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Feb 10 2023 08:36 AM
Elizabeth A. Brown
Clerk of Supreme Court

Appellants,

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

Respondents.

VOLUME 7

Appeal from the Eighth Judicial District Court for Clark County

District Court Case No. A-16-735550-C

(Honorable Mark Gibbons)

DONALD C. KUDLER, ESQ.

Nevada Bar No.: 5041

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Jeffrey A. Myers and Andrew James

APPELLANTS' APPENDIX
VOLUME 7
CHRONOLOGICAL ORDER

Document	Index Number	Bates Number
Amended Complaint [Filed 05/06/2016]	1	AA000001 - AA000007
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Jury Instruction No. 27 8.1 Premises Liability: Essential Factual Elements [05/31/2022 Jury Trial - Day 1]	1	AA000039
Jury Instruction No. 28 8.20 Landowner Liability: Owner Duty to Inspect [05/31/2022 Jury Trial - Day 1]	1	AA000040
Jury Instruction No. 29 8.4 Landowner Liability: Duty [05/31/2022 Jury Trial - Day 1]	1	AA000041

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12	Testimony of Donald Gifford		
13	[Filed 07/07/2022]		
14	Recorder's Partial Transcript of Jury	5	AA000464 -
15	Trial - Day 3, Thursday, 06/02/2022		AA000559
16	[Filed 08/08/2022]		
17	Recorder's Partial Transcript of Jury	6	AA000560 -
18	Trial - Day 3, Thursday, 06/02/2022:		AA000715
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20	[Filed 07/07/2022]		
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24	Recorder's Partial Transcript of Jury	7	AA000810 -
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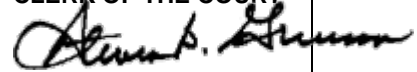
ALPHABETICAL ORDER

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Amended Errata to Motion for New Trial [Filed: 7/20/2022]	8	AA000960 - AA000961
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Jury Instruction No. 29 8.4 Landowner Liability: Duty [05/31/2022 Jury Trial - Day 1]	1	AA0000041
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6	Notice of Order Denying Plaintiffs' Motion for	8	AA000997 -
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9	Opposition to Plaintiffs' Motion for New Trial by	8	AA000962 -
10	Defendants		AA000976
11	[Filed 8/1/2022]		
12	Order Denying Plaintiffs' Motion for New Trial	8	AA000985 -
13	[Filed: 9/23/2022]		AA000996
14	Plaintiffs' Reply to Defendants' Opposition to	8	AA000977 -
15	Plaintiffs' Motion for a New Trial		AA000984
16	[Filed 8/30/2022]		
17	Plaintiffs' Third Motion to Compel Discovery	1	AA000008 -
18	Responses		AA000030
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25	[Filed: 08/08/2022]		

Recorder's Partial Transcript of Jury Trial - Day 5, Monday, 06/06/2022: Testimony of Andrew James [Filed 08/08/2022]	8	AA000936 - AA000942
Special Verdict Form [Filed: 06/06/2022]	8	AA000943 - AA000945



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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 FRIDAY, JUNE 3, 2022

16 **RECORDER'S PARTIAL TRANSCRIPT OF JURY TRIAL - DAY 4**

17 APPEARANCES

18 For the Plaintiffs:

DONALD C. KUDLER, ESQ.

19 For the Defendants:

20 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, Friday, June 3, 2022

2
3 [Case called at 8:56 a.m.]

4 [Outside the presence of the jury]

5 THE COURT: All right. A-735550, Myers v. THI, et al.

6 The record should reflect the presence of the representatives
7 of the plaintiff and Defense outside the presence of the jury.

8 THE MARSHAL: Ready, sir?

9 THE COURT: No, no. Not yet. At the Clerk's request, she
10 just wanted to -- and I agree, we need to clarify after yesterday regarding
11 the exhibits. There were a series of photos I believe identified as
12 Defendants' 225, 226, 227, 228; is that correct?

13 THE CLERK: No, these were the 232 ones, the dash 1, and
14 dash 2, dash 3, dash 8, and dash 13.

15 THE COURT: Okay. So under -- when Mr. Myers was
16 testifying, those were exhibits that were offered and admitted. How do
17 you want to -- what's the most efficient way for you to have them
18 marked, Madame Clerk?

19 THE CLERK: I did them 232A through 232B.

20 THE COURT: Okay. So what was Bates stamped 232-13 is A?

21 THE CLERK: Uh-huh.

22 THE COURT: And then 1, 2, 3 -- and I have 1, 2, 3, and 8.

23 THE CLERK: Yeah. Correct.

24 THE COURT: And those are just A, B, C, D. Any objection to
25 that? She's just trying to maintain a record.

1 MR. A. GIOVANNIELLO: No objection.

2 THE COURT: All right. Good.

3 THE CLERK: Thank you.

4 MR. KUDLER: No objection, Your Honor.

5 THE COURT: Good. All right. Anything else outside the
6 presence, gentlemen?

7 MR. KUDLER: I did finally get ahold of Sam Zand, the
8 psychiatrist. He's -- around 12:45 since we're taking that long break.

9 THE COURT: Okay.

10 MR. KUDLER: And then Dr. Taylor who saw Mr. James one
11 time in regard to this, about 1:30. And then Luke Crawford, an EMT,
12 2:00, and that will be it.

13 THE COURT: Okay. So you're going to rest, and you have
14 your man behind?

15 MR. A. GIOVANNIELLO: I have the one guy and another guy
16 can't make it until Monday morning because I didn't know he was resting
17 today.

18 THE COURT: Okay. I'm going to let you try your case. So --

19 MR. A. GIOVANNIELLO: Yeah. The guy on Monday --

20 THE COURT: -- Monday morning is going to -- that's fine.

21 MR. A. GIOVANNIELLO: The guy on Monday is going to be --
22 if he's more than 20 minutes, I'd even be surprised.

23 THE COURT: Okay. Based upon that proffered, do you
24 anticipate any rebuttal?

25 MR. KUDLER: No.

1 THE COURT: Okay. So we're going to close evidence
2 Monday morning. I'd like to have the jury instructions in line so we can
3 move immediately into instruction phase and then deliberations; give it
4 to them Monday. So prep your arguments over the weekend and we'll
5 have the instructions well under hand today since we had that long
6 break. So yeah, I think we'll head into arguments and hand it to the jury
7 Monday afternoon. Make sense?

8 MR. C. GIOVANNIELLO: What time are we going to start on
9 Monday?

10 THE COURT: Monday is a -- I was just going through my
11 Monday calendar. On first read, it's a big one. So probably do an 11:00
12 call, just because I don't want to hold the jury in the hallway.

13 MR. C. GIOVANNIELLO: Understood.

14 THE COURT: So 11:00.

15 MR. KUDLER: Your Honor, also we submitted a special
16 verdict?

17 THE COURT: I haven't seen a special verdict form. I was
18 fussing with it on my own, but I have not seen your special verdict form.
19 We're going to need one.

20 MR. KUDLER: They had provided it to me previously.

21 THE COURT: Okay.

22 MR. KUDLER: So I have seen it. There may be some little
23 modifications to it.

24 THE COURT: Gentlemen, if you can find your way, that's
25 easier for me. If there's no objection, then -- unless there's something

1 glaring that I see that we'll talk through, it's your case.

2 MR. A. GIOVANNIELLO: if you don't have one, I mean, we
3 can print it up. But I --

4 THE COURT: I have not seen it. If -- and I think my staff
5 reached out to you because I had everything with citation. I had no
6 blank, without citation instructions. So my -- I told my clerk about a half-
7 hour -- the law clerk -- about a half-hour ago to reach out to your staff,
8 whoever sent them, and --

9 MR. KUDLER: My staff is on her way to a cruise today.

10 THE COURT: Well, and there's going to be no answer.

11 MR. KUDLER: So I'm my staff today and Monday.

12 THE COURT: Okay. We're going to need them without
13 citation and in Word because I want to be able to change them if
14 circumstances require to. In PDF it makes it harder.

15 MR. KUDLER: Yeah, I mean, I work in WordPerfect, but I can
16 save it as a Word file. Easy enough.

17 THE COURT: WordPerfect?

18 MR. KUDLER: Yes, I do.

19 THE COURT: All right. Well, again, I'm just -- I don't care
20 about that. I just care about being able to make the unique to us.

21 MR. KUDLER: I started in WordPerfect 1.0.

22 THE COURT: Listen, my wife is the same way. And you
23 know what, if you want to be a dinosaur, be a dinosaur. I didn't like to --
24 I didn't like to change over back 20 years ago either. I thought it was
25 awful. But you know, you adapt. But anyway, neither here nor there. I

1 just want to be able to manipulate them and make them unique.

2 MR. KUDLER: Yeah, and like you said, there aren't many --

3 THE COURT: Do you have them on your machine here?

4 MR. C. GIOVANNIELLO: I think we have them -- we have
5 ours --

6 MR. A. GIOVANNIELLO: We have it on our machine here and
7 I can email if necessary or get it to him.

8 THE COURT: As long as, together, we're pointed somewhere
9 where we can generate a hard copy, change them as we need to if we
10 need to, generate a hard copy so I can make copies for our jury, and we
11 can make a master one for me.

12 MR. KUDLER: Yeah, I don't -- I don't believe I have the jury
13 instructions on --

14 THE COURT: Okay.

15 MR. KUDLER: I might on my stick so -- I have everything.

16 MR. C. GIOVANNIELLO: I'll just email them to you if you
17 need them.

18 MR. KUDLER: Yeah, but I think I have them in Word --

19 MR. C. GIOVANNIELLO: Okay.

20 MR. KUDLER: -- in WordPerfect so I can save them out in
21 Word.

22 THE COURT: Okay. Sounds like you guys are not ignoring
23 them so -- because many trial lawyers do. They get wrapped up so
24 tightly in the evidence that they forget about the instructions and then --

25 MR. KUDLER: We've gone back and forth a few times.

1 THE COURT: Perfect. All right. Good. So we're going to go
2 with the nurse, then is it we're taking a break?

3 MR. KUDLER: Douglas Smith.

4 THE COURT: Oh, Douglas Smith. Okay.

5 MR. KUDLER: And he's going to be fairly short.

6 THE COURT: Okay. Then a break --

7 MR. KUDLER: And then the break. 12:45, Van; 1:30, Taylor;
8 2:00, and then out the door.

9 THE COURT: All right. We've got a jury in the hall. Let's go
10 to work.

11 THE MARSHAL: All rise for the jury.

12 [Jury in at 9:01 a.m.]

13 THE COURT: Please be seated, ladies and gentlemen. Be
14 comfortable. We are on the record in A-735550, Myers v. THI. Record
15 should reflect the presence of representative of Plaintiffs and Defense.
16 All members of the jury panel do appear to be present.

17 Will parties stipulate to the presence of the entire panel?
18 Plaintiff?

19 MR. KUDLER: Yes, sir.

20 THE COURT: And Defense?

21 MR. A. GIOVANNIELLO: Yes, sir.

22 THE COURT: Thank you. Good morning, ladies and
23 gentlemen. Everybody have your notepads? We've got ears on?
24 Everybody good? If you have a problem right now, raise your hand.
25 Seeing no hands, State, record should reflect we remain in Plaintiffs'

1 case-in-chief, cross-examination of the witness. Let's call the witness.

2 It's Cipollini. And you have her on cross --

3 MR. A. GIOVANNIELLO: I have her on cross right now.

4 THE COURT: Correct. So that's what we're going to pick up.

5 MR. A. GIOVANNIELLO: Okay.

6 THE COURT: But we're going to reswear since she's present
7 in the room.

8 SHERYL CIPOLLINI, PLAINTIFFS' WITNESS, SWORN

9 THE CLERK: Please state and spell your first and last name
10 for the record?

11 THE WITNESS: It's Sheryl Cipollini, S-H-E-R-Y-L C-I-P-O-L-L-I-
12 N-I.

13 THE COURT: Counsel, you have the witness on cross.
14 Continue cross.

15 CONTINUED CROSS-EXAMINATION

16 BY MR. A. GIOVANNIELLO:

17 Q Ms. Cipollini, sorry to drag you down here but we have to go
18 over these records with you. Just have a couple questions for you. Did
19 you bring any records with you today?

20 A I did not.

21 Q Okay. So you didn't bring any records from 2016, correct?

22 A No.

23 Q Okay. And were those records available to you at all?

24 A From -- yes. There was a note -- yes, there was a note from
25 Dr. Craig from 2016.

1 Q Just one note from him from 2016?

2 A That I recall seeing, yes. We had three different EHRs over
3 the years, so I don't have access to everything.

4 Q Okay. And his business was called Reflections Healthcare?

5 A Our business was called Reflections Healthcare.

6 Q Thank you for correcting me.

7 A Uh-huh.

8 Q We'll make sure you were there. Okay. And let's see. Okay.
9 The records I have start at 2018. So I'm just going to ask you some
10 questions about that.

11 A Okay.

12 Q You have a book in front of you -- the black book. It's
13 Defendants' exhibits.

14 A Okay.

15 Q What I want you to do is turn to Exhibit 216. I have to take
16 my glasses off because I can't read with them on. And turn to Exhibit
17 216-3.

18 A Okay.

19 Q And for the Court, can you tell us what this exhibit is? What
20 is 216-3? And I'm going to ask you about 216-3 and 4.

21 A Okay. So this is a chart note to -- the 216-3 is a chart note.

22 Q And this is a note that's kept in the normal course of
23 business?

24 A Correct.

25 Q Okay. And chart note -- why don't you explain for us, what's

1 a chart note?

2 A So it's generally a documentation of the patient visit where
3 we -- we would discuss the subjective complaint which is the -- the
4 patient's words basically, of their chief complaint. And then an objective
5 assessment which is our physical exam. And then our diagnosis and our
6 plan.

