaintiffs conveniently failed to note that the *Rees* holding was recently
4 distinguished in *Rives v. Center*, 485 P.3d 1248, 2021 WL 1688014 (2021). *Rives* held that it was
5 distinguishable from *Rees* because there, the defendant failed to proffer any evidence to the
6 contrary of the plaintiff's testimony, whereas in *Rives* there was ample testimony to contradict
7 the plaintiff's testimony. *Id.* at *4. *Rives* held that the jury's verdict was not "impossible" because
8 the jury could have reasonably found based on the evidence presented that the plaintiff was solely
9 responsible for the compensable injury even if the settled defendant's conduct fell below the
10 standard of care, or that the jury could have disregarded the expert's testimony that the settled
11 defendants contributed to the injuries in some measurable or compensable way, per *In re Scott*.
12 The *Rives* court further held that the decision to grant or deny a motion for new trial rests within
13 the sound discretion of the trial court, and it would not disturb that decision absent **palpable**
14 **abuse**. *Id.* at *3 (emphasis added).

15 Again, in the instant matter College Park presented contradictory evidence to Plaintiffs'
16 testimony and Plaintiffs' expert's testimony, namely that the area was inspected prior to the
17 Plaintiffs beginning their work, and that Plaintiffs caused their own injuries due to their own
18 negligence. Given this evidence, it is not impossible for the jury to have reached their verdict
19 without disregarding the jury instructions. Therefore, *Rees* is inapplicable to the instant matter
20 whereas *Rives* is applicable, as there was no "manifest disregard" or "palpable abuse" in the
21 instant matter.

22 Next, Plaintiffs rely upon *Groomes v. Fox*, 96 Nev. 457, 611 P.2d 208 (1980), a decision
23 containing roughly three paragraphs of information. In *Groomes*, the taxicab passenger plaintiffs
24 brought action to recover damages from the taxicab driver and his employer for injuries sustained
25 in an automobile collision. *Id.* The jury found for the defendant, and the district court granted a
26 new trial on the ground that there had occurred manifest disregard by jury of instructions of the
27 court, particularly instruction concerning duty of care owed by a common carrier to its passengers.
28 *Id.* The defendant appealed. *Id.*

1 The plaintiffs in *Groomes* were passengers for hire in the cab driven by the defendant. *Id.*
2 at 458, 208. Before picking up the plaintiff, the defendant noticed that his brakes were “mushy,”
3 radioed that information to the dispatcher and was told to bring the cab in after his next fare. *Id.*
4 The plaintiffs were the defendant’s next passengers. *Id.* While proceeding south on Las Vegas
5 Boulevard, the defendant entered the left turn lane to enter the Sands Hotel when the car in front
6 stopped suddenly—the defendant applied his brakes but could not stop. *Id.* The Supreme Court
7 of Nevada held that had the jury paid due regard to the instructions of the court regarding the
8 heightened duty of care owed by a common carrier to its passengers, it was not possible to return
9 a defense verdict. *Id.*

10 *Groomes* is clearly inapplicable to the instant matter, as in *Groomes* there were no other
11 possibilities for the jury to determine that the defendant was not negligent, especially considering
12 the heightened duty of care owed by a common carrier to its passengers. Here, as noted above,
13 there are multiple theories in which the jury determined College Park was not negligent, such as
14 the jury disregarded the testimony of Plaintiffs; the jury disregarded the testimony of Plaintiffs’
15 expert’s testimony; the jury determined the Plaintiffs were negligent and caused their own
16 injuries; or the jury determined the Plaintiffs were not wearing proper protective gear (“PPE”) in
17 completing their work. Plaintiffs allege that the jury disregarded the instructions regarding
18 College Park’s duty of care to maintain its premises but fail to rectify Plaintiff Andrew James’
19 testimony that an inspector had previously inspected the area, and that College Park retained
20 Plaintiffs to replace the breaker at issue. Clearly, there is no evidence that the jury disregarded
21 the jury instructions and simply did not believe Plaintiffs’ theory of their case.

