

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Electronically Filed
Feb 10 2023 08:40 AM
Elizabeth A. Brown
Clerk of Supreme Court

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

7
8

9
101
2
3
415
1617
18
1919
2020
2121
2223
24

24

25

25

26

26

27

27

APPELLANTS' APPENDIX
VOLUME 6
CHRONOLOGICAL ORDER

| Document | Index Number | Bates Number |
|--|-------------------------|-------------------------|
| Amended Complaint [Filed 05/06/2016] | 1 | AA000001 - AA000007 |
| Plaintiffs' Third Motion to Compel Discovery Responses [Filed 02/24/2020] | 1 | AA000008 - AA000030 |
| Notice of Entry of Order re: Plaintiffs' Third Motion to Compel Discovery Responses [Filed 08/13/2020] | 1 | AA000031 - AA000037 |
| Jury Instruction No. 21 4.2 Elements of Negligence Claim [05/31/2022 Jury Trial - Day 1] | 1 | AA000038 |
| 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 |

| | | | |
|----|---|---|------------|
| 1 | Recorder's Transcript of Jury Trial | 2 | AA000042 - |
| 2 | Day 1, Tuesday, 05/31/2022 <i>Pages 1 - 199</i> | | AA000240 |
| 3 | [Filed 08/08/2022] | | |
| 4 | Recorder's Transcript of Jury Trial | 3 | AA000241 - |
| 5 | Day 1, Tuesday, 05/31/2022 <i>Pages 200 - 257</i> | | AA000298 |
| 6 | [Filed 08/08/2022] | | |
| 7 | Recorder's Partial Transcript of Jury | 4 | AA000299 - |
| 8 | Trial - Day 2, Wednesday, 06/01/2022 | | AA000393 |
| 9 | [Filed 08/08/2022] | | |
| 10 | Recorder's Partial Transcript of Jury | 4 | AA000394 - |
| 11 | Trial - Day 2, Wednesday, 06/01/2022: | | AA000463 |
| 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 |
| 19 | Testimony of Jeffrey Myers and Andrew James | | |
| 20 | [Filed 07/07/2022] | | |
| 21 | Recorder's Partial Transcript of Jury | 7 | AA000716 - |
| 22 | Trial - Day 4, Friday, 06/03/2022 | | AA000809 |
| 23 | [Filed 08/08/2022] | | |
| 24 | Recorder's Partial Transcript of Jury | 7 | AA000810 - |
| 25 | Trial - Day 4, Friday, 06/03/2022: | | AA000854 |
| 26 | Testimony of Leroy Comstock | | |
| 27 | [Filed 07/07/2022] | | |

| | | | |
|----|---|---|------------|
| 1 | Recorder's Partial Transcript of Jury | 8 | AA000855 - |
| 2 | Trial - Day 5, Monday, 06/06/2022 | | AA000935 |
| 3 | [Filed 08/08/2022] | | |
| 4 | Recorder's Partial Transcript of Jury | 8 | AA000936 - |
| 5 | Trial - Day 5, Monday, 06/06/2022: | | AA000942 |
| 6 | Testimony of Andrew James | | |
| 7 | [Filed 08/08/2022] | | |
| 8 | Special Verdict Form | 8 | AA000943 - |
| 9 | [Filed 06/06/2022] | | AA000945 |
| 10 | Motion for New Trial | 8 | AA000946 - |
| 11 | [Filed 07/18/2022] | | AA000957 |
| 12 | Errata to Motion for New Trial | 8 | AA000958 - |
| 13 | [Filed: 7/18/2022] | | AA000959 |
| 14 | Amended Errata to Motion for New Trial | 8 | AA000960 - |
| 15 | [Filed: 7/20/2022] | | AA000961 |
| 16 | Opposition to Plaintiffs' Motion for New Trial by | 8 | AA000962 - |
| 17 | Defendants | | AA000976 |
| 18 | [Filed 8/1/2022] | | |
| 19 | Plaintiffs' Reply to Defendants' Opposition to | 8 | AA000977 - |
| 20 | Plaintiffs' Motion for a New Trial | | AA000984 |
| 21 | [Filed 8/30/2022] | | |
| 22 | Order Denying Plaintiffs' Motion for New Trial | 8 | AA000985 - |
| 23 | [Filed: 9/23/2022] | | AA000996 |