7 Q Okay. And then I want you to turn to 216 and I want to put
8 this exhibit into evidence, 216 -- Defendants' Exhibit 216-3 and 4.

9 THE COURT: Is that offered at this time?

10 MR. A. GIOVANNIELLO: It's being offered, yes.

11 THE COURT: 216-3, -4, which will be A and B under the
12 current process. Any objection, Counsel?

13 MR. KUDLER: No objection. It's actually one medical record,
14 just two pages.

15 THE CLERK: So it'll just be A then.

16 THE COURT: Then the just the entirety of 16 -- are you
17 offering the entirety of 16 including the pages that you're focused on,
18 Counsel?

19 MR. A. GIOVANNIELLO: No, Your Honor. I'm only offering
20 pages that I'm focused on.

21 MR. KUDLER: Oh, no Your Honor, I'm just saying that 216-3
22 and -4 are one record, two pages of one record.

23 THE COURT: Two pages, one record. So offer 216-3, -4, now
24 A -- just A, is accepted and is admitted.

25 [Defendants' Exhibits 216A admitted into evidence]

1 MR. KUDLER: Thank you, Your Honor.

2 [Counsel and clerk confer]

3 BY MR. A. GIOVANNIELLO:

4 Q Just to show you this exhibit here; this is the chart note we're
5 talking about dated 1/25/18?

6 A Yes.

7 Q Okay. And under respiratory, is that part of the examination
8 or is that what the patient would tell you?

9 A That is part of the examination.

10 Q Okay. If you could just do me -- can you just read what
11 respiratory effort is for us?

12 A Normal, regular rate with non-labored breathing. No
13 distress, cyanosis, or pursed-lip breathing.

14 Q And then under oscillation -- oscillation is that -- that means
15 with the stethoscope, right?

16 A Correct.

17 Q Okay. So that's when the doctor uses a stethoscope to
18 examine the patient's chest?

19 A Yes.

20 Q Okay. Can you read what his findings were there?

21 A Normal, clear to auscultation and percussion bilaterally
22 without wheezing, [indiscernible] rhonchi even on forced expiration.

23 Q Okay. Thank you. And then let's look at the next page,
24 which is the same date, correct?

25 A Yes.

1 Q This is a 2-page document?

2 A Correct.

3 Q And that's Exhibit 216-4. And here once again, this is a
4 continuation of the examination?

5 A Yes.

6 Q I'm going to make this just a little bit bigger for the jury.
7 Okay. Excuse me one second.

8 MR. A. GIOVANNIELLO: Just wanted to make sure it was big
9 enough to be seen, Your Honor, because I can't see it from here. Okay.

10 BY MR. A. GIOVANNIELLO:

11 Q Can you please read -- extremities, that's also part of the
12 examination, correct?

13 A It is.

14 Q Can you please read that for us?

15 A Normal upper and lower extremities symmetric without
16 lesions, nodules, deformities, or swelling. Full range of motion with all
17 extremities against gravity and resistance. Muscle strength is five over
18 five with no gross anomalies.

19 Q And that's upper and lower extremities, right?

20 A Correct.

21 Q That would mean the arms and the legs, right?

22 A Correct.

23 Q Okay. Next I want you to read where it says nude affect?

24 A Normal -- normal judgment affect appearance, language,
25 orientation, and memory. No evidence for depression, anxiety, suicidal

1 or homicidal ideation, hallucinations, paranoia, or ideas of reference.

2 Q Thank you. Okay. Next, I want you to turn to -- it's Exhibit
3 216-8, and this is a --

4 MR. A. GIOVANNIELLO: Same document, Your Honor, but
5 it's a three-page document. It's dash 8, 9, and 10.

6 THE COURT: Are you offering --

7 MR. A. GIOVANNIELLO: I am offering it into evidence.

8 MR. KUDLER: No objection, Your Honor.

9 THE COURT: Hearing no objection, 216-8, 9, 10 will be
10 marked as Defense Exhibits 216B.

11 [Defendants' Exhibit 216B admitted into evidence]

12 MR. A. GIOVANNIELLO: Thank you.

13 BY MR. A. GIOVANNIELLO:

14 Q Okay. And just for purposes of identification, the date of this
15 is -- looks like 1/8/19, correct?

16 A Correct.

17 Q Correct?

18 A Uh-huh.

19 Q And same thing, this is a chart note?

20 A Yes, it is.

21 Q Okay. And it reflects a visit from Mr. Andrew James?

22 A It does, yes.

23 Q Okay. I want you to turn to -- because what I'm interested in
24 in this one is the last page which is 216-10. And under -- read where it
25 starts with mood disorder?

1 A Mood disorder well handles with present medication. He
2 does not have depression. Medication successful creating mood
3 stability. Continues -- he said his same; it probably should say the same.

4 Q Okay. Thank you. Wish we could've done this yesterday, but
5 we'll just get through this.

6 A That's okay.

7 Q Okay. Please turn to -- it's the next in order. It's a -- it looks
8 like a visit date of 2/5/19.

9 MR. A. GIOVANNIELLO: It's Exhibit 216-11 to 13; it is one
10 document, Your Honor, a three-page document. I'm offering it into
11 evidence.

12 THE COURT: Any objection?

13 MR. KUDLER: No, Your Honor.

14 THE COURT: 216-11, -12, -13 marked and admitted as --
15 that's 216C.

16 [Defendants' Exhibit 216C admitted into evidence]

17 BY MR. A. GIOVANNIELLO:

18 Q And once again, just for the identification, this is a -- the visit
19 on this date is 2/5/19?

20 A Correct.

21 Q Okay. And here, same thing. I want you to turn to just the
22 last page, 216-13. And just read where it says mood disorder?

23 A Mood disorder well controlled on present medication. Is that
24 all you want me to read? That's what pertains to the mood disorder.

25 Q Okay. The other part does not? It says -- I'm sorry. That's

1 obesity restart something --

2 A Yeah, that doesn't pertain to the mood disorder.

3 Q Okay. That pertains to his weight?

4 A Correct.

5 Q Okay. We're not concerned with his weight?

6 A We're not.

7 Q And then it looks like your medical record -- electric medical
8 records changed. Go to -- now we're going to switch to Exhibit 217.

9 A 217. Okay.

10 Q Okay. Go to 217-10. Are you there?

11 A I am.

12 Q This is now a different -- it look like a different document,
13 right?

14 A It is. It's a different EHR.

15 Q Okay. Why don't you explain what an EHR is?

16 A It's an electronic health record.

17 Q Okay. And like you testified earlier, you had at least three of
18 them and this changed over, right?

19 A Correct.

20 Q Okay. So let me put this up here for you.

21 THE COURT: Is it in?

22 MR. A. GIOVANNIELLO: Oh, I'm sorry, Your Honor. Yes, I'd
23 like to submit this as evidence, 217-10.

24 THE COURT: 217-10 offered. Any objection?

25 MR. KUDLER: You put in the whole record, 9, 10 and 11 in?

1 MR. A. GIOVANNIELLO: I was just putting in 10. Do you
2 want me to put in 9, 10, 11?

3 MR. KUDLER: Yeah, might as well see the whole record.

4 MR. A. GIOVANNIELLO: Okay. We'll put in the whole record.

5 THE COURT: 217-9, -10, -11 marked and admitted as Defense
6 Exhibit D.

7 THE CLERK: [Indiscernible] 217A.

8 THE COURT: Oh, I'm sorry. 217A. There you go. Good
9 catch.

10 [Defendants' Exhibit 217A admitted into evidence]

11 BY MR. A. GIOVANNIELLO:

12 Q Maybe you can help me. I don't see a date of service on this
13 one? Is there any date of service?

14 A Let me see if I can find one.

15 Q Because on the upper left, it looks like when you made --
16 when it may have produced versus the date of service.

17 A So it looks like we are missing -- let me see if it's this page
18 prior. So it's actually -- this chart note starts on 217-9.

19 Q Oh, okay. This is why you're here and not me.

20 A And so our date of service on this one is 10/30/19. In the
21 right corner you see encounter ID?

22 Q I see that --

23 MR. A. GIOVANNIELLO: -- and Your Honor, I stand corrected.
24 So I'd like to admit 217-9 through 12. So this is a four-page document. A
25 four-page one document.

1 THE COURT: 9 through 12 is now -- without hearing an
2 objection, 9, 10, 11, 12 is now 217A.

3 MR. KUDLER: Yeah, and again, Your Honor, I think we're
4 going to have to redact these before they go to the jury.

5 THE COURT: All right. Other than that potential redaction,
6 any objection?

7 MR. KUDLER: No.

8 THE COURT: All right. They're received.

9 MR. A. GIOVANNIELLO: No objection. And I'm sorry, Your
10 Honor, now I stand corrected yet again and it's 217, 9 through 11. 12 is
11 the beginning of the next one. So to get this straight, it's 217-9, -10, and
12 -11 dated 10/30/19. That is the going to be the exhibit that we're offering.

13 THE COURT: That's offered. Any objection?

14 MR. KUDLER: That was 9, 10, and 11 that we had before his
15 D?

16 THE CLERK: So that's 217A.

17 MR. KUDLER: Oh, 217A. I'm sorry. Yes. But that was the
18 same one that we had already --

19 THE CLERK: Yes.

20 MR. KUDLER: -- admitted. Yes.

21 THE COURT: All right. Hearing no objection --

22 MR. KUDLER: Subject to redactions.

23 THE COURT: Again admitted.

24 BY MR. A. GIOVANNIELLO:

25 Q Okay. Here, now that we got that settled. Under respiratory,

1 can you read that?

2 A The patient is relaxed and breathes without effort. The
3 patient is not cyanotic and does not use the accessory muscles of
4 respiration. The AP diameter of the chest is normal. The chest expands
5 symmetrically upon inspiration. Upon palpation of the chest wall, there
6 is not tenderness or masses. Tactile fremitus is normal and symmetrical.
7 The lungs are clear to percussion. There are no crackles, wheezes,
8 rhonchi, stridor, or plural rubs.

9 Q I don't want to make a mistake here so that's one, two, three,
10 four. Okay. Please turn to Exhibit 217-12 through 15. And please look at
11 this and let me know if all four pages are the same chart note for the
12 same day, so I don't make another error here?

13 A Yes, they are.

14 Q Okay.

15 MR. A. GIOVANNIELLO: Your Honor, I'd like to submit this
16 into evidence.

17 THE COURT: Marked 12, 13, 14, 15. Any objection?

18 MR. KUDLER: Subject to redaction, no objection.

19 THE COURT: Hearing no objections, subject to redaction,
20 marked and admitted is 217B.

21 [Defendants' Exhibit 217B admitted into evidence]

22 BY MR. A. GIOVANNIELLO:

23 Q Purposes of the date, this visit is 1/28/20?

24 A Correct.

25 Q Okay. Here once again, I'd like you to read on page 217-13,

1 respiratory?

2 A The patient is relaxed and breathes without effort. The
3 patient is not cyanotic and does not use the accessory muscles of
4 respiration. The AP diameter of the chest is normal. The chest expands
5 symmetrically upon inspiration. Upon palpation of the chest wall there
6 is no tenderness or masses. Tactile fremitus is normal and symmetrical.
7 The lungs are clear to percussion. There are no crackles, wheezes,
8 rhonchi, stridor, or plural rubs.

9 Q Pretty much the same as the earlier one, right?

10 A Exactly, yes.

11 Q And here please turn to the last page of this exhibit which is
12 217-15?

13 A Okay.

14 Q And here please read of the psychiatric?

15 A The patient is oriented to person, place, and time. Speech is
16 fluent and words are clear. Thought processes are coherent. Insight is
17 good. There are no obsessive compulsive, phobic, or delusional
18 thoughts. There are no illusions or hallucinations. Serial sevens are
19 accurate. Recent and remote memory intact.

20 Q Let me ask you something. What's a serial seven?

21 A Honestly, I can't recall. It's part of a neurological exam.

22 Q Okay. No problem. Keep reading, please?

23 A The patient's fund of knowledge, awareness of current
24 events, and past history is appropriate for age. The patient's higher
25 cognitive functions are intact. The patient can perform simple

1 calculations and understands proverbs. The patient's mood is neutral
2 and the affect appropriate. There are no loose associations. Serial
3 sevens are counting by sevens, I believe.

4 Q Like you go one, two, three, four, five, six, seven?

5 A No, like one, eight, fifteen, I believe. I'm not positive but I
6 believe.

7 Q I might fail that test. Okay. The next one I want to look at is
8 Exhibit 217-18 through -21.

9 MR. A. GIOVANNIELLO: And I want to offer that into
10 evidence subject to redaction.

11 THE COURT: 18 through 21 offered. Any objection?

12 MR. KUDLER: No, Your Honor.

13 THE COURT: Received subject to redaction and identified as
14 217C.

15 [Defendants' Exhibit 217C admitted into evidence]

16 BY MR. A. GIOVANNIELLO:

17 Q And the date on this is 7/22/20, correct?

18 A 7/22/20.

19 Q Okay. I know I highlighted something on that page but it's
20 not what I want. Turn to page 217-19? And under respiratory --

21 A Uh-huh.

22 Q -- rather than read the whole thing, if you look at it, it's pretty
23 much the same as the last respiratory entry that you actually read,
24 correct?

25 A It is the same, yes.

1 Q Okay. No difference really, right?

2 A Correct.

3 Q Okay. Then please turn to page 217-20. What I'd like you to
4 read is the highlighted which is psychiatric?

5 A The patient is oriented to person, place, and time. Speech is
6 fluent and words are clear. Thought processes are coherent. Insight is
7 good. There are no obsessive compulsive, phobic, or delusional
8 thoughts. There are no illusions or hallucinations. Serial sevens
9 accurate. Recent and remote memory intact. The patient's fund of
10 knowledge, awareness of current events, and past history is appropriate
11 for age. The patient's higher cognitive functions are intact. The patient
12 can perform simple calculations and understands proverbs. The
13 patient's mood is neutral and affect appropriate. There are no loose
14 associations.