22 Finally, Plaintiffs rely upon *Taylor v. Silva*, 96 Nev. 738, 615 P.2d 970 (1980). In *Taylor*,
23 the plaintiff brought action against the defendant earthmoving company to recover for personal
24 injuries sustained when the defendant’s earthmover turned right, hitting the front left fender of
25 the plaintiff’s car, throwing the plaintiff across the inside of her car. *Id.* After trial, a jury returned
26 a special verdict finding that defendants were negligent but that their negligence was not the
27 proximate cause of the plaintiff’s injuries, causing the plaintiff to move for new trial. *Id.* The
28 district court granted the plaintiff’s motion for new trial, causing the defendant to appeal. *Id.* The

1 Supreme Court of Nevada held that under all the circumstances including the fact that there was
2 no intervening force between the defendant's negligence and the collision, the jury could not have
3 found an absence of proximate cause if it correctly applied the law, and a new trial was required.
4 *Id.*

5 The plaintiff in *Taylor* was driving eastbound on Williams Street following an earthmover
6 driven by the defendant. *Id.* at 740, 971. The earthmover straddled both eastbound lanes, and as
7 the vehicles approached the intersection of Williams and Taylor Streets, the traffic signal turned
8 red. *Id.* Believing the earthmover would continue upon Williams Street, the plaintiff drove her
9 car to the right of the earthmover, in what would have been a parking lane but for the red curb
10 and prepared to turn right onto Taylor Street. *Id.* As the plaintiff was about to turn, the earthmover
11 turned right, hitting the front left fender of the plaintiff's car causing the plaintiff to suffer neck
12 injuries. *Id.* During the trial, the plaintiff argued that the defendant negligently failed to signal
13 the turn, to equip the earthmover with signals, to look before turning, to equip the earthmover
14 with a rearview mirror, and to have an escort car. *Id.*

15 The Supreme Court of Nevada held there was no intervening force between the
16 defendant's negligence and the collision, the type of harm was foreseeable, and that the plaintiff's
17 contributory negligence could reduce her recovery under comparative negligence but does not
18 negate a finding that the plaintiff's negligence was a proximate cause of her injuries. *Id.* at 741,
19 971. The Court concluded that the jury was adequately instructed as to proximate cause, and had
20 the jury correctly applied the law, it could not have found an absence of proximate cause. *Id.* The
21 Court continued that a general verdict in favor of the defendant would only have been correct if
22 the plaintiff's negligence was greater than the defendant's, and since that was not the case, the
23 only remaining possibility for the jury's verdict was that it did not understand the difference
24 between proximate cause and comparative negligence. *Id.* at 741, 972.

25 Again, as with the previously noted cases relied upon by Plaintiffs, the *Taylor* matter is
26 wholly inapplicable to the instant matter. In *Taylor*, there was no other possible reason the jury
27 could have reached the verdict it reached without misunderstanding the difference between
28 comparative negligence and proximate cause, as the jury did not apportion fault to the plaintiff.

1 *Id.* Here, there are multiple possibilities as to why the jury found College Park to not be negligent,
2 including the jury disregarded the testimony of Plaintiffs; the jury disregarded the testimony of
3 Plaintiffs' expert's testimony; the jury determined the Plaintiffs were negligent and caused their
4 own injuries; or the jury determined the Plaintiffs were not wearing proper protective gear
5 ("PPE") in completing their work; or that College Park maintained its duty to maintain the breaker
6 based upon Plaintiff Andrew James' testimony that an inspector had inspected the area prior to
7 Plaintiffs beginning their work along with his testimony that Plaintiffs were hired to replace the
8 breaker at issue. Again, there is simply no contradictory evidence that College Park failed to
9 maintain the area when an inspector was retained to inspect the area at issue, the inspector notified
10 both College Park and Plaintiffs of an issue with the breaker, and Plaintiff Andrew James'
11 testimony that he was retained to replace the breaker at issue.