| | | | |
|---|--|---|------------|
| 1 | Notice of Order Denying Plaintiffs' Motion for | 8 | AA000997 - |
| 2 | New Trial | | AA001010 |
| 3 | [Filed: 9/27/2022] | | |
| 4 | Notice of Appeal | 8 | AA001011 - |
| 5 | [Filed: 9/28/2022 | | AA001012 |
| 6 | | | |

APPELLANTS' APPENDIX
VOLUME 6

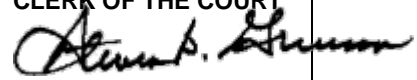
ALPHABETICAL ORDER

| Document | Index Number | Bates Number |
|--|-------------------------|-------------------------|
| Amended Complaint [Filed: 05/06/2016] | 1 | AA000001 - AA000007 |
| Amended Errata to Motion for New Trial [Filed: 7/20/2022] | 8 | AA000960 - AA000961 |
| Errata to Motion for New Trial [Filed: 7/18/2022] | 8 | AA000958 - AA000959 |
| Jury Instruction No. 21 4.2 Elements of Negligence Claim [05/31/2022 Jury Trial - Day 1] | 1 | AA0000038 |
| Jury Instruction No. 27 8.1 Premises Liability: Essential Factual Elements [05/31/2022 Jury Trial - Day 1] | 1 | AA0000039 |
| Jury Instruction No. 28 8.20 Landowner Liability: Owner Duty to Inspect [05/31/2022 Jury Trial - Day 1] | 1 | AA0000040 |
| Jury Instruction No. 29 8.4 Landowner Liability: Duty [05/31/2022 Jury Trial - Day 1] | 1 | AA0000041 |
| Motion for New Trial [Filed 07/18/2022] | 8 | AA000946 - AA000957 |

| | | | |
|----|---|---|------------|
| 1 | Notice of Appeal | 8 | AA001011 - |
| 2 | [Filed: 9/28/2022] | | AA001012 |
| 3 | Notice of Entry of Order re: Plaintiffs' Third | 1 | AA000031 - |
| 4 | Motion to Compel Discovery Responses | | AA000037 |
| 5 | [Filed: 08/13/2020] | | |
| 6 | Notice of Order Denying Plaintiffs' Motion for | 8 | AA000997 - |
| 7 | New Trial | | AA001010 |
| 8 | [Filed: 9/27/2022] | | |
| 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 |
| 19 | [Filed: 02/24/2020] | | |
| 20 | Recorder's Transcript of Jury Trial | 2 | AA000042 - |
| 21 | Day 1, Tuesday, 05/31/2022 <i>Pages 1 - 199</i> | | AA000240 |
| 22 | [Filed 08/08/2022] | | |
| 23 | Recorder's Transcript of Jury Trial | 3 | AA000241 - |
| 24 | Day 1, Tuesday, 05/31/2022 <i>Pages 200 - 257</i> | | AA000298 |
| 25 | [Filed 08/08/2022] | | |