15 Q Thank you.

16 A May I have a tissue?

17 THE COURT: I'm sorry?

18 THE WITNESS: A Kleenex?

19 THE COURT: Sure.

20 THE WITNESS: Thank you.

21 BY MR. A. GIOVANNIELLO:

22 Q And the very last chart entry I have -- and we're talking about
23 Exhibit 217-27 and 28, and it goes up to 29 so it's a three-page document.

24 MR. A. GIOVANNIELLO: I'd like to offer this into evidence as
25 well subject to the redaction.

1 THE COURT: Any objection?

2 MR. KUDLER: No, Your Honor.

3 THE COURT: 27, 28, 29 received and marked as 217D.

4 [Defendants' Exhibit 217D admitted into evidence]

5 BY MR. A. GIOVANNIELLO:

6 Q This is date 1/18/21; is that correct?

7 A Correct.

8 Q Okay. And that's the last entry I have. Do you know when
9 Dr. Craig actually passed away?

10 A In September of '21.

11 Q Okay. Now, I'm interested in this one. We could do this
12 fairly quickly. Is under respiratory -- can you look at that and tell me as
13 of /18/21 whether under respiratory the condition is the same as actually
14 read in the last two entries -- the last few entries?

15 A Yes, it is.

16 Q It's the exact same, correct?

17 A Yes.

18 Q Okay. Thank you so much.

19 A Uh-huh.

20 MR. A. GIOVANNIELLO: Your Honor, that's all I have for this
21 witness.

22 THE COURT: Redirect?

23 MR. A. GIOVANNIELLO: I'll move out of the way in one
24 second.

25 REDIRECT EXAMINATION

1 BY MR. KUDLER:

2 Q And Exhibit 12 is the letter that we were discussing
3 yesterday?

4 A Yes.

5 Q That's the letter that you were involved in writing?

6 A I typed it.

7 Q Typed it?

8 A Yes.

9 Q And it's part of the medical record of the partnership
10 business?

11 A Yes, it is.

12 Q Okay. And that again confirms that he has a mood disorder
13 and separate PTSD?

14 A As well as the complex regional pain syndrome, yes.

15 Q Now, there is notations in these records that talk about his
16 extremities having no lesions and things?

17 A Correct.

18 Q You've seen the scarring on his arm?

19 A Yes.

20 Q Okay. That's been there for years?

21 A For as long as I've known him which -- I didn't meet Andy till
22 after the accident.

23 Q Right.

24 A Yes.

25 Q But I mean, if -- there is noticeable scarring?

1 A Correct.

2 Q So where the records talk about no abnormalities, would you
3 consider the scarring an abnormality?

4 A I would.

5 Q Okay. So that portion of the record is not correct?

6 A Correct.

7 Q Okay.

8 MR. KUDLER: And I would offer the letter from May 29th,
9 Exhibit 12 in for evidence.

10 THE COURT: 12 is offered. Any objection?

11 MR. A. GIOVANNIELLO: Yes, Your Honor, there is an
12 objection to that letter.

13 THE COURT: What is the objection?

14 MR. A. GIOVANNIELLO: Well, one of the objection is
15 hearsay. And I believe the second page has objectionable material in it
16 as well on issues that you ruled on previously.

17 THE COURT: Response? This is a letter to you?

18 MR. A. GIOVANNIELLO: Yes.

19 THE COURT: To the lawyer?

20 MR. A. GIOVANNIELLO: And that's the other problem I have
21 with it.

22 THE COURT: Sustained.

23 MR. KUDLER: Thank you, Your Honor.

24 BY MR. KUDLER:

25 Q Looking at Exhibit 13 in your book, that is the medical record

1 produced during the course of Mr. James' treatment?

2 A Yes.

3 Q Okay. And these were all done simultaneously with
4 treatment or fairly close in time to treatment?

5 A The chart notes?

6 Q Yes.

7 A So chart notes are generally done at the time of treatment.

8 So this -- the day that you see the patient you generate a chart note and
9 then you finish it after the visit.

10 Q Okay. So they're fairly contemporaneous with the visit?

11 A Yes.

12 Q Okay.

13 MR. KUDLER: I would offer Exhibit 13 in its entirety.

14 THE COURT: 13 -- Plaintiffs' 13 is offered. Any objection?

15 Gentlemen, 13 is offered. Any objection?

16 MR. C. GIOVANNIELLO: No objection, Your Honor.

17 THE COURT: Hearing no objection, 13 is received.

18 [Plaintiffs' Exhibit 13 admitted into evidence]

19 MR. KUDLER: Thank you, Your Honor.

20 BY MR. KUDLER:

21 Q And even if you just look at the first page of that, the 6/27/19
22 note --

23 MR. A. GIOVANNIELLO: Your Honor, just so I'm clear and
24 I'm sorry. 13 is the entirety of the medical records from Dr. Craig?

25 THE COURT: What is the component of 13? I'm looking at --

1 MR. KUDLER: Is Reflections which is Dr. Craig and Nurse
2 Cipollini's facility.

3 THE COURT: So when I look at it I'm looking at a multi-page
4 document, Plaintiffs' -- or a Bates stamped Plaintiff 271 through 323 --

5 MR. KUDLER: Yeah --

6 THE COURT: -- Is that an accurate --

7 MR. KUDLER: Uh-huh. That's correct, Your Honor.

8 MR. A. GIOVANNIELLO: Is it 17, Counsel?

9 MR. KUDLER: Exhibit 13.

10 MR. A. GIOVANNIELLO: Exhibit 13. All right. Let me just
11 look at it, please.

12 MR. A. GIOVANNIELLO: No objection.

13 THE COURT: 13 is in.

14 MR. KUDLER: Thank you, Your Honor.

15 BY MR. KUDLER:

16 Q And looking at Plaintiffs' -- marked on the bottom -- 290?

17 A Okay.

18 Q And the problem lists at the top, okay. It lists the post-
19 traumatic stress disorder?

20 A Yes.

21 Q And separately lists irritability and anger?

22 A Yes.

23 Q And then in your opinion, are those related to the arc flash?

24 A Yes, from the medical history that I know. Yes.

25 Q Okay. And then it also lists complex regional pain syndrome

1 --

2 A Yes.

3 Q -- in the left arm?

4 A Yes.

5 Q And calcific tendonitis of the left upper arm?

6 A Yes.

7 Q Are those two items related to the incident?

8 A Yes.

9 Q Okay.

10 MR. KUDLER: That's all I have. Thank you, Your Honor.

11 THE COURT: Recross?

12 MR. A. GIOVANNIELLO: Just a couple.

13 RECROSS-EXAMINATION

14 BY MR. A. GIOVANNIELLO:

15 Q When you looked at that document --

16 A Uh-huh.

17 Q -- there's a couple other problem listed such as epilepsy;
18 that's not related to the incident, right?

19 A Not to my knowledge.

20 Q Okay. Obesity unspecified; that's not related to the incident,
21 right?

22 A I could get really technical and say that it is because side
23 effects of the medications can cause obesity.

24 Q Okay.

25 A Mood disorder can cause obesity.

1 Q Eating a lot of food can cause obesity, correct?

2 A This is true, yes.

3 Q Okay. Eating a lot of potato chips and things like that?

4 A It can.

5 Q And I want to -- well, under the family history, that's not
6 related to the incident, right?

7 A It is not, no.

8 Q Okay. Other sprain, right elbow; it's not related to the
9 incident, right?

10 A It is because it's actually pertaining to the -- the tendonitis --
11 oh, the right elbow, no. I'm sorry. Not the right elbow.

12 Q Yeah, it says right elbow.

13 A No, I'm sorry.

14 Q Thank you. And it says other disorders of peripheral nervous
15 system? What is that?

16 A It's generally a neuropathy. So Andrew is treated for
17 neuropathy which is related to the complex pain syndrome.

18 Q Okay. That's all I have for you. Thank you.

19 A Thank you.

20 THE COURT: Anything else for this witness from the
21 lawyers? Redirect?

22 MR. KUDLER: Yes, Your Honor. Very quickly.

23 FURTHER REDIRECT EXAMINATION

24 BY MR. KUDLER:

25 Q You said the obesity could be related to the depression?

1 A Yes.

2 Q How so?

3 A Because when people are depressed, they're a little bit less
4 motivated. They don't necessarily exercise. They make some poor
5 eating decisions. And like I said, the side effects of medication can cause
6 weight gain.

7 MR. A. GIOVANNIELLO: Your Honor, objection. Move to
8 strike. It's speculation.

9 THE COURT: Overruled.

10 MR. KUDLER: Thank you, Your Honor. That's all.

11 THE COURT: Any re-recross?

12 MR. A. GIOVANNIELLO: Nah. She can go.

13 THE COURT: The witness having been passed by the
14 lawyers; I look to the jury. Are there any additional questions? I see one
15 hand up.

16 [Sidebar begins at 9:38 a.m.]

17 THE COURT: I have a witness list here somewhere but I'm
18 not [indiscernible]. I guess it wouldn't be hearsay.

19 MR. KUDLER: It's not in.

20 MR. A. GIOVANNIELLO: It's not in, no. Don't read it.

21 THE COURT: So there's an objection?

22 MR. A. GIOVANNIELLO: I would object to it. I objected to the
23 letter so I would object to that as well.

24 THE COURT: The date the letter was written?

25 MR. KUDLER: She's talking about the [indiscernible].

1 THE COURT: Well, I got an objection here, hearsay. All right.

2 MR. KUDLER: I mean, I don't think it's hearsay. I think it's
3 you know, there is an exception, but I don't care one way or another.

4 THE COURT: Okay. All right.

5 MR. KUDLER: Thank you, Your Honor.

6 THE COURT: All right. Thank you very much.

7 [Sidebar ends at 9:38 a.m.]

8 THE COURT: Please step down.

9 THE WITNESS: Thank you.

10 THE COURT: Call your next witness.

11 MR. KUDLER: We are waiting for -- we're waiting for Mr.
12 Smith to come in via Zoom -- or via BlueJeans.

13 THE COURT: Can we check our technology, our machines
14 and see --

15 THE CLERK: We don't have anybody else that has --

16 MR. KUDLER: He's coming in now.

17 [Counsel confer]

18 MR. KUDLER: Yeah, he's just been -- he's been advised that
19 now is the time. So he's just trying to --

20 THE COURT: Okay.

21 MR. KUDLER: He's just got to get in.

22 [Pause]

23 THE COURT: Can we go off the Elmo? The overhead.

24 MR. KUDLER: Yeah, I put it down so when I'm sitting here I
25 can see a witness, but I don't know if we have anymore live witnesses

1 but --

2 THE CLERK: I actually need to switch it over anyhow, so
3 BlueJeans pops up.

4 THE COURT: There you go.

5 [Pause]

6 MR. KUDLER: I apologize for the delay. I was trying to get
7 in.

8 [Counsel confer]

9 MR. KUDLER: Your Honor, so Jaime's going to see if she can
10 talk him through getting in. If that doesn't work, I can probably have him
11 call into the --

12 THE COURT: I can always send him another BlueJeans link.

13 MR. KUDLER: He has it.

14 THE COURT: He has it??

15 MR. KUDLER: I believe he has it, yeah. I don't know that he
16 has BlueJeans on his computer there.

17 [Pause]

18 JAMIE: He said the number that he's typing in isn't working.

19 THE COURT RECORDER: I have the number right here if
20 you --

21 JAMIE: You have it?

22 THE COURT RECORDER: -- want to read it to him.

23 JAMIE: Okay.

24 THE COURT RECORDER: I'm going to give you the number.
25 Okay? Yeah, give her that one.

1 [Pause]

2 MR. KUDLER: Do you want me to go check, Your Honor, and
3 see how he's doing?

4 THE COURT: Yes, please.

5 [Mr. Kudler exits the courtroom]

6 [Pause]

7 THE COURT: Ladies and gentlemen, I apologize for the delay
8 we are -- as the Court's trying to work out protocols necessary to make
9 this as efficient as possible, I -- because I've been doing this a long time
10 with both witnesses, and this electronic system, I feel like the minute I
11 admonish you and discharge you to the hallway, the witness is going to
12 pop up. So I -- I just tell myself, just calm down and let the process work.
13 And so that's what I'm trying to do.

14 [Pause]

15 THE COURT: I can tell you while we wait -- oh, I don't have a
16 lawyer in the room, so I'm not going to talk to you anymore.

17 [Mr. Kudler reenters the courtroom]

18 MR. KUDLER: He had to join -- he forgot to join meeting. So
19 he should not popping in.

20 THE COURT: So while we continue to wait for this to work
21 through, and with both lawyers now in the room, I have met and
22 conferred with counsel. We have discussed the future efforts here, and I
23 can inform that you our intent -- their intent is to complete the
24 examination of witnesses, instruct the jury, and head into argument, and
25 deliberation Monday. So that is the plan at this point. And both sides

1 feel that that seems realistic. What time on Monday we'll submit it to
2 you to begin deliberations, it's still kind of flexible. But that would be the
3 plan.

4 All right. It appears that we have a witness identified as
5 Douglas on BlueJeans.

6 MR. KUDLER: Yes.

7 Call him and tell him to turn his mic and his.

8 UNIDENTIFIED SPEAKER: Camera.

9 MR. KUDLER: -- camera on.

10 UNIDENTIFIED SPEAKER: Sorry. I'm so sorry.

11 [Pause]

12 MR. KUDLER: What was our start time for Monday?

13 THE COURT: It's going to be 11 on Monday. I have a long
14 morning, an unrelated calendar to this case. So it will be 11:00.