12 Given the above, none of case law relied upon by Plaintiffs applies to the instant matter.
13 As noted throughout this opposition, there were multiple reasons for the jury to determine College
14 Park was not negligent, including the jury disregarded the testimony of Plaintiffs; the jury
15 disregarded the testimony of Plaintiffs' expert's testimony; the jury determined the Plaintiffs were
16 negligent and caused their own injuries; or the jury determined the Plaintiffs were not wearing
17 proper protective gear ("PPE") in completing their work; or that College Park maintained its duty
18 to maintain the breaker based upon Plaintiff Andrew James' testimony that an inspector had
19 inspected the area prior to Plaintiffs beginning their work along with his testimony that Plaintiffs
20 were hired to replace the breaker at issue. NRCP 59(a)(1)(E) requires a manifest disregard of the
21 jury instructions wherein the court must find that the only reason the jury reached its verdict was
22 because it failed to understand or follow jury instructions. College Park provided contradictory
23 evidence to Plaintiffs' allegations, including evidence that refutes the testimony of Plaintiffs
24 Andrew James and Jeffrey Myers, and Plaintiffs' expert's testimony. There is simply no avenue
25 the court can take to find that there was palpable abuse, as the court need not determine how the
26 jury reached its conclusion; it need only determine whether it was possible for the jury to do so.
27 *Town & Country Elec. Co. v. Hawke*, 100 Nev. 701, 702, 692 P.2d 490, 491 (1984). As noted
28 above, the court will determine that it was more than possible that the jury reached the conclusion

1 that College Park was not negligent.

2 **2. Plaintiffs Did Not Raise the Issue of the Motion for Judgment As A Matter Of**
3 **Law in Their Moving Papers and Thus Admit that Defendants Healthcare**
4 **Realty of Cheyenne, LLC, and Fundamental Administrative Services, LLC,**
5 **Were Properly Adjudicated from this Matter**

6 College Park notes that Plaintiffs failed to raise any issue with the trial court granting its
7 Motion for Directed Verdict in favor of Defendants Healthcare Realty of Cheyenne, LLC, and
8 Fundamental Administrative Services, LLC. As this court is well aware, it is well established in
9 Nevada that an appellant's failure to timely raise an issue in its briefing on appeal, even if it raised
10 the issue before the district court, generally results in a waiver of that issue. *Kahn v. Morse &*
11 *Mowbray*, 121 Nev. 454, 480 n.24, 117 P.3d 227, 238 n.24 (2005). As such, as Plaintiffs failed
12 to raise this issue in its Motion for New Trial, it has waived any ability to argue that the Motion
13 for Directed Verdict was improper.

14 **III. CONCLUSION**

15 Given that College Park presented evidence contradictory to Plaintiffs allegations, and
16 that the jury had multiple avenues for determining that College Park was not negligent, such as
17 the jury disregarded the testimony of Plaintiffs; the jury disregarded the testimony of Plaintiffs'
18 expert's testimony; the jury determined the Plaintiffs were negligent and caused their own
19 injuries; or the jury determined the Plaintiffs were not wearing proper protective gear ("PPE") in
20 completing their work; and that College Park properly maintained its premises, College Park
21 respectfully requests this Court to deny Plaintiffs' Motion for New Trial.

22 Dated: July 19, 2022

23 By:

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THI OF NEVADA AT CHEYENNE, LLC dba

COLLEGE PARK REHABILITATION CENTER

CERTIFICATE OF MAILING

The undersigned, designee of Alexander F. Giovannello, Esq., hereby certifies that on this 1st day of August 2022, a true and correct copy of **OPPOSITION TO PLAINTIFFS MOTION FOR NEW TRIAL BY DEFENDANT THI OF NEVADA AT CHEYENNE, LLC dba COLLEGE PARK REHABILITATION CENTER** was served to the following person(s) as indicated below:

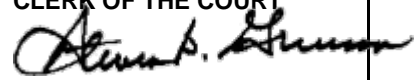
xx Via E-Service through email or the Court's Electronic Service system pursuant to NEFCR 4(b) on the following
by placing a true and correct copy of the above-mentioned document(s) in a sealed envelope, first class postage fully pre-paid, in the United States mail.