| | | | |
|----|---------------------------------------|---|------------|
| 1 | Recorder's Partial Transcript of Jury | 4 | AA000299 - |
| 2 | Trial - Day 2, Wednesday, 06/01/2022 | | AA000393 |
| 3 | [Filed: 08/08/2022] | | |
| 4 | Recorder's Partial Transcript of Jury | 4 | AA000394 - |
| 5 | Trial - Day 2, Wednesday, 06/01/2022: | | AA000463 |
| 6 | Testimony of Donald Gifford | | |
| 7 | [Filed: 07/07/2022] | | |
| 8 | Recorder's Partial Transcript of Jury | 5 | AA000464 - |
| 9 | Trial - Day 3, Thursday, 06/02/2022 | | AA000559 |
| 10 | [Filed: 08/08/2022] | | |
| 11 | Recorder's Partial Transcript of Jury | 6 | AA000560 - |
| 12 | Trial - Day 3, Thursday, 06/02/2022: | | AA000715 |
| 13 | Testimony of Jeffrey Myers and Andrew | | |
| 14 | James | | |
| 15 | [Filed: 07/07/2022] | | |
| 16 | Recorder's Partial Transcript of Jury | 7 | AA000716 - |
| 17 | Trial - Day 4, Friday, 06/03/2022 | | AA000809 |
| 18 | [Filed: 08/08/2022] | | |
| 19 | Recorder's Partial Transcript of Jury | 7 | AA000810 - |
| 20 | Trial - Day 4, Friday, 06/03/2022: | | AA000854 |
| 21 | Testimony of Leroy Comstock | | |
| 22 | [Filed: 07/07/2022] | | |
| 23 | Recorder's Partial Transcript of Jury | 8 | AA000855 - |
| 24 | Trial - Day 5, Monday, 06/06/2022 | | AA000935 |
| 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 |



1 RTRAN

2
3
4
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 THURSDAY, JUNE 2, 2022

16 **RECORDER'S PARTIAL TRANSCRIPT OF JURY TRIAL - DAY 3**
17 **TESTIMONY OF JEFFREY MYERS AND ANDREW JAMES**

18 APPEARANCES

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

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

22
23
24
25 RECORDED BY: KRISTINE SANTI, COURT RECORDER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

Testimony4

WITNESSES FOR THE PLAINTIFFS

JEFFREY MYERS

Direct Examination by Mr. Kudler 4
Cross-Examination by Mr. A. Giovanniello 40
Redirect Examination by Mr. Kudler 50
Recross Examination by Mr. A. Giovanniello..... 53

ANDREW JAMES

Direct Examination by Mr. Kudler 61
Cross-Examination by Mr. A. Giovanniello 114
Redirect Examination by Mr. Kudler 138
Further Redirect Examination by Mr. Kudler..... 150

1 Las Vegas, Nevada, Thursday, June 2, 2022

2

3 [Designation of the record begins at 11:02 a.m.]

4 THE COURT: Call your next witness.

5 MR. KUDLER: Jeffrey Myers to the stand, please.

6 THE MARSHAL: Please remain standing and raise your right
7 hand to be sworn.

8 JEFFREY MYERS, PLAINTIFF, SWORN

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

11 THE WITNESS: Jeffrey Myers, J-E-F-F-R-E-Y M-Y-E-R-S.

12 THE COURT: Counsel, your witness.

13 MR. KUDLER: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. KUDLER:

16 Q Jeff, where did you grow up?

17 A In Pasadena, California.

18 Q Okay. How long did you live in Southern California?

19 A Well, I moved to Vegas in '97.

20 Q Okay.

21 A From Southern California.

22 Q And how old were you when you moved to Vegas.

23 A I'll have to do some math.

24 Q What year were you born?

25 A '62.

1 Q Okay. So from '63 to '97, 34 years?

2 A Yeah.

3 Q Okay. So you came to Vegas in '97. While you were living in
4 California, did you work as an electrician?

5 A Yes, I did.

6 Q When did you start working as an electrician?

7 A 1983 I was hired by an electrical contractor, and I did on-the-
8 job training there. After six years he retired so I went ahead and took the
9 electrical contractor's exam in California.

10 Q Okay.

11 A And got my own California license.

12 Q Did you work as an electrical contractor in California?

13 A Yes, I did for six years.

14 Q And when did you get licensed as an electrical contractor?

15 A It was '91, I believe.

16 Q And you did that for six years before coming to --

17 A To Vegas.

18 Q -- Las Vegas, correct?

19 A Yes, sir.

20 Q Okay. If you could explain to the jury how kind of you move
21 up in the ranks as an electrician and how you move your way in title.

22 A Okay. Well, when I started electrical, California had no
23 journeys license or anything -- or official apprenticeships so it was on-
24 the-job training. I started out crawling under houses like most kids do.

25 MR. A. GIOVANNIELLO: Could you speak up? I can't hear

1 you.