15 Is there anything we can do to help Douglas along here?

16 THE COURT RECORDER: I can't -- I can't unmute him. He
17 just unmuted his --

18 MR. SMITH: I'm here now.

19 MR. KUDLER: There we go.

20 THE COURT: All right. Are you Mr. Smith?

21 THE WITNESS: Yes, sir, I am.

22 THE COURT: Mr. Smith, my name is Judge Barker. I'm the
23 presiding judge -- district judge in this effort. You've been summoned to
24 participate as a witness in a civil case. The protocols are follows: You
25 need to be in a room by yourself with the door secured so you're -- we're

1 going to have dogs barking in the background or children rushing in
2 unexpectedly. Are you in that situation now, sir?

3 MR. SMITH: Yes, I am. I do have a couple of windows open
4 for ventilation because it's kind of tight in here. But I can shut those if --

5 THE COURT: No, no, no. That's fine. I'm just worried about
6 more direct interruption than that.

7 MR. SMITH: No. I kicked everybody out of the house.
8 They're gone.

9 THE COURT: Perfect. You should have no documents,
10 reference materials of any sort in front of you. Should those situations --
11 obviously that is as we move into your testimony, if it becomes
12 necessary through the examination of the -- by the lawyers, we'll build
13 the appropriate record of that effort.

14 With that, then let's -- I'm going to have my clerk raise -- have
15 you raise your right hand to be sworn by my clerk.

16 DOUGLAS SMITH, PLAINTIFFS' WITNESS, SWORN

17 THE CLERK: Please state and spell your first and last name
18 for the record.

19 THE WITNESS: First name is Douglas, D-O-U-G-L-A-S;
20 second name is Smith, S-M-I-T-H.

21 THE COURT: Counsel, your witness.

22 MR. KUDLER: Thank you,

23 DIRECT EXAMINATION

24 BY MR. KUDLER:

25 Q Mr. Smith, are you currently working?

1 A No.

2 Q Okay. How long have you been retired?

3 A Well, I retired a couple of times. But since -- let's see, I was
4 70 years old. When was that? Seven years ago. I -- I retired from my
5 main job in 2003, and then I retired a couple of years, got bored and -- I
6 don't have the dates in front of me -- when I was 65, I went back to work
7 for a company called Brett [indiscernible] Brothers Sports International
8 Company. And I worked there for five years.

9 Q Okay.

10 A But now, the last seven years, I've been retired.

11 Q Okay. What did you do for most of your life for work?

12 A Well, I retired at -- I -- I drove a truck. I retired after 30 years.
13 There was a driver supervisor position, and I had a couple of different
14 times, but most of it was truck driving. Teamster.

15 Q You ever work as an electrician?

16 A No.

17 Q Okay. You know, other than maybe some things around the
18 house, you have no experience with working with electricity?

19 A No, sir. I can change a light bulb.

20 Q Okay. You know Andrew James?

21 A Yes, I did.

22 Q How long have you known him?

23 A Well, for some years. 25, 28 years.

24 Q Okay. And -- and how did you meet him?

25 A I met him when my daughter brought him home. He's

1 married to my daughter.

2 Q Okay. And you have a good relationship with him?

3 A Very good, yes.

4 Q Okay. At some point in time did you and he have a
5 conversation regarding what he wanted to do with his life?

6 A Oh, yeah -- yeah, we did, actually. He was working as an
7 electrician and -- and, yeah, we had a debate on -- and he had shown
8 interest in having his own company. We had that debate. So I decided
9 that I would sort -- support and back that dream.

10 Q Okay. What's the name of that company?

11 A Industrial Light and Power.

12 Q And who's the owner of that company?

13 A I'm the owner.

14 Q Okay. Who runs the company?

15 A Andrew James runs the company.

16 Q Okay. Was there a -- an agreement between and you Andrew
17 regarding finances when the company first started?

18 A No. He did get a paycheck.

19 Q Okay. What about debt -- debts of the company?

20 A Debts?

21 Q Debt. Did you have an agreement as to debt?

22 A The company pays its own debts.

23 Q Okay.

24 A Andrew's an employee of the company.

25 Q Okay. Who is responsible for buying the equipment?

1 A Andrew bought most of the equipment.

2 Q Okay. Those kind of decisions, were they run by you?

3 A Of course.

4 Q Okay.

5 A Everything.

6 Q Now -- now why back then -- and how long ago was this?

7 A Well, our company was formed probably 12 years ago. My

8 memory's not really good, so if I'm off a year or two, you have to forgive

9 me. But --

10 Q Okay.

11 A -- I don't have paperwork in front of me to tell me all of this

12 stuff.

13 Q It's been a while?

14 A It's been a while, yeah.

15 Q Okay. And why back then did you put your name and your

16 finances behind this company as opposed to Andrew on his own?

17 A Well, because I had the finances to do it, and of course my

18 belief in Andrew. And he's, when it comes to the electrical end of it,

19 brilliant. And, you know, they always say, if you want to start a business,

20 hire somebody smarter than you to run it. And that's exactly when I did.

21 Q Okay. Now, who has -- has contact with customers?

22 A Andrew.

23 Q Okay. He has all the day-to-day --

24 A Yes.

25 Q -- responsibility?

1 A Exactly.

2 Q Okay. And his compensation is a paycheck?

3 A Yes.

4 Q Okay. And that's the entirety of his compensation?

5 A That's the entire compensation?

6 Q Yes.

7 A Yeah, there -- yes.

8 Q Okay. So now you've formed the company with Andrew

9 and -- based on your belief in him as an electrician?

10 A Totally.

11 Q Okay. Now, do you -- do you recall when he was injured?

12 A Yes. I remember hearing about it. I was up here, but, yes.

13 Q Okay. Do you come down here and visit your daughter and

14 family?

15 A Yeah. I come down, well, probably a couple of times a year

16 at least, you know.

17 Q Okay. And during those times, both before and after the

18 accident, you had interactions with Andrew, with Andy [phonetic]?

19 A Well, yes. I've stopped by there even for three or four days a

20 couple of times on my way through, and I've seen Andrew and the

21 changes in him, yes.

22 Q Okay. What kind of changes did you notice in Andy?

23 A Well, he was -- oh, his attention span probably wasn't nearly

24 as good. I mean just he was irritable and kind of grumpy. He was in

25 pain, so, you know, I understood all that. And just wasn't Andy.

1 Q Okay. You're talking about --

2 A He was basically afraid to -- you know, and -- and then we
3 had a discussion about this -- afraid to go back to work but -- but in
4 electrical boxes. Sorry about that plane.

5 Q Uh-huh.

6 THE COURT: Let the record reflect we've lost the witness.
7 He was closing the window.

8 THE WITNESS: Yeah. I'm sorry. I forgot we live over an --
9 over an airport.

10 BY MR. KUDLER:

11 Q So you were talking about he was irritable, lost
12 concentrations, and things?

13 A Yeah. And argumentative more than ever. You know, I
14 mean in 12 years, we never argued about one thing. When we first
15 started out, we communicated a lot because we were starting a
16 company, and I had a lot of money invested in it. And, you know, I had a
17 rule that we don't buy anything on [indiscernible] time. So, you know,
18 when he needed stuff, if we had the money, we bought it. And he would
19 let me know and we'd talk about it. Not so much now because, you
20 know, he's -- he's amazing, what he does, to be honest with you.

21 Q And -- and before this accident, did you witness the
22 interactions between -- between Andy and your daughter?

23 A Yes.

24 Q Okay.

25 A Ten years.

1 Q What were those interactions like before the accident?

2 A Before and even now, they're total commit -- commitment,
3 total love. They -- they were probably what we would all like to be in our
4 lives, just fun together, joking, laughing. Once in a while Cheyenne
5 [phonetic] would have to crack the whip on him, straighten him out.
6 But -- but no arguments. Not -- not -- I don't -- I haven't ever really heard
7 them mad at each other.

8 Q Okay. Did you see -- did you see any change after the
9 accident?

10 A Wow. Yeah, he's, you know, even a little withdrawn, I would
11 say. You know, I mean I tried to think it was --

12 MR. A. GIOVANNIELLO: Asked and answered, Your Honor.

13 THE WITNESS: -- of descriptions.

14 THE COURT: Sustained.

15 THE WITNESS: He -- he --

16 Pardon?

17 THE COURT: Mr. Smith, I've got an interposed objection.

18 I've sustained the objection. We're going to move on to the next we.

19 MR. KUDLER: Yes.

20 BY MR. KUDLER:

21 Q And specifically what I was asking about, any changes after
22 the accident in regards to his relationship with your daughter.

23 A Well, I haven't -- I haven't witnessed that enough to know for
24 sure about that.

25 Q Okay. And any other -- I think that's it.

1 MR. KUDLER: Thank you, Your Honor.

2 THE COURT: All right. Cross-examination?

3 [Counsel confer]

4 MR. A. GIOVANNIELLO: I'll have to get up there.

5 CROSS-EXAMINATION

6 BY MR. A. GIOVANNIELLO:

7 Q Good morning, Mr. Smith.

8 A Good morning.

9 Q My name is Alex Giovanniello. I represent the Defense in
10 this case. I'm just going to ask you a couple of questions.

11 A Okay.

12 Q First of all, who -- who did -- you said Andrew is really
13 amazing at running the business, right?

14 A He -- yeah.

15 Q And even right now, absolutely amazing in running that
16 business?

17 A No.

18 Q No?

19 A Well, he can't do -- Andrew right now can't do the work he
20 used to do. So we sat down and had a discussion and -- he doesn't -- he
21 doesn't work in the field anymore --

22 Q Okay.

23 A -- and hand been since the accident.

24 Q Okay. Other than not working in the field, he's still doing a --
25 a good job running the business?

1 A No. Well, I mean hour business has slowed down. He isn't --
2 he isn't bidding like he used to and his -- you know, it's gotten worse as
3 -- as he's gotten worse. We don't have near the business and -- and, to
4 be honest with you, you know, I am thinking very hard on whether I'm
5 going to keep the company or not, so.

6 Q Okay. Who determines payroll?

7 A Pardon me?

8 Q Who determines the payroll at Industrial Light and Power?

9 A Well, I -- I do and Andrew does.

10 Q Andrew does?

11 A [No audible response.]

12 Q Okay.

13 A Yes.

14 Q Okay. Now, does Industrial Light and Power employ also
15 your daughter?

16 A No. And I have to clarify one thing. Andrew's pay after the
17 accident, not before, was determined -- we sat down and had a
18 discussion, and -- and since he wasn't working in the field and I had to
19 hire somebody else, so we did lower his wages, so.

20 Q Okay. Anyway, do you employ your daughter?

21 A No.

22 Q Okay.

23 MR. A. GIOVANNIELLO: All right. I have no other questions.

24 THE WITNESS: Excuse me?

25 MR. A. GIOVANNIELLO: I have no other questions for you.

1 Thank you.

2 THE COURT: Redirect?

3 THE WITNESS: You bet.

4 MR. KUDLER: No thank you, Your Honor.

5 THE COURT: Any questions for this witness?

6 I see one hand up.

7 JUROR NO. 4: Oh, I forgot to put my juror number.

8 THE COURT: We'll just mark it as 4. I'll do it.

9 [Sidebar begins at 10:03 a.m.]

10 THE COURT: Factual.

11 MR. C. GIOVANNIELLO: And I don't think it's relevant. And
12 he already said the business --

13 MR. A. GIOVANNIELLO: I think it's --

14 MR. C. GIOVANNIELLO: -- is failing, so there's really no
15 reason --

16 MR. A. GIOVANNIELLO: Yeah.

17 MR. C. GIOVANNIELLO: -- to rehash it. It's asked and
18 answered.

19 MR. A. GIOVANNIELLO: I think it's just going to rehash his
20 testimony.

21 THE COURT: Well, I'll note that objection, but I think the
22 Court can [indiscernible] ask the question.

23 MR. KUDLER: Thank you, Your Honor.

24 [Sidebar ends at 10:03 a.m.]

25 THE COURT: All right. Let's -- how much --

1 THE COURT RECORDER: Hold on one second, Your Honor.
2 I've got to get him back on. Okay.

3 THE COURT: How much was your investment into ILP, and
4 what is the valuation of ILP today?

5 THE WITNESS: Oh, gosh, over the years, my investment --
6 you know, it's hard for me to say because when we first started out, we
7 were putting money into different things and licenses and all of that
8 and -- and bonds and -- and everything. And, you know, I -- I don't know
9 how much I threw in originally. And then after that, buying equipment
10 and everything came out of ILP, not out of -- out of my pocket.

11 And it's -- what is my company worth? I know that we set -- I
12 set the company up to where we didn't have any debt when we bought
13 something. In other words, if he needed something, a piece of
14 machinery, he had to have the cash for it. And we ran it that way all
15 except for the land and one another thing. And then we paid that all off
16 early. So I -- I think we have around 1.3 million in assets. What the
17 company's worth, I'm not sure. I would say 3 to 4 million, but that's
18 just -- that's a guess.

19 THE COURT: Is Andrew the beneficiary of ILP should
20 something happen to you?

21 THE WITNESS: Yes.

22 THE COURT: Any additional questions from the jury as a
23 consequence of the questions asked and answered? I need a hand if
24 there's follow-up. I'm seeing no hands.

25 Follow-up, Plaintiff?

1 MR. KUDLER: No thank you, Your Honor.

2 THE COURT: Follow-up, Defendant?

3 MR. A. GIOVANNIELLO: No thank you, Your Honor.

4 THE COURT: All right. Mr. Smith, you may turn off your --
5 your technology.

6 THE WITNESS: Thank you, sir.

7 THE COURT: Ladies and gentlemen, based upon the
8 discussion at sidebar, it's -- we're going to take a morning recess, that
9 extended recess that I mentioned to you briefly yesterday afternoon.

10 During this recess, you must not discuss or communicate
11 with any fellow juror in any way regarding the case or its merits either
12 by voice, phone, email, text, Internet, or other means of communication
13 or social media.

14 You're not to read, watch, or listen to any report of or
15 commentary on the trial by any medium, do -- you may not do research,
16 consult dictionaries, the Internet, use reference materials, make any
17 investigation, test the theory of the case, recreate any aspect of the case,
18 or in any way investigate the case on your own. You may not form or
19 express any opinion regarding the case until it's finally committed to
20 you.