Donald C. Kudler CAP & KUDLER 3202 W. Charleston Boulevard Las Vegas, NV 89102 Tel: (702) 878-8778 Fax: (702) 878-9350 Email: donaldkudler@capandkudler.com Email: lizcarrion@capandkudler.com	Attorneys for Plaintiffs
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By:



Carolina Olmos, an employee of
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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

HEARING REQUESTED

PLAINTIFFS' REPLY TO DEFENDANTS' OPPOSITION

TO PLAINTIFFS' MOTION FOR A NEW TRIAL

COME NOW, Plaintiffs, JEFFREY A. MYERS and ANDREW JAMES, by and through
their Attorney of Counsel and bring forth this Reply to Defendants' Opposition to Plaintiffs'
Motion for New Trial. This Reply is made and based on the Papers and Pleadings on file in this
case, the attached Points and Authorities and the oral argument of Counsel, if any, at the time this
matter is heard before this Court.

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....

LEGAL ARGUMENT

The Defendants either misunderstand the evidence or are misleading this Court in their unsupported citation of the facts. The Plaintiffs in this case were retained to replace a breaker but not the main breaker. See, e.g. Trial Day 3, Page 146, Lines 2 - 14)¹. During the installation of that breaker, a screw fell and caused a short at another location when it crossed two phases. See, e.g., Gifford Testimony at Page 66 line 22 - page 68, line 5. That short should have caused the main breaker to trip. The main breaker never tripped. *Id.* It is the failure of the main breaker that allowed the plasma ball to form injuring the Plaintiffs. *Id.* Had that breaker worked as it should have, it would have tripped almost instantaneously causing the power in the entire building to turn off. The lights in the building never went off nor did the backup generator engage². *Id.*

While the Defendants argue that the Jury may have chosen to not believe the Plaintiffs or their expert, even the Defendants's own employee testified that they never maintained the electrical equipment prior to, or after the incident that injured the Plaintiffs. According to Mr. Comstock , the maintenance Department's only job is to repair things that are reported to be broken. See, Comstock Testimony at Page 33, line 12 - page 34, line 5.

The Defendants point to red herrings in defense of this Motion stating, for instance that the Jury could have found that the Plaintiffs were contributorily negligent. But, as can be seen, the Jury never got that far (Question 3) in the Special Verdict Form attached as EXHIBIT “__”. Nor did the Jury address the question as to whether or not the failure to maintain the premises as required by the Jury Instructions and specified by the Plaintiffs caused the Plaintiffs' injuries in question 2. *Id.* The only issue they addressed was whether or not the Defendants were negligent in Question 1 which simply requires that the Defendants owed a duty to the Plaintiffs (they did) and whether or not that duty was breached (it was). There is NO contradictory evidence. The

¹ Please note that all Exhibits referred to herein are attached to the initial Motion and are not reattached here.

² In fact, the main breaker failed again after the incident as testified to by Defendants' employee, Roy Comstock, who testified that in the subsequent incident the lights, again, remained on after another short in the same panel.

Defendants simply never maintained the main breaker which failed. While the Defendants argue that the Jury might have believed their employee, Roy Comstock, and not the Plaintiffs', they do not cite to any contradictory evidence offered by Mr. Comstock. That is because there is none. Mr. Comstock never testified in regards to any duty to maintain the main breaker. He did, however, testify that they never maintain the breakers as noted in the Motion.