2 THE WITNESS: So I was an apprentice for the first several
3 years. I was able to progress pretty quickly in -- at that company. By my
4 third year I was doing TI remodels myself and --

5 BY MR. KUDLER:

6 Q What's a TI remodel?

7 A Tenant improvement.

8 Q Okay.

9 A It was for commercial office buildings, that kind of stuff. And
10 I was -- pretty much worked on my own after that -- the owner retired.

11 Q Okay. He'd assign a job to you, and you take care of
12 everything?

13 A Yes.

14 Q Okay. You would -- you were responsible for ordering parts?

15 A Oh, yes. I even -- when I had to leave the town, I'd go
16 downtown LA, and I'd even pull the permits for him.

17 Q Okay.

18 A And you know, order the materials, do all the muscle work,
19 get helpers if I need them.

20 Q Okay. So you supervised other workers.

21 A Uh-huh.

22 Q That was a, yes?

23 A Yes.

24 Q Okay. Then you come to Las Vegas in '97.

25 A Yes.

1 Q Why did you --

2 A Well --

3 Q -- decide to come to Las Vegas.

4 A I was -- I was -- had my own business but I really had no
5 business experience, you know, business management skills and I ended
6 up owing some money to the IRS and then I became sick without any
7 insurance. I had an emergency appendectomy and that pretty much
8 finished my business, so I decided to go back to work for another
9 contractor.

10 Q And then you came to Las Vegas?

11 A And then -- yeah, he -- I went to work for him when he was in
12 California. About a year into it he decided they wanted to open an office
13 in Vegas.

14 Q Okay.

15 A So me and a few other guys moved to Vegas.

16 Q And what company was that?

17 A Tri State Electric.

18 Q Okay. Now, did you ever reach, in California, a journeyman
19 status?

20 A Oh, I was a master electrician in California.

21 Q Okay. And what's a master electrician?

22 A It's just the highest -- to become a contractor, that's with the
23 testing when you pass.

24 Q You have a test you have to pass?

25 A Yes.

1 Q Okay. And you have to demonstrate your knowledge of
2 electrical?

3 A You have to have -- first of all, you have to have the work
4 experience. So the contractor I worked for had to sign off on the
5 application.

6 Q Okay. And how much work experience at that time did you
7 need to be a master electrician?

8 A Four years. Four years.

9 Q Four years? And then pass the test?

10 A Yes.

11 Q A written test. Any hands-on things that you have to
12 demonstrate during that test or is it all written?

13 A It's -- parts of the test you have to do the trade and then to
14 become a contractor you have to take the business law part -- test too.

15 Q Okay. So the master electrician and a general -- electrical
16 contractor.

17 A Yes.

18 Q You come to Nevada, kind of a reset, working for somebody
19 you knew.

20 A Yeah.

21 Q When you came to Nevada did you maintain a journeyman
22 status or what happened?

23 A Nevada doesn't require a journeyman's card so --

24 Q Okay.

25 A -- journeyman's license.

1 Q Do you have one?

2 A I currently hold one for the State of Alaska.

3 Q Okay. And how long have you held that one?

4 A About ten years.

5 Q Okay. And the only reason you don't have one in Nevada is
6 it's not required?

7 A Correct.

8 Q Okay. So you come in '97, you're working for -- what was the
9 name of the company?

10 A Tri State Electric.

11 Q Okay. You're working for Tri State. How long do you stay at
12 Tri State?

13 A I was there for about six years, seven years, I think.

14 Q And why did you leave Tri State?

15 A Well, the -- once they got the office established, they hired
16 some local management for the office, and they were not very honest
17 people. And so we had run into some run-ins with them. They let me
18 go.

19 Q Okay. And then where did you start working?

20 A I worked for several contractors.

21 Q Do you recall where you were working in 2014?

22 A Yes, for ILP, Industry Light and Power.

23 Q Now, for some time now you've been spending part of the
24 time here and part of the time in Alaska?

25 A Yeah, in 2012 I got an opportunity to go to Alaska and work,

1 which was really good. So I had to take the Alaska test and get the
2 Alaska journeyman's card because they require it.