21 Now, it's a little bit after 10:00. It's going to be a three-hour
22 break, Ladies and Gentlemen. We're going to bring you back at 1:00.
23 Follow the marshal, please.

24 MR. KUDLER: Your Honor?

25 THE COURT: Yes?

1 MR. KUDLER: I -- I do believe that Dr. Zand could be 12:45.

2 THE COURT: 12:45?

3 Let's do 12:30 then. All right? Or let's do 12:45 so we're not
4 staring at each other. 12:45.

5 MR. KUDLER: Thank you, Your Honor.

6 THE MARSHAL: All rise for the jury.

7 [Jury out at 10:07 a.m.]

8 [Outside the presence of the jury]

9 THE COURT: All right. The record should reflect we're
10 outside the presence the jury.

11 Any additional record need to be made by either side as a
12 function of witness examination this morning?

13 Plaintiff?

14 MR. KUDLER: Thank you.

15 THE COURT: Defense?

16 MR. A. GIOVANNIELLO: No thank you, Your Honor.

17 THE COURT: Very good. All right. So gather up your
18 materials. We're going to work in back in the jury deliberation room -- in
19 the jury room on instruction. So I'm going to give you 15 minutes to
20 kind of collect what information you have. What I'm looking for is a way
21 to create that final draft. So I need the documents in Word without
22 citation, what you've agreed on in the appropriate format. And then we
23 will sit down, and you'll show me what your efforts are, and I'll sort out
24 whatever conflicts you might have.

25 Do you want to -- would you prefer a half hour to do that,

1 and then --

2 MR. KUDLER: Well, I have to see if I have it on my stick. And
3 if not, then --

4 THE COURT: Why don't --

5 MR. KUDLER: -- I'm going to have to figure out how --

6 THE COURT: -- I give you --

7 MR. KUDLER: -- to get it.

8 THE COURT: -- a half hour then. In fact, I'm going to give
9 you until 11:45 to make that happen. All right?

10 MR. KUDLER: Thank you.

11 MR. A. GIOVANNIELLO: 11:45? 10:45 you mean?

12 THE COURT: 10:45. Excuse me. 10:45. Sort out your
13 questions as -- as you can.

14 [Recess taken from 10:07 a.m. to 12:43 p.m.]

15 THE COURT: Are you ready?

16 MR. KUDLER: Yes, ma'am -- yes, sir.

17 THE COURT: All right. Is anything outside the presence
18 we're still working on instructions, tightening them up a little bit ?

19 MR. KUDLER: Not at this time, Your Honor.

20 THE COURT: Do you have your witness on line?

21 MR. KUDLER: He's there. Just ask him to turn his mic and
22 camera on.

23 THE COURT: Terrific. Looks like we are ready to go.

24 THE MARSHAL: All rise for the jury.

25 [Jury in at 12:43 p.m.]

1 THE COURT: Please be seated, ladies and gentlemen. Be
2 comfortable. We are on Case No. A735550, Myers v. THI, and I'll reflect
3 the presence of representative of Plaintiff and Defense.

4 Excuse me, all members of the jury panel do appear to be
5 present. Will parties stipulate to the presence of the entire panel.

6 Plaintiff?

7 MR. KUDLER: Yes, sir.

8 THE COURT: Defendant?

9 MR. A. GIOVANNIELLO: Yes, Your Honor.

10 THE COURT: Thank you. The record should reflect we
11 remain in Plaintiffs' case in chief. Call your next witness.

12 MR. KUDLER: Dr. Zand, just waiting for him to get his
13 camera and mic turned on. There he is.

14 DR. ZAND: Hello. I'm Dr. Zand, I'm here. I didn't know you
15 were waiting for me.

16 THE COURT: Dr. Zand, my name is Judge Barker, I'm
17 presiding over a trial, civil jury trial, in the 8th Judicial District Courts
18 here in Las Vegas. You've been summoned to participate as a witness in
19 the case. And as a consequence, we're heading towards examination.

20 Before we go there, it's important for me to kind of explain
21 some of the ground rules to you. I need to make sure you're in a secured
22 room, door closed, so that we can minimize the possibility of
23 interruption. I also need to make sure that you have no documents or
24 anything in front of you and no other person is in the room with you; is
25 that true?

1 DR. ZAND: Nobody's in the room with me. No documents, I
2 mean papers on my desk. I don't understand the question.

3 THE COURT: Right. I just need if you have reports or
4 documents, close them up until your lawyer asks you if it's necessary for
5 you to open them so we know exactly -- we are able to follow along as
6 you move through your testimony.

7 Fair enough?

8 DR. ZAND: Got it.

9 THE COURT: Very good.

10 I'm going to have my clerk swear you in. Please raise your
11 right hand.

12 DR. SAM ZAND, PLAINTIFFS' WITNESS, SWORN

13 THE CLERK: Please state and spell your first and last name
14 for the record.

15 THE WITNESS: Sam Zand, S-A-M Z-A-N-D.

16 THE COURT: Counsel, your witness.

17 MR. KUDLER: Thank you.

18 DIRECT EXAMINATION

19 BY MR. KUDLER:

20 Q Dr. Zand, where did you go to college?

21 A John's Hopkins University.

22 Q And where did you go to medical school?

23 A Touro University in Nevada.

24 Q Okay. And when did you graduate medical school?

25 A Graduated medical school 2014.

1 Q And did you -- well, what degree did you get?

2 A A D.O., Doctor of Osteopathic Medicine.

3 Q And did you specialize in anything during your medical
4 training or your osteopathic training?

5 A Medical training is just normal medical education. I went to
6 psychiatry residency afterwards.

7 Q And where did you do that?

8 A UNLV.

9 Q And how long was that?

10 A Four-year program, finished in 2018.

11 Q During your residency were you working in psychiatry?

12 A Yes.

13 Q And where were you working at that time?

14 A At multiple locations in residency, from City Hospital to the
15 hospital and clinics.

16 THE COURT: Doctor, we're losing you. We're losing your
17 voice a little bit. If you could move maybe closer to the microphone.

18 THE WITNESS: Can you hear me better now?

19 THE COURT: That's better.

20 THE WITNESS: Okay. During my residency I did my training
21 at the VA Hospital, UMC Hospital, Ross and Neal Psychiatric Hospital,
22 and outpatient clinics, mostly Southern Nevada Development al Health.

23 BY MR. KUDLER:

24 Q During that time in your residency did you work with patients
25 who were affected by PTSD?

1 A Yes.

2 Q Okay. After you finished your residency, where did your
3 career go next?

4 A I started in a private practice after residency and continued
5 working in the outpatient setting.

6 Q At some point did you start your own practice?

7 A Yes.

8 Q And what's the name of that practice?

9 A Anywhere Clinic is the name of the practice; d/b/a is Calm
10 Clinic.

11 Q Do you have any board certifications?

12 A I do not.

13 Q Are you working towards any?

14 A No, because I have a private practice I don't [indiscernible]
15 board certification.

16 Q You're clipping out a little bit, so I'm not sure what --

17 A Sorry. I said because I have a private practice, I never
18 needed to have a board certification.

19 Q The -- your business, Calm Clinic, what's the focus of your
20 practice if any?

21 A Psychiatry and overall mental health.

22 Q Do you treat patients there with PTSD?

23 A Yes.

24 Q Do you treat patients who are involved in personal injuries?

25 A Yes.

1 Q Okay. Do you belong to any professional organizations?

2 A No.

3 Q Now, I've sent you a set of records, they're marked at the
4 bottom right-hand corner PTLF386 to 424. Have you reviewed those?

5 A I have.

6 Q And are those the records that you produced to us as the
7 treating physician at Calm Clinic?

8 A Yes, correct.

9 Q And were those done contemporaneously with your
10 treatment?

11 A Yes.

12 MR. KUDLER: Your Honor, I'd offer for admission Exhibit 17.

13 THE COURT: Plaintiffs' 17 is offered. Any objection?

14 MR. A. GIOVANNIELLO: No objection.

15 THE COURT: Plaintiffs' 17 is received without objection.

16 [Plaintiffs' Exhibit 17 admitted into evidence]

17 MR. KUDLER: Thank you.

18 BY MR. KUDLER:

19 Q When did Mr. James first present to you?

20 A The first date of our visit -- and may I pull up the documents
21 now?

22 Q Yes.

23 A Okay. The first date of our initial visit was August 24, 2021.

24 Q And what did he come to you -- or why did Mr. James tell
25 you he came to see you?

1 A That he was dealing with symptoms of anxiety, depression
2 and post-traumatic symptoms and was just looking for support to feel
3 better.

4 Q And did you take Mr. James on as a patient?

5 A Yes.

6 Q Okay. Did you do any testing to confirm his -- the diagnosis
7 he told you he had?

8 A Yeah. We followed the DSM-5 criteria and so
9 symptomatically looking at the different criteria, we were able to confirm
10 a few diagnoses.

11 MR. A. GIOVANNIELLO: Your Honor, I'm going object as
12 cumulative evidence

13 THE COURT: Overruled.

14 BY MR. KUDLER:

15 Q So you looked at the criteria and found that he -- you agreed
16 with the diagnosis of PTSD.

17 A Yes.

18 Q Okay. Are you still treating Mr. James today?

19 A He's an active patient welcome to come see us, so I would
20 say, yes, I'm still treating him, but last time, interested, I think he saw our
21 team was in April.

22 Q Okay. The -- during his course of treatment you prescribed
23 him medications?

24 A Yes.

25 Q What kind of medications did you prescribe him?

1 A Anti -- let's see. Mood stabilizers to help with mood and
2 anxiety.

3 Q Anything else?

4 A Yes, throughout the course of treatment we had tried several
5 things. You want me to name them specifically?

6 Q Sure, when they were attempted and whether or not they
7 were helpful and why they were terminated.

8 A Yes. We started with Rexulti. He shared that he had a lot of
9 difficult experiences with medications in the past and exhausted many
10 options. And started with Hydroxyzine, as needed for anxiety. And then
11 we tried several others over time, Cymbalta for depression and anxiety.
12 And let's see, and Truvada and Ketamine for depression. And Lyrica --
13 I'm not sure that we prescribed that, it's on his medication record list.

14 Q Now, there's multiple different medications that treat the
15 same thing. Do all medications work the same on all people?

16 A No.

17 Q So is part of your job trying to find the right drug or
18 combination of drugs for the particular patients?

19 A Yes.

20 Q Okay. Were you able to do that with Mr. James?

21 A We had some benefit. And were able to rule out some
22 options and continue some options, yes.

23 Q Were there some medications that gave him more difficulty
24 than the benefit he got from them?

25 A Yes.

1 Q What kinds of things did he have the adverse effects of?
2 A It seemed that Cymbalta was not a good fit.
3 Q What happened with that?
4 A I'd have to find it in the notes, I don't remember offhand.
5 Q You know if that was something that wasn't effective --
6 A Would you like me to --
7 Q -- or gave him a negative effect?
8 A Let me find it. No benefit per the notes.
9 Q What other medications were tried and terminated?
10 A It looks like Rexulti was also discontinued.
11 Q Do you recall why? Or do the notes tell you why?
12 A No benefit.
13 Q No effect?
14 A No efficacy.
15 Q And what other medications were tried and terminated?
16 A Hydroxyzine as needed for anxiety did not appear effective
17 either.
18 Q Okay. Is that unusual that certain drugs are not effective on a
19 patient?
20 A No.
21 Q Okay. What are the current medications he's on that you're
22 prescribing?
23 A Currently he has continued the Ketamine treatment with the
24 Ondansetron as needed for nausea. Ketamine for depression and
25 anxiety.

1 Q And what's the purpose of Ketamine, how does it work?

2 A It helps to increase neuroplasticity; it helps to reset anxious
3 and depressive thought patterns and cycles.

4 Q In your notes does it have some notes about what Mr. James
5 experiences while he's taking the Ketamine?

6 A I would have to view -- usually it says pleasant experience.

7 Q And if you could go to specifically, page 419.

8 A Almost there. I apologize, it's just lagging a little bit. I have
9 418 loaded, I'm waiting for 419.

10 Okay, I'm on page 419.

11 Q Okay. And in the subjective he discusses his experience.

12 A In the subjective of this note, and it says that -- talks about
13 the intensity of the treatment and the aftereffect. Seemed that it helped
14 decrease nightmares and not as severe. Intense experience bad nausea,
15 felt at peace, thought things different, different things. And it says the
16 anxiety and depression still there. And that we're making efforts to
17 continue therapeutically working through that.

18 Q Okay. Is your plan for him to continue the Ketamine therapy?

19 A Yes, that is the plan.

20 Q Do you have an idea of how many, in your medical
21 experience, how many more treatments he'll need of Ketamine?

22 A For the FDA approved Esketamine for depression, the
23 indication is once every one or two weeks forever. I don't really agree
24 with that being necessary, but I do anticipate he will continue for at least
25 weeks to months more, until hopefully there is more benefit.

1 Q Okay. In your experience does someone who has or suffers
2 from PTSD, are they able to handle life's other stressors as well as if
3 they didn't have those PTSD?

4 MR. A. GIOVANNIELLO: Objection. Speculation.

5 THE COURT: Overruled.

6 THE WITNESS: In general, most people [indiscernible] with
7 trauma and developed PTSD have a hard time with external and social
8 factors that might trigger them.