The Defendants simply offer no support for the claims in their Opposition. For instance, at Page 11, Lines 22 - 24 of the Opposition, the Defendants state "College Park provided contradictory evidence to Plaintiffs' allegations, including evidence that refutes the testimony of Plaintiffs Andrew James and Jeffrey Myers, and Plaintiffs' expert's testimony." One would expect to have such alleged evidence quoted, or cited to, in the Opposition³. No such evidence is provided to this Court because none exists. The Defendants called no experts and none of the witnesses or evidence provided in this case contradicts or refutes the Plaintiffs' expert in any way, including the issue of duty to maintain and breach of that duty.

The Defendants' cite to *Weaver Bros. v. Misskelley*, 98 Nev. 232, 645 P.2d 438 (1982) in support of their Opposition. In that case, the Court held that, unlike here, the evidence did not mandate a certain conclusion. Here, the Jury instruction and evidence are clear: the Defendants had a duty to maintain the building, including the main breaker and they failed to do so.

The Defendants cite to the unpublished decision of *Rives v. Vickie Ctr.*, 485 P.3d 1248 (Nev. 2021) in support of their Opposition. In holding that the Jury did not manifestly disregard the Jury Instructions, the Court held:

....

³ The Defendants have no excuse for failing to support their allegations with evidence from the Trial. While the Defendants sought additional time to obtain a copy of the entire Transcript in a Motion to Continue this Motion, all of the relevant testimony (From the Plaintiffs, their expert and the Defendants' employee) regarding this issue was attached to the initial Motion. The remainder of the Testimony consisted of medical providers who did not discuss the issues in this Motion, the Defendants' private eye whose testimony was limited to laying foundation for a short video surveillance of one of the Plaintiffs and a few pages of Rebuttal testimony from Plaintiff Andrew James which did not address the issues in this Motion and was attached to the Plaintiffs' Opposition to the Motion to Continue which was filed on July 27, 2022 within 4 hours of the Defendants filing the Motion to Continue some 8 days after the Motion for New Trial was filed.

1 This case is distinguishable from Rees, where the evidence clearly established
2 fault, the defendant failed to proffer any evidence to the contrary, and the jury's verdict
3 was inconsistent with the evidence. See Rees, 101 Nev. at 305, 701 P.2d at 1019. In
4 contrast, this case was a true "battle of the experts." The trial ran 19 days and over a
5 dozen experts testified. Although Dr. Savluk testified that the settled defendants' actions
6 fell below the standard of care and contributed to the injury, other evidence supported that
7 Dr. Rives was wholly to blame for the compensable injury. Thus, the jury's verdict was
8 not "impossible" because the jury could have reasonably found, based on the evidence
9 presented, that Dr. Rives was solely responsible for the compensable injury even if the
10 settled defendants' conduct fell below the standard of care. Moreover, the jury could have
11 disregarded Dr. Savluk's testimony that the settled defendants contributed to Vickie's
12 injuries in some measureable and compensable way. See, e.g., In re Scott, 29 Cal. 4th
13 783, 129 Cal. Rptr. 2d 605, 61 P.3d 402, 424 (Cal. 2003) ("The fact finder determines the
14 facts, not the experts. Indeed, the fact finder may reject even a unanimity of expert
15 opinion." (internal quotation marks and citation omitted)). In fact, the jury did just that
16 here, as is evidenced by their disregard of Dr. Savluk's testimony against Dr. Siddiqui,
17 when they entered a verdict in favor of Dr. Siddiqui. Therefore, we conclude that the
18 district court did not abuse its discretion by denying Dr. Rives's motion for new trial.

19 Although the Defendants claim there was contradictory evidence, they cite to: no expert
20 who testified on their behalf; no point in the Plaintiffs' expert testimony where he contradicted
21 himself in regard the duty to maintain the main breaker and/or breach of that duty, or any
22 testimony by any lay witness that contradicts the duty to maintain the breakers or breach of that
23 duty. This is because no such testimony or evidence exists. The evidence is clear: the Defendants
24 had a duty to maintain the main breaker and failed to do so.