3 Q How much time did you spend -- how much of your time --

4 A I would -- I would bounce back and forth but I'd work most of
5 the year, the summertime up there and I'd try to -- you can't -- you can't
6 work non-stop up there. So I would take time off, come down here. And
7 in 2014, I believe Andrew had contacted me while I was up there telling
8 me he had a project that he would like me to help with. So I decided to
9 leave Alaska, I think it was a year and a half.

10 Q And was that in part this project?

11 A That was to -- yes, work on the --

12 Q Okay.

13 A Well, he had got a contract for a nursing home, ground up,
14 and that's the main reason I came down here. When I got here, he asked
15 me to go with him to work on the -- do some service work on this
16 fundamental or College Park --

17 Q Okay.

18 A -- Nursing.

19 Q The night of the incident on June 6th of 2014, do you
20 remember when you got to the site?

21 A Yes.

22 Q And about what time was that?

23 A It was in the evening. I don't remember. It was eight years
24 ago.

25 Q Okay.

1 A It was getting dark.

2 Q What's your understanding of why it was being done in the
3 evening?

4 A Because they wanted to wait until the kitchen was closed.

5 Q Okay. Was anybody from College Park with you when you
6 were working -- doing the work?

7 A No. I mean, there was people around, but nobody in the
8 room with me --

9 Q Okay.

10 A -- except for --

11 Q When you say around you --

12 A -- ILP employees.

13 Q You're talking about with patients in the lobby and --

14 A Yeah.

15 Q Okay. Do you recall if you had ever been in this particular
16 box before?

17 A I had not been in that piece of gear before, no.

18 Q Okay. And who was with you while you were doing this
19 work?

20 A Andrew James.

21 Q Okay. Was there another employee of ILP that was around?

22 A Yeah, there was, Jason.

23 Q But he was not actually working on the unit?

24 A No. No at the same time I was.

25 Q Okay. So you go in -- into the room. What's the first thing

1 you do?

2 A Well, we may clear the room, all the stuff in the way out of
3 the rooms. It was a very small electrical room, more like a closet. So we
4 made some room in there and then we started pulling the covers off.

5 Q Okay. And as Mr. Gifford described, there's a front cover?

6 A It was several pieces to the cover, yeah. There's sides and
7 top and bottom and the dead front.

8 Q When he got there, was there already a breaker there?

9 A Yes, the maintenance man had supplied the breaker.

10 Q Okay. You didn't bring one with you?

11 A No.

12 Q Okay. The -- each breaker are -- they have different ratings?

13 A Oh, yes.

14 Q Okay. When you go to replace a breaker, how do you know
15 what type of breaker to get?

16 A You get the model number, type, and model number off of
17 the breaker itself.

18 Q Okay. And how do you get that?

19 A Well, it's got a sticker on it. But --

20 Q Okay. Is that visible from outside the box?

21 A No, it's not.

22 Q Okay, so the cover is on -- can I tell you what door?

23 A All you can see is the handle, the trip handle, and the
24 amperage rating.

25 Q The sticker that's there. Is it on the side? Is it on the back,

1 typically?

2 A It's on the front, but it's covered up by the dead front.

3 Q Okay. The dead front of the piece of metal?

4 A Yeah, where they breaker's poke through.

5 Q Okay. And in this case, you said that it was there?

6 A Yeah, so apparently, they -- he was able to troubleshoot and
7 determine what the problem was. I'm not sure how he did that without
8 looking.

9 Q What were you told the problem was?

10 A I was told the kitchen had intermittent power.

11 Q Okay. You take the covers off?

12 A Yes.

13 Q Now, the box is energized?

14 A Yes.

15 Q Why is it energized?

16 A Because they -- it's a nursing, and they wanted to leave it on.

17 Q Okay. Have you worked on energized panels before?

18 A Oh, yes. Many times.

19 Q Okay. Have you worked on energized panels before this
20 incident in 2014?

21 A Many times.

22 Q At that time in 2014, what was required to be worn if you
23 were working on an energized panel?

24 A Well, okay, the voltage of that panel was the lowest arc flash
25 rating -- well, I believe that it was a one. There's -- you can go zero but --

1 so you required to wear eye protection which I was wearing a clear pair
2 of safety glasses. Not -- no face shield, just the safety glasses. I has
3 some high-voltage gloves clipped to my forearms. I had a Carhartt T-
4 shirt, a fire retardant T-shirt and pants. So that -- and that's why the burn
5 -- you know, the shirt protected me to there [witness indicating] and the
6 gloves further on.