9 Q Okay. Would he have more difficulty dealing with his wife's
10 cancer and cancer treatments?

11 MR. A. GIOVANNIELLO: Objection, Your Honor. That's
12 irrelevant.

13 THE WITNESS: I would say --

14 THE COURT: No, that's relevant. It's overruled.

15 BY MR. KUDLER:

16 Q Go ahead, you can answer.

17 A Can you repeat the question, please?

18 Q Having PTSD is Mr. James' ability to handle his wife's cancer
19 and cancer treatment affected?

20 A It certainly can be and responding to difficult social stimuli is
21 not as easy when we've been through PTSD.

22 Q Doctor, do you have an opinion as to what caused Mr.
23 James' PTSD?

24 A My professional opinion is the work related traumatic events
25 that he went through.

1 Q That's the arc flash?

2 A Was the cause of the PTSD.

3 Q We missed the last part of that. You clipped out.

4 A The work related trauma was the cause of his PTSD per our
5 evaluation noting that he didn't have a lot of these symptoms prior to
6 that event.

7 Q And that's the arc flash incident?

8 A Yes.

9 Q Thank you. Is that opinion within a reasonable degree of
10 medical probability?

11 A Yes.

12 Q Okay. The treatment that you render and will continue to
13 render, is that reasonable and necessary to treat Mr. James' PTSD?

14 A Yes. Given that he's tried many treatment options and we
15 classified his treatment resistance, these are standard of care options
16 that would be necessary for him to continue if he was wanting to feel
17 better.

18 Q What is your short term goal for Mr. James through your
19 treatment?

20 A Short term goals would include improved sleep, improved
21 mood, improved ability to remain relaxed and not become anxious
22 regularly. Improvement in functional outcomes -- work life, social life
23 and just kind of social healthy outlets.

24 Q In addition to medication is there notes in your chart notes
25 that you have conversations and talk therapy with him?

1 A Yes.

2 Q Is that what you're doing yourself?

3 A I have done psychotherapy with him, and he has worked with
4 others to continue that as well.

5 Q Within your office?

6 A Correct.

7 Q And they do that under your orders or authority?

8 A Under my supervision, yes.

9 Q Thank you. In Mr. James' case, what is the particular goal of
10 those conversations?

11 A It's to overcome flashbacks, feelings of hypervigilance,
12 overcome anxious patterns, depressive patterns, to overcome forced
13 sleep.

14 Q I believe there are some notes about developing better
15 patterns of coping mechanisms, more positive thoughts.

16 A Yes. I would agree, increasing positive thought patterns and
17 healthy behaviors.

18 Q And how do you do that in your conversations?

19 A We process the events that happened. Try to understand
20 how they affected us. Add awareness to any thought patterns
21 perspectives or beliefs that might be skewed because of past traumas.
22 Begin to learn coping mechanisms that involve deep breathing,
23 meditation, relaxation techniques. And built those connections between
24 the way we think, the way we behave and the way we feel releasing any
25 of the triggers and anchors that might have come from mental and

1 emotional trauma and physical trauma.

2 Q And you're aware also that he has an outside
3 psychotherapist doing similar kinds of things.

4 A Yes, I think it's always great to have additional support.

5 Q Okay. Have you noticed any benefit with the conversations
6 and the behavioral changes you're trying to help him with?

7 A I think there's been minor benefit from talking and behavioral
8 therapy.

9 Q Have all the opinions you've given here today been within a
10 reasonable degree of medical probability?

11 A Yes.

12 MR. KUDLER: Thank you. That's all I have, Your Honor.

13 THE COURT: Witness is passed. Cross-examination.

14 MR. A. GIOVANNIELLO: He's not going to be able to see
15 them. You can't turn this on, can you with him --

16 THE CLERK: No, that's why they have the documents in front
17 of them.

18 MR. A. GIOVANNIELLO: Oh, okay.

19 MR. KUDLER: He's got the same Bates stamps that I have.
20 He's got a set of these with the Bates stamps in front of him.

21 MR. A. GIOVANNIELLO: Okay. Okay. Cool. I just wanted to
22 show it to the jury. All right.

23 CROSS-EXAMINATION

24 BY MR. C. GIOVANNIELLO:

25 Q Doctor, I don't really have that many questions for you. But

1 you were looking at document number 419 in Plaintiffs' Exhibit 2.

2 A Yes, I have it in front of me.

3 Q And you read, I guess you were reading some of the
4 sequelae from the Ketamine. At the bottom of that subjective, it says --
5 where it says patient rates depression as mild. Is that just --

6 A I see it.

7 Q Can you read that for me?

8 A Line says patient rates depression as mild. Would you like
9 me to continue?

10 Q Yeah, please. Just read the whole thing. And just read it up
11 to where it says objective.

12 A Patient rates depression as mild, sleep is good, appetite is
13 good, energy, interest and focus are good. Patient has no feelings of
14 hopelessness, worthlessness, guilt. Patient has no suicidal ideation,
15 homicide ideation and plan. Patient writes exactly as [indiscernible] no
16 recent panic attacks. Patient otherwise notes any other negative side
17 effects to medication, denies audio/visual hallucination, paranoia or
18 manic symptoms. No recent drug use.

19 Q Okay.

20 MR. A. GIOVANNIELLO: Thank you, Doc. That's pretty much
21 all I have. Thanks.

22 THE COURT: Redirect?

23 MR. KUDLER: Thank you, Your Honor.

24 REDIRECT EXAMINATION

25 BY MR. KUDLER:

1 Q Dr. Zand, his ratings of how he was doing at that moment
2 are -- is that over time, from the last visit, or at that moment?

3 A This is a snapshot and its objective response to the
4 subjective path.

5 Q And these ratings are given --

6 A Right--

7 Q Sorry about that. Go ahead, I cut you off.

8 A Yes. It's subjective response to how we're doing in a
9 snapshot of time.

10 Q And these ratings are given while he's taking his medication?

11 A During the course of treatment, perhaps not exactly while on
12 the medication.

13 Q This is while he's taking the prescriptions that you prescribed
14 to him. This is not with no medications in his system.

15 A Correct, yes.

16 MR. KUDLER: That's all I have. Thank you.

17 THE COURT: Recross?

18 MR. A. GIOVANNIELLO: No recross, Your Honor.

19 THE COURT: Anything for this witness? I see one hand.
20 Okay.

21 [Sidebar at 3:11 a.m., ending at 3:11 a.m., inaudible, not
22 transcribed]

23 THE COURT: Doctor, this is the Judge again. I have a
24 question I need to read to you posed by the jury that I'm going to ask
25 that you answer. The question is as follows. In your years of private -- in

1 your years of practice, how many patients have you diagnosed with
2 PTSD seven years after the traumatic event occurred?

3 THE WITNESS: Good question. Hard for me to know the
4 exact answer. But if I had to estimate, I would say many of our patients
5 have had childhood trauma that resulted in PTSD. So probably, at least,
6 my estimate is 50 percent of patients who have a diagnosis of PTSD I
7 probably didn't meet them within seven years. The trauma may have
8 happened long before.

9 THE COURT: Any follow-up questions from the jury? Seeing
10 no hands, follow-up Plaintiff to question --

11 MR. KUDLER: No, thank you, Your Honor.

12 THE COURT: Defense?

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

14 THE COURT: Doctor, you can turn off your technology.

15 MR. KUDLER: Thank you, Doctor.

16 THE WITNESS: Okay. Thank you.

17 THE COURT: Call your next witness.

18 MR. KUDLER: I'm waiting to see if Dr. Taylor is coming in.

19 MR. A. GIOVANNIELLO: Is he going to be in person,
20 Counselor?

21 MR. KUDLER: No. He might be, I don't know. Did I have Dr.
22 Taylor via BlueJeans?

23 THE COURT: You don't show him that way on your --

24 MR. A. GIOVANNIELLO: He was in person.

25 THE CLERK: He just has --

1 THE MARSHAL: He is out here.

2 MR. KUDLER: Oh, he is here. I thought they were all
3 BlueJeans this afternoon.

4 MR. A. GIOVANNIELLO: Dr. Taylor is orthopedist, right?

5 MR. KUDLER: Yeah.

6 [Pause]

7 DR. ARTHUR TAYLOR, PLAINTIFFS' WITNESS, SWORN

8 THE CLERK: You may take a seat. Please state and spell
9 your first and last name for the record.

10 THE WITNESS: My name is Arthur Taylor. First name
11 spelled A-R-T-H-U-R last name, T-A-Y-L-O-R.

12 THE COURT: Counsel, your witness.

13 MR. KUDLER: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. KUDLER:

16 Q Dr. Taylor, could you give a -- the jury a quick rundown on
17 your education?

18 A Yes. I'm a practicing orthopedic hand surgeon. I've
19 practiced in Las Vegas since 1996 and I subspecialize in hand surgery as
20 well as my orthopedic training. I've been with the same group, Nevada
21 Orthopedic and Spine since the beginning of my practice here in Las
22 Vegas.

23 Q And where did you go to college and medical school?

24 A My undergrad was at Hofstra University in New York. I then
25 went to Chicago Medical School. And then I did my residency and hand

1 training after residency at Stonybrook University Hospital in New York.

2 Q Okay. And what was your residency in?

3 A Residency, basic training, and orthopedics I did one year of
4 internship in Chicago with the Northwestern Program for general
5 surgery, and then orthopedics and then hand.

6 Q Okay. By hand, does that include hand, forearm, elbow?

7 A Yes. Some of the residency and fellowships actually even
8 include shoulder. My particular fellowship was from the elbow to the
9 hand and that's where I generally practice.

10 Q Are you board certified?

11 A Yes.

12 Q And what's your board certification in?

13 A I'm separately board certified in orthopedic surgery and then
14 separately in hand surgery.

15 Q And how long have you been board certified?

16 A Since the beginning of my practice. When you first come out
17 of fellowship, you're eligible for board certification at two years, and
18 that's when I became board certified. And then I recertified ever since.

19 Q And what board or boards do you certified with?

20 A The American Board of Orthopedic Surgeons and the
21 American Board of Hand Surgeons.

22 Q Okay. How often do you have to reapply or recertify?

23 A Recertification process has evolved. It was every ten years
24 with an examination. Now more recently we actually take exams every
25 year and the culmination of years will lead up to that 10-year certification

1 which I'm in the process of in now in my file.

2 Q In addition to the requirements of the board certification, do
3 you have to take continuing education and continuing medical education
4 classes?

5 A Yes. There are a certain number of credits. Some of them
6 are scored credits where you actually have to take an exam and do well
7 on the exam. And then other credits are attending meetings, giving
8 talks. Myself I do give educational talks and you get varying amounts of
9 credit for each of those events.

10 Q Okay. Have you authored any papers regarding hand
11 surgery or orthopedic surgery?

12 A I've been involved in research; I haven't personally been the
13 lead author. But most recently I was involved with research on
14 something called Dupuytren's of the hand, which is a genetic disease.
15 Actually, the professor that trained me and I participate in research
16 together.

17 Q Okay. Are you credited as an author or researcher in that
18 article?

19 A I don't believe I'm on the lead. If you looked into it you
20 would see that I was part of the continuation of the drug into multiple
21 injections, and so in that area you'll find my name."

22 Q Okay. Do you have an ownership interest in Nevada
23 Orthopedics?

24 A I am a partner.

25 Q Okay. And is that a practice that you started, or did you join

1 an ongoing practice?

2 A It's actually a practice that was started, it's evolved over the
3 years. Some doctors have retired, but myself, Dr. Rimoldi and Dr.
4 Bradford are the three original doctors dating back to 1996.

5 Q So you were one of the original doctors, and other doctors
6 have retired?

7 A yes, and many have joined.

8 Q If you look at the book that's in front of you there, Exhibit 16.

9 A Yes.

10 Q Do you recognize those?

11 A Yes.

12 Q Okay. And if you want to take a quick look through the
13 entirety of the record. At least Exhibit 16.

14 A Yes.

15 Q Do those appear to be your treatment records and notes for
16 Andy James in regards to the treatment he received at Nevada
17 Orthopedic and Spine Center?

18 A They do.

19 MR. KUDLER: Okay. I would offer those for admission,
20 Exhibit 16.

21 THE COURT: Any objection to 16?

22 MR. A. GIOVANNIELLO: No objection, Your Honor.

23 THE COURT: 16's received.

24 [Plaintiffs' Exhibit 16 admitted into evidence]

25 BY MR. KUDLER:

1 Q How did -- what condition --

2 MR. A. GIOVANNIELLO: Wait a second, Your Honor. Most of
3 16, if the entire thing is coming in, is dealing with a fracture to the hand,
4 which he stated he wasn't making a claim for.

5 THE COURT: Counsel

6 MR. KUDLER: And it has come up, and yes, the fracture of
7 the hand is unrelated, not being claimed. But it's kind of background as
8 to how he got there.

9 MR. A. GIOVANNIELLO: Then Your Honor, I would object to
10 the entirety of the record coming in. I would think that the only thing
11 that would come in would be anything dealing with the elbow.

12 THE COURT: I'm going to allow 16 in over objection and 16's
13 in.

14 MR. KUDLER: Thank you, Your Honor.

15 BY MR. KUDLER:

16 Q How did Mr. James -- what did he first present to your office
17 for?

18 A So within these sections there are seven encounters, and the
19 first encounter is a transcribed history and physical report dated May
20 14th, year 2020. This is a visit that's documented with my physician
21 assistant Jay Zurfluh, Z-U-R-F-L-U-H, being involved in the examination.

22 MR. A. GIOVANNIELLO: Doctor, can you say the Bate
23 number on the bottom, so I see where we are?

24 THE WITNESS: The Plaintiff and then it's 368 for the last. It's
25 encounter number 1 at the top.

1 BY MR. KUDLER:

2 Q And that encounter was for fracture of the right wrist?

3 A That's correct.

4 Q Okay. And if we can skip through this, the first six
5 encounters are for the right wrist injury, correct?

6 Q Okay. The seventh encounter what was that about?

7 A Encounter number 7 is a history and physical transcribed
8 report dated April 7th, year 2021, and there's an office visit for lateral
9 epicondylitis of the left elbow.

10 THE COURT: Doctor, hold on for a second. Parties approach.

11 [Sidebar begins at 1:22 p.m.]