25 The Defendants claim that they did not breach the duty to maintain the premises,
26 including the main breaker because : "an inspector had previously inspected the area, and that
27 College Park retained Plaintiffs to replace the breaker at issue." The Defendants fail to cite to any
28 portion of the Trial to support that statement. They cannot do so because it is not true. What
happened here, was that the Plaintiffs were initially hired to separate systems due to violations
found by a State Inspector then were asked to replace a specific breaker by way of change order
as testified to by Andrew James. During Cross Examination, Mr. James testified on Day 3 of the
Trial (at Page 43, Line 25 - Page 44, Line 22):

Q I wanted to show you some photographs that I believe Mr. Gifford -- Gilford? Gifford?
That Mr. Gifford took on the inside of the panel. But while we're looking for those, let me
move on and ask you a couple of other questions. How long -- you were at that job for
about a week, right, before this arc flash happened?

A Yeah, I was helping them. When I got there they were already into correcting the --
separating the electrical systems, fire
safety, the critical care, and the regular power.

1 Q Right, because that was the initial job.

2 A Right.

3 Q That was the initial phase of the job --

4 A Correct.

5 Q -- right? To do that, to separate the live --

6 A This was just a service call that they -- we got after they were done, I believe.

7 Q Okay. That was after the -- Phase 1?

8 A Yes.

9 Q Okay. And what -- and was the purpose to bring College Park
up to code?

10 A Well, the original work was, yes.

11 Q Right. It was to bring them up to code, right?

12 A Well, to correct the violations that the state inspector called them on.

13
14 Likewise, Mr. James testified in response to a Juror question Id. at page 146, Lines 2 -
15 14):

16 THE COURT: When was the original electrical inspection
done to identify the breaker at issue? Strike that. Let me try this again. When was the
17 original electrical inspection done to identify the breaker was an issue, open paren, for
change order, close paren?

18 THE WITNESS: I'm not sure exactly. We were approached by College Park to change a
19 breaker on a change order basis. I can't remember the exact date of that change order, but
it was brought to our attention there was a problem with the kitchen panel. We knew what
20 it was from Roy. He had already bought the breaker, and we went there that night to
replace it, so I'm not exactly sure, if I understand the question fully, but it's -- that's to the
21 best of my recollection, that's all I can tell you, is that it was done on a change order basis
for the scope of the job, probably sometime in May of 2014.

22 The Defendants next rely on the California case of In re Scott, 29 Cal. 4th 783, 129 Cal.
23 Rptr. 2d 605, 61 P.3d 402 (2003) to argue that the Jurors have a right to find facts and can
24 disagree with experts in regards to their opinions. However, as noted in that case, there were
25 experts who held opinions supporting the referee's ruling. Specifically, the Court noted
26 "[m]oreover, his findings were generally consistent with, and supported by, the testimony of one
27 expert--Dr. Sharma--the only one who was originally court appointed and who had examined
28 petitioner shortly after the crimes." Here, no evidence supported any conclusion that the

1 Defendants did not have a duty to maintain the premises, including the main breaker or that they
2 did maintain the main breaker and, therefore, did not breach their duty to do so. In fact, as noted
3 above and in the Motion, the Defendants' own employee clearly stated they never performed
4 regular maintenance on the main breaker.

5 The Defendants' argument through the remainder of the Opposition is that the Jury had
6 other avenues to determine that there was no breach of the duty to maintain the premises
7 including the main breaker such as: the Jury could have disregarded the uncontested testimony
8 that the Defendants had a duty to maintain the main breaker and failed to do so, the Jury could
9 have found that the Plaintiffs were contributorily negligent, etc. None of the Defendants claims
10 of contradictory evidence is supported by any evidence in the Defendants' Opposition simply
11 because it does not exist.