7 Q Okay. And that's -- you were showing where the burn
8 actually is?

9 A Yes. It's -- can you see that? [Witness indicating] That pretty
10 much goes -- yeah.

11 Q Okay.

12 MR. A. GIOVANNIELLO: Can you raise your arm again? I
13 didn't have my glasses on. Thank you. Thank you.

14 THE WITNESS: And -- uh-huh.

15 BY MR. KUDLER:

16 Q So you go -- we're going to go back to where we were? So
17 you go in, you take the front panel off. There's a breaker already left in
18 the --

19 A It was obvious once I uncovered the breaker that it had
20 burned up from a loose connection.

21 Q Okay. And when you say it "burned up from a loose
22 connection" what did you see?

23 A The conductors going into the breaker were not torqued
24 down properly and that -- the resistance creates a lot of heat when the
25 load, you know, comes -- it expands and contracts the wire and it just

1 works itself completely loose, basically eaten it. It was -- the wire -- end
2 of the wire was cooked and the breaker was burning up.

3 Q Is there a procedure to follow to make sure that the lug nuts
4 are torqued down enough --

5 A Yes. Oh, yes.

6 Q -- so that this doesn't happen?

7 A A breaker of that size, the wire, probably bigger than your
8 thumb. But you put it in the lug, and then you tighten it down. That's
9 what I do. You tighten in down as tight as you can get it and then you
10 move the wire around some. And you got to do that three or four times
11 because it'll work loose as it compacts the strands of wire in the lug. So
12 you have to do that repeatedly to all three phases --

13 Q Okay.

14 A -- before it's going to stay.

15 Q Okay. So just putting it in and saying it's good enough --

16 A You can put it in and tighten it down but it's not going to last.

17 Q Okay. Because this is a stranded cable?

18 A A stranded copper cable. Yeah. Any qualified electrician
19 knows this.

20 Q Yeah. So looking at that, did you have an opinion as to how
21 long that thing had been in there?

22 A It -- I'd be amazed if it lasted a year like that. I doubt it would
23 -- could go that far, let alone years and years. No way.

24 Q Because of the heat that builds up?

25 A Yes.

1 Q Okay. So it physically burned itself out because somebody
2 didn't tighten the wire.

3 A It wasn't installed properly, yes.

4 Q Okay. Did you have to unloosen the nut to pull the wires out.

5 A I'm -- no, the wires just came out by themselves. I mean, I
6 unbolted the breaker to remove it.

7 Q And the wires just came right out?

8 A Yeah, I didn't have to -- those lugs wouldn't have turned
9 anyways, they were so burned up.

10 Q The -- you kept the wires separate so it didn't --

11 A Yes. I had to retrim the ends of the wires and re-strip them
12 to get back to the good copper.

13 Q Okay. Were the wires at the end of the wires burnt?

14 A Yes, they were.

15 Q Okay. So you removed the breaker.

16 A Uh-huh.

17 Q You put the new breaker in.

18 A Yes.

19 Q Okay.

20 A I had the new breaker -- it was a long time ago I was near the
21 end of installing it. I can't remember if -- you know, if I was tightening
22 the lugs or the -- or the bolts exactly.

23 Q Your procedure, just general procedure for safety --

24 A Well, when -- anytime you're working in energized gear, you
25 have to be very aware of what's around you. And make sure nothing --

1 you don't touch or bump into anything metal, obviously. And then you
2 need to stay hyper-focused on what you're doing, and you be very
3 methodical about what -- how you're doing it.

4 Q And what height was this at?

5 A It was probably chest high. The breaker. The gear was from
6 the floor to almost the ceiling.

7 Q