12 THE COURT: Is there a way to bisect these so we're just
13 talking about what you're claiming?

14 MR. KUDLER: If -- I don't have a problem with the records
15 being limited just to that 7th encounter.

16 THE COURT: So we can redact the record. Because you've
17 got a point here. The first contacts were on the broken arm or wrist.

18 MR. KUDLER: And the following.

19 THE COURT: So I'm going to -- yeah, we're going to -- that's
20 all irrelevant so we can redact the record relevant to the broken arm.'

21 MR. KUDLER: It's just that they came in regard to his cross-
22 examination of Mr. James and that other guy. Yeah, I'm fine toss it.

23 THE COURT: Okay. So let's just change my decision on it's
24 admissible on 16 and then we'll redact.

25 MR. KUDLER: Thank you, Your Honor.

1 [Sidebar ends at 1:23 p.m.]

2 THE COURT: Our record should reflect, based upon a
3 sidebar conversation, I'm going to amend my decision on 16 to allow
4 admittance of records relevant to treatment focused here, not on the
5 broken wrist which is not subject to redaction.

6 Let's continue with the examination.

7 MR. KUDLER: Thank you.

8 BY MR. KUDLER:

9 Q So we're looking at Encounter No. 7. What was the date of
10 that again?

11 A April 7th, year 2021.

12 Q Okay. And what page are you looking at there?

13 A The last three numbers are 351.

14 Q Okay. And that encounter, that note goes 351, 352 and 353?

15 A 354 goes to April 7th as well.

16 Q And 355 also.

17 A And 355, 356. There's some reprints within that section. So
18 357. 351 to 357 is all involving April 7th, year 2021 visit.

19 Q And what did he come to you for on that day?

20 A He wanted an evaluation of his left elbow. He reported
21 moderate pain, onset gradual, but has been occurring constantly over
22 seven years. And he noted that it began with an electrical injury from an
23 arc flash as I read my transcription and he sustained burns close to the
24 area of the lateral side of his left elbow, which were still visible on
25 physical exam. And the injury occurred in June, year 2014. And he

1 continues to work as an industrial light and power engineer.

2 Q Okay. The lateral epicondyle injury, is that consistent with a
3 burn?

4 A So There are parts of information that I don't have at the time
5 of his original injury.

6 Q Okay.

7 A Electrical burns have significant bearing, intensities of injury
8 based on a lot of factors.

9 Q You have any other cause that would have caused this injury
10 specific in Mr. James' case?

11 A Not to my knowledge.

12 Q Okay. Do you have an opinion, based on what you know, as
13 to what caused the left lateral epicondyle injury?

14 MR. A. GIOVANNIELLO: I'm going to object. It's asked and
15 answered.

16 THE COURT: Objection?

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

18 THE COURT: Overruled.

19 THE WITNESS: So when the patient tells me, any patient
20 tells me that they had an electrical injury or any type of injury or trauma
21 to the elbow and that the pain is associated with that event, there's a
22 reasonable assumption that I should look for reasons that the lateral
23 epicondylitis would occur. And it might help me in my understanding of
24 the injury, how to treat it. That's a reasonable way to express it.

25 BY MR. KUDLER:

1 Q Okay. Just want to make sure I'm clear. Do you -- are you
2 saying that this injury, with the information that you have, is related to
3 the arc flash injury? Not incident.

4 A Based upon what my history tells me, it's reasonable to make
5 the connection between the causation of pain and what I saw in the
6 findings, physical findings, electrodiagnostics.

7 Q Did you look at any films?

8 A I'm sorry, yeah, MRI. I forgot that.

9 Q You looked at an MRI?

10 A Yes.

11 Q And what did that MRI show?

12 A The MRI was consistent with a strain of the attachments of
13 the extensors of the wrist, the muscles they insert on the distal portion of
14 the humerus at the elbow level. And you do routinely have the ability to
15 see that on an MRI.

16 Q Okay. Did that confirm your diagnosis?

17 A It helps confirm. I would say that you can get MRI findings
18 and the patient is not symptomatic. And so I wouldn't treat the problem,
19 even though it's on the MRI. But it certainly is helpful information as
20 part of making the diagnosis.

21 Q Did you do any tests on his grip strength?

22 A So I did not do actual measurements with a measuring
23 device. I did measure -- not measure, but I identified ranges of motion of
24 the elbow and the digits and the wrist. And during my examination I did
25 note that he had painful guarding, which is when a patient or any

1 individual has pain, they tend to limit the pain by often limiting their
2 motion.

3 Q Okay. Would this injury prevent him from holding
4 something in the crook of his arm like this [indicating] that was light? Or
5 small?

6 A So depending upon how symptomatic lateral epicondylitis is,
7 it can be painful even for people to reach out and pick up their coffee in
8 the morning. It's amazing. It's not that there's this huge injury, but it
9 does tend to cause discomfort at times to a high level. It is, in general,
10 harder for patients to grip and lift objects as the elbow's extended. But
11 even when it's very symptomatic it can hurt a lot in almost any position.

12 Q But he could carry something in his arm?

13 A As long as the pain wasn't outrageously bad he could most
14 likely lift something in that position, yes.

15 Q Okay. Did you suggest treatment for Mr. James?

16 A Yes. Under the -- So looking at page 356, there's a section
17 called instructions, recommendation, care plans discussed today. And
18 that also includes some of the history of the injury, my physical exam
19 and then in the second paragraph under instructions, recommendation
20 care plans I identified that I would attempt non-surgical interventions.
21 Therapy was prescribed. I also have a set of home exercises and
22 interventions that I typically explain to my patients, and I try to teach
23 them things that they can do on their own.

24 I discuss the potential need for surgical debridement, release of the
25 most common muscle involved which is, namely, extensor carpi radialis

1 brevis. I also suggested to have him wean off all narcotic medications
2 as it would be healthier. Try Tylenol, Motrin and ice. I think that pretty
3 much covers my recommendation.

4 Q Tylenol, Motrin or NSAIDs?

5 A And or ice. NSAIDs is Motrin, that is an NSAID.

6 Q And that has some long term adverse effects?

7 A If it's take too long and if the quantities are not as prescribed.
8 I also always recommend patients to take the NSAIDs with food. That
9 can be helpful I avoiding -- and I usually limit the NSAIDs to one, at the
10 most, two months. After hat I suggest that the primary care physician
11 take over for monitor purposes.

12 Q Mr. James never returned after this one day of service?

13 A I don't have any record of him seeing me again after that.

14 Q And you don't know if he attempted more physical or
15 physical therapy?

16 A I don't have any records of that.

17 Q Have all the opinions you've given here today, Doctor, been
18 within a reasonable degree of medical probability?

19 A Yes.

20 MR. KUDLER: Thank you, Doctor.

21 THE COURT: Cross.

22 CROSS-EXAMINATION

23 BY MR. C. GIOVANNIELLO:

24 Q Doctor, you said, I think, that Mr. James could carry
25 something in his left arm if he wasn't in pain.

1 A I said the degree of pain is what I was trying to get at. I mean
2 the question was kind of broad, I thought, so --

3 Q All right. So if he was in constant excruciating pain it would
4 be a little bit more difficult to carry something in the left arm, right?

5 A I would expect people to probably choose the opposite side.

6 Q Right. Okay. And you only saw him on one occasion, right?

7 A For that --

8 Q I mean --

9 A -- that problem, right.

10 Q Yes, for this problem.

11 A Yes.

12 Q When -- did Mr. James ever discuss with you any other
13 possibilities for why his elbow, you know, why he had pain?

14 A I was not aware of any other problems in the notes.

15 Q You reviewed the MRI, right?

16 A Yes.

17 Q The MRI showed that there was a tear in the muscle or the
18 tendon.

19 A Let me actually get to that report.

20 Q You have the report in there somewhere? If you find it, let
21 me know.

22 A I do. It is from Desert Radiologists, it's on --

23 Q Page 384?

24 A -- page 384.

25 Q Okay.

1 A Yes. And the findings identified tendinosis.

2 Q Right.

3 A Which is not a tear in and of itself, its --

4 Q But look at page 385 where it says impression.

5 A Yes. And then there's a what's called a small moderate

6 grade partial tear.

7 Q Right.

8 A In that same area of the tendinosis, actually.

9 Q Right. And it says just distal to the tendon origin?

10 A Right. So in my experience, these readings are not always a

11 hundred percent accurate.

12 Q Okay. But this is what we have in front of us, right?

13 A Right. And I won't disagree that you have findings consistent

14 with tendinosis. But as far as degrees of tear, in my experience what is

15 real and what is seen on the MRI don't always correlate.

16 Q Okay. But what causes a tear?

17 A It can be a one time event, where a force is applied to the

18 arm greater than the attachment can stand. And so you have

19 biomechanical failure of the attachment to some degree.

20 Q Were you aware of the degree of the burn that he had in his

21 arm?

22 A The only information I had was in that first note, where he

23 stated there was an arc burn.

24 Q Okay.

25 A That's the only information I have.

1 Q Okay. If I was to tell you he had a second degree burn on his
2 arm, in your opinion does that cause a tear of the tendon?

3 A So you know not being at the time of the injury -- I just want
4 to be honest about this -- you can have a degree of burn at the skin level
5 and possibly some of it might get through the skin to the structures
6 underneath.

7 Q Sure.

8 A Possibly. I don't know.

9 Q All right.

10 A Not being there.

11 Q Here we have a second degree burn.

12 A Yes.

13 Q That only goes to the second layer of the skin.

14 A That's true.

15 Q Is that going to tear a tendon?

16 A No, a second degree burn would not involve structures deep
17 to the skin.

18 MR. A. GIOVANNIELLO: Thank you, Doc. That's all I have.

19 THE COURT: Redirect?

20 MR. KUDLER: Thank you, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. KUDLER:

23 Q How about scarring of tissue as a result of a burn?

24 A So if the burn is a second degree burn, they typically will
25 heal with scar at the skin level.

1 Q Okay. And can that scarring and lack of motion or cause
2 some wear and tear on a tendon?

3 A If it altered the biomechanics of the patient's arm, it's
4 possible it could contribute due to posture and lifting at the same time a
5 higher incidence of straining the muscles. It's possible.

6 Q And how about a quick jerk when you're faced with a large
7 hot flash fireball?

8 A Quick movements unanticipated could cause strains of
9 musculotendon and structures.

10 Q Including a small tear?

11 A Yes.

12 MR. KUDLER: Thank you, Your Honor.

13 THE COURT: Recross?

14 RECROSS-EXAMINATION

15 BY MR. C. GIOVANNIELLO:

16 Q Doctor, you talking what's possible or what's probable?

17 A It's possible.

18 Q What's possible, right? Because anything's in the realm of
19 possibility, right? In medicine. And in law.

20 A I wouldn't say anything, but --

21 Q But anything -- right. But things -- it's just -- but you are
22 talking possibility, not probability, right?

23 MR. A. GIOVANNIELLO: You know what, I already asked that
24 question and you answered it.

25 Thank you, I'm done.

1 THE COURT: Any questions for the witness consequence of
2 these questions asked and answered?

3 [Sidebar begins at 1:39 p.m.]

4 THE COURT: I don't think I've never seen this many
5 questions in my life.

6 UNIDENTIFIED SPEAKER: [Indiscernible] and I guess we've
7 got to have --

8 THE COURT: It's a fact or pattern.

9 UNIDENTIFIED SPEAKER: Okay.

10 THE COURT: All right.

11 [Sidebar ends at 1:39 p.m.]

12 THE COURT: Would the injury of the Plaintiffs' wrist cause
13 issues relating to this elbow?

14 THE WITNESS: Very good question. So when one extremity
15 is injured it could cause an individual to have to use the opposite
16 extremity more. And so that potentially could lead to overuse of one
17 extremity to avoid use of the opposite extremity being injured. So it's a
18 good question.

19 THE COURT: Any additional questions from the jurors?
20 Seeing no hands, follow-up jury question, Plaintiff?

21 FURTHER REDIRECT EXAMINATION

22 BY MR. KUDLER:

23 Q The right wrist injury that you treated him for, what year was
24 that?

25 A That was beginning in May of the year 2020.

1 Q And the MRI film showing the tear, what year was that?
2 A That was March 2nd, year 2017.
3 Q Okay. So the tear was there two years before the right wrist
4 injury?
5 A Yes.
6 Q Okay. Any causal relation from the right wrist injury causing
7 the tear at all, seeing it was [indiscernible] after?
8 A I would not say causing it but could aggravate it.
9 Q But it didn't -- what's in the film was in the film two years
10 before the right wrist injury.
11 A Correct.
12 Q Okay. And --
13 A Four years -- well, three years.
14 Q Three years, thank you.
15 So the right wrist injury doesn't affect what's on the film.
16 A Correct.
17 MR. KUDLER: Okay. Thank you, Doctor.
18 THE COURT: Follow-up jury question, Defense?
19 MR. A. GIOVANNIELLO: None, Your Honor.
20 THE COURT: Please step down. Call your next witness.
21 MR. KUDLER: I just need to make a quick call to Mr.
22 Crawford tell him to come on in, he's waiting.
23 THE COURT: Is he going to appear via BlueJeans?
24 MR. KUDLER: BlueJeans, yes.
25 THE COURT: Ladies and gentlemen, while that's arranged,

1 I'm not going to sit here and have you stare at me. So take a quick
2 recess.

3 Remember during this recess you must not discuss or
4 communicate with anyone, including fellow jurors , in any way regarding
5 the case or its merits by voice, blog, email, text, internet or other means
6 of communication or social media.

7 You may not read, watch, or listen to any report or
8 commentary on the trial by any medium. Do not do research, consult
9 dictionaries, internet, reference materials, investigation, no testing of
10 theories recreating any aspect of the case. Don't investigate the case in
11 any way by yourself. Do not form or express any opinion regarding the
12 case until it's finally submitted to you.