12 The Defendants argue that the Plaintiffs cannot demonstrate that the Jury manifestly
13 disregarded the Jury Instructions because "Plaintiffs have failed to proffer any affidavits from any
14 of the jurors noting any malfeasance or misapplication of the jury instructions." see, Opposition
15 at Page 1, Lines 25 - 27. However, doing so would have been a violation of *Weaver, supra* cited
16 to by the Defendants in which the Court held, in excluding such Affidavits from their
17 consideration stated: This court has long held that, as a general rule, jurors will not be permitted
18 to impeach their own verdict (citations omitted). *Weaver* at 233. The Court went on to state
19 "[t]he district court erred by considering the affidavits, and we decline to consider them in
20 deciding whether a new trial was properly granted." *Id.* at 234.

21 The Defendants bring up an issue in their Opposition stating "As this court is well aware,
22 it is well established in Nevada that an appellant's failure to timely raise an issue in its briefing
23 on appeal, even if it raised the issue before the district court, generally results in a waiver of that
24 issue. *Kahn v. Morse & Mowbray*, 121 Nev. 454, 480 n.24, 117 P.3d 227, 238 n.24 (2005).
25 However, this is not an Appeal. This is a request for a new Trial on all issues as the Jury
26 manifestly disregarded the Jury Instructions. Should the Court grant the Motion for New Trial, it
27 should be against all parties as evidence against them will be presented anew.

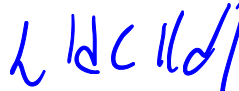
28

CONCLUSION

The Defendants offer zero evidence to support their evidence despite making several claims of what the evidence and/or testimony showed in Trial. The Defendants' arguments that the Jury did not manifestly disregard the Jury Instructions in holding that the Defendants either owed no duty to maintain the premises, including the main breaker, and/or did not breach that duty because the Jury could have decided the Plaintiffs were contributorily negligent or that the Plaintiffs failed to wear the proper Personal Protective Equipment are red herrings as the Jury only held that the Defendants did not breach any duty owed to the Plaintiffs and never got to the other issues. The Court should rule in favor of the Plaintiffs and grant a new Trial against all defendants on all issues.

DATED this 3rd day of August, 2022.

CAP & KUDLER



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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of August, 2022, pursuant to Administrative Order 14-2, I electronically served a true and correct copy of the foregoing **PLAINTIFFS' REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR A NEW TRIAL**, addressed as follows:

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DISTRICT COURT
CLARK COUNTY, NEVADA

JEFFREY A. MYERS and ANDREW JAMES,
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THI OF NEVADA AT CHEYENNE, LLC a Foreign
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REHABILITATION CENTER; HEALTHCARE
REALTY OF CHEYENNE, LLC a Delaware
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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
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

28

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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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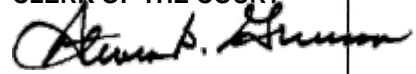
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6 DISTRICT COURT
7
8 CLARK COUNTY, NEVADA

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

11 Plaintiff,

12 vs.

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

21 Defendants.

CASE NO. : A-16-735550-C

DEPT. NO.: XVII

NOTICE OF ENTRY OF ORDER


22 TO: ALL INTERESTED PARTIES TO THIS ACTION; and

23 TO: THEIR ATTORNEY'S OF RECORD:


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

27 DATED this 27th day of September, 2022.

CAP & KUDLER

28 
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Personal Injury Experts

CERTIFICATE OF SERVICE

I hereby certify that on the 27th 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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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
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
there's no question it should have tripped.

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

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

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

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

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

15 Q Were the lights on?

16 A The lights never went off.

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

18 A The breaker never tripped.

19 **5. Jury Verdict**

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

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

Dated this 23rd day of September, 2022

Mark Gibbon

Submitted by:

F29 10D 6D3A EC93
Mark Gibbons
District Court Judge

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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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)

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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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