13 Stay in the general vicinity so I'll have the marshal come out
14 and find you when we have the witness lined up and ready to move
15 forward.

16 Follow the marshal, please.

17 THE MARSHAL: All rise for the jury.

18 [Jury out at 1:42 p.m.]

19 [Outside the presence of the jury]

20 THE COURT: All right. We're outside the presence of the
21 jury. Any additional record need to be made by either side as a function
22 of witness examination.

23 Plaintiff?

24 MR. KUDLER: No, Your Honor.

25 THE COURT: And Defense?

1 MR. A. GIOVANNIELLO: No, Your Honor.

2 THE COURT: From the Court's perspective, we need to make
3 the record clear that Plaintiffs' 16 admitted will include now, we'll mark
4 that as 16A, and it will be composed of Plaintiffs' Bates stamp 351
5 through 357 the balance of the exhibit will not be presented to the jury or
6 admitted. All right.

7 MR. KUDLER: 345 also. But we can redact out some of the
8 things on 345.

9 THE COURT: You think it should be 345 through 375?

10 MR. KUDLER: Yeah, I think 345 you got to get rid of some of
11 the non-related bills.

12 THE COURT: Oh.

13 MR. KUDLER: We can do that.

14 MR. A. GIOVANNIELLO: Except he didn't testify to the bills.
15 So I'm objecting to it.

16 THE COURT: He didn't testify to the bills. So at this point
17 351 through 35 -- strike that. 3 -- so 35 -- 345 starts left elbow. So it's
18 34 -- I'm going to do 351 through 357. Left elbow 351, 352, 353, 4, 5, 6, 7.
19 Plantar fasciitis 1:45:21. To 357. All right.

20 MR. KUDLER: Thank you, Your Honor.

21 THE COURT: Get my marshal when you've got your witness
22 lined up, please.

23 [Recess taken from 1:45 p.m. to 1:53 p.m.]

24 THE MARSHAL: All rise for the jury.

25 [Jury in at 1:53 p.m.]

1 THE COURT: Please be seated, ladies and gentlemen.

2 We're on the record in A735550 Myers v. THI. The record
3 should reflect the presence of representative of the Plaintiff and Defense,
4 all members of the jury panel do appear to be present.

5 The parties stipulate to the presence of the entire panel?
6 Plaintiff?

7 MR. KUDLER: Yes, Your Honor.

8 THE COURT: And Defense?

9 MR. A. GIOVANNIELLO: Yes, Your Honor.

10 THE COURT: Thank you.

11 The record should reflect we remain in the Plaintiffs' case in
12 chief.

13 Call your next witness.

14 MR. KUDLER: Plaintiff calls Luke Crawford.

15 THE COURT: Mr. Crawford, can you hear me?

16 MR. CRAWFORD: Yes, sir.

17 THE COURT: Mr. Crawford, my name is Judge Barker. I'm
18 the presiding judge in this civil trial. You have been summoned to
19 participate as a witness in the effort.

20 Before we get into the actual testimony of the witness, I need
21 to admonish you that you hopefully are in a secured room, door closed,
22 windows closed, comfortable but alone and subject to minimum
23 intrusion, if that's possible. That you've removed any paperwork, files,
24 documents from your immediate view unless they're required by the
25 lawyer or as a consequence of question. And that you're alone in the

1 room. Is that all true?

2 MR. CRAWFORD: Yes, sir.

3 THE COURT: All right. Very good.

4 I'm going to have my clerk -- I'm going to ask you to raise
5 your right hand and be sworn by my clerk.

6 LUKE CRAWFORD, PLAINTIFFS' WITNESS, SWORN

7 THE CLERK: Please state and spell your first and last name
8 for the record.

9 THE WITNESS: Luke Crawford. First name L-U-K-E last
10 name Crawford, C-R-A-W-F-O-R-D.

11 THE COURT: Counsel, your witness.

12 DIRECT EXAMINATION

13 BY MR. KUDLER:

14 Q Mr. Crawford, what do you do for a living?

15 A I'm a firefighter paramedic.

16 Q Okay. When did you first become a paramedic?

17 A I began in EMS in 2006, and I became a paramedic in 2011.

18 Q And what education did you need to become a paramedic?

19 A I went through several years of school. I got my EMT basic,
20 my EMT intermediate, then I went to paramedic school which was two
21 years. So I received a degree out of College of Southern Nevada. And
22 then I did around a thousand clinical hours.

23 Q Okay. And you're licensed as a paramedic?

24 A Yes, sir.

25 Q How long have you been licensed?

1 A Within the State of Nevada and National Registry.
2 Q How long you been licensed?
3 A Since 2011 as a paramedic.
4 Q In 2014 where were you working?
5 A I worked for Medic West Ambulance.
6 Q Okay. Also known as AMR?
7 A Yes, sir.
8 Q Okay. Now, I have provided you with a couple of small sets
9 of records. One set starts with a number on the lower right-hand corner
10 PLTF28 through 35, do you have those?
11 A Yes, sir.
12 Q And the second set starts with 482 through 487.
13 A Yes, sir.
14 Q Okay. These are the records from your treatment and
15 dispatch regarding Andrew James and Jeffrey Myers.
16 A Uh-huh.
17 Q That's a yes?
18 A Yes. Sorry.
19 Q That's okay.
20 Let's start with the first set starting at 28. Who was your
21 patient?
22 A Page 28 we have Andrew James listed.
23 Q Were you involved in the creation of these notes of that
24 dispatch and transport?
25 A Yes, sir.

1 Q Okay. Do you recall the date of that? And if you don't and
2 it's located from the record, please let us know.

3 A Looking from the record I can see that the date was 6-6-2014.

4 Q Okay. Do you have any personal recollection of this
5 transport and the treatment of these two patients?

6 A No, sir.

7 Q Everything you'll discuss is coming from the records?

8 A Correct.

9 Q Okay. Where was you dispatched to

10 A The dispatch location was 2856 East Cheyenne.

11 Q And do you know the name of that business?

12 A I don't see it anywhere listed.

13 Q Okay. Do you recall had you been to that location on
14 multiple occasions?

15 A Yes.

16 Q Okay.

17 A It's a care home.

18 Q Okay. When you got there what was or what were Mr.
19 James' complaints? And I would direct you to the top of page 30.

20 A Page 30. He was complaining of a burn, it looks like, thermal
21 from electrical.

22 Q Okay. What parts of his body were burned?

23 A I'm going back to on page 29 it looks like I've listed left ear
24 burn, left cheek burn, and left elbow second degree burn.

25 Q Okay. What did you do to assist Mr. James at the scene?

1 A The [indiscernible] the fire was on [indiscernible]. Yeah the
2 vital signs and extricated the patient for transport from there. I gave him
3 oxygen, performed an EKG, put in an IV, gave morphine.

4 Q Why did you give him the morphine?

5 A For pain control.

6 Q Okay. Morphine is a narcotic drug?

7 A Yes, sir.

8 Q In a situation like this your license allows you make that
9 decision?

10 A It does.

11 Q Okay. Following that what did you do?

12 A He was transported at lights and sirens to UMC for their burn
13 center.

14 Q Was he having any problems with his lungs at that time?

15 And if you look at the narrative on page 30 you'll see it.

16 A I note that there is burn of left arm, thickness starting there
17 so the singed facial hair, it says he's noted to have blisters to the uvula
18 and roof of the mouth. He denied any shortness of breath and lung
19 sounds were clear and equal bilaterally. No strider was noted. And he
20 denied any chest pain.

21 Q At the end of that line it says LOC. What does that mean?

22 A Loss of consciousness.

23 Q He was denying loss of consciousness?

24 A Yes, sir.

25 Q Okay. Once you took him into the hospital that was the end

1 of your treatment of him?

2 A That would be, yes.

3 Q And then, if we look at, starting in the other record, Plaintiff
4 482, that set.

5 A Okay.

6 Q Who's the patient the?

7 A It looks like Jeffrey Myers.

8 Q Are you --

9 A That's how you pronounce the last name?

10 Q Yes. Same pickup location and date and time?

11 A It says College Park Rehab.

12 Q Okay.

13 A And then the date and time, yes, it is the same.

14 Q Okay. And what were his complaints and what were his
15 issues?

16 A I'm trying to locate the part of that chart.

17 Appears burns as well.

18 Q Okay. What area were burned?

19 A From the physical findings, I see on his head he's got burned
20 from ear to ear and hairline to sternal notch. He's got a burn to his neck
21 anterior of the neck, second degree burns. We also have partial
22 thickness burn to his extremities and the remarks I have burn to left
23 triceps second degree with first degree fully circumferential burn to the
24 anterior of right arm at the AC area.

25 Q Anterior is the back.

1 A Excuse me?

2 Q Anterior is the back or the front of the arm?

3 A Anterior and posterior, those are the terms that are used.

4 Anterior meaning the front, posterior meaning the back.

5 Q Okay. Was Mr. Myers complaining of any problems with his
6 eyes?

7 A From the remarks I don't see anything. Let me address the
8 narrative. I don't see anything about his eyes.

9 Q Okay. And no problem with his lungs either?

10 A It says superficial burn -- he has singed facial hair, which is
11 usually indicative of an airway type burn, but I have listed that there is
12 no stridor airway burns or blistering to airway noted. Lung sounds are
13 clear and equal bilaterally. And patient has not complaints of shortness
14 of breath, cough or irritation.

15 Q And he was also transported to UMC?

16 A UMC Hospital. Yes, sir.

17 Q That was the end of your care?

18 A It was.

19 Q Okay. Well, you know burns to an area, for instance, where
20 you're talking about the burns to his face, are you giving varying degrees
21 or are you just generally saying there were burns to his face?

22 A There are varying degrees that I have listed. It looks like I
23 have partial -- superficial and partial thickness.

24 Q What part of his body?

25 A Yeah.

1 Q Which part of his body?

2 A So I have, let's see. Partial thickness burns to the face.

3 Q Did it say --

4 A Partial thickness burns to the left triceps with superficial
5 burns, fully circumferencing burns. Then left side of the chest. And then
6 to the right antecubital.

7 Q And what part -- where is that located?

8 A On the arm, near the bicep. In between the bicep and the
9 forearm.

10 Q Okay. Of the partial thickness burns to his face, do you know
11 what part of the face that was?

12 A I have he has a burn from ear to ear and hairline to sternal
13 notch.

14 Q Okay. But you don't know if that entire area was partial
15 thickness.

16 A It says partial thickness, it does.

17 Q Okay. Do you know if that was the entire face that had that
18 degree of burn?

19 A I don't know. To be exact, no, sir.

20 MR. KUDLER: That's all I have. Thank you, Your Honor.

21 THE COURT: Cross-examination?

22 MR. A. GIOVANNIELLO: Your Honor, no questions.

23 THE COURT: Anything from this witness as a consequence --
24 from the jury? Witnesses [sic] all pass? Seeing no hands, Mr. Crawford,
25 you can turn your technology off. You go back to your day.

1 THE WITNESS: Yes, sir. Thank you.

2 THE COURT: Parties approach,

3 [Sidebar begins at 2:08 p.m.]

4 THE COURT: Is that all you have for today?

5 MR. KUDLER: I'm resting.

6 THE COURT: You're going to rest. Okay.

7 So you could go? I've seen there's somebody out there. So I
8 think maybe your witness.

9 MR. A. GIOVANNIELLO: I think he's out there.

10 THE COURT: All right. So you're ready? He's going to rest.

11 MR. A. GIOVANNIELLO: Okay. I can put him on, but like I
12 said, last witness is on Monday.

13 THE COURT: I know.

14 MR. A. GIOVANNIELLO: And he's got 20 minutes, if even
15 that long.

16 THE COURT: That's fine.

17 [Sidebar ends at 2:08 p.m.]

18 THE COURT: Plaintiff, call your next witness.

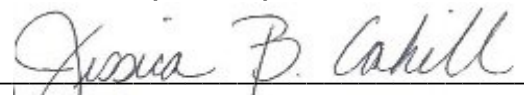
19 [Testimony of LeRoy Comstock, transcribed under separate cover]

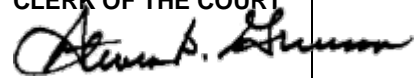
20 [Proceedings adjourned at 3:08 p.m.]

21

22 ATTEST: I do hereby certify that I have truly and correctly transcribed the
23 audio-visual recording of the proceeding in the above entitled case to the
best of my ability.

24

25 
Maukele Transcribers, LLC
Jessica B. Cahill, Transcriber, CER/CET-708



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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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.

1 [Sidebar ends at 2:25 p.m.]

2 BY MR. A. GIOVANNIELLO:

3 Q Getting back to the question. When you were -- were you
4 given any kind of training program?

5 A Just the polices.

6 Q Okay. Other than that, what else?

7 A No. I wasn't -- it's not like we're going to train you on doing
8 this or that. I already know all that stuff, so it was strictly the policies.
9 This is what the company expects because this is what the CDC requires.

10 MR. KUDLER: Your Honor.

11 THE WITNESS: This is what the Center for Medications --

12 THE COURT: Mr. Comstock, I sustained the objection. Let's
13 ask the next question, counsel.

14 BY MR. A. GIOVANNIELLO:

15 Q Okay. So you're employed by College Park?

16 A Yes.

17 Q Okay, great. Now you do not hold an electrician's license,
18 right?

19 A No, I do not.

20 Q Do you have a handyman's license?

21 A No.

22 Q Okay. Do you consider yourself a handyman for the most
23 part?

24 A Most part. You asked me about something. I can do it or tell
25 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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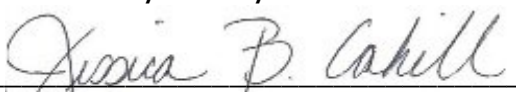
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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio-visual recording of the proceeding in the above entitled case to the
best of my ability.

23 

24 Maukele Transcribers, LLC

25 Jessica B. Cahill, Transcriber, CER/CET-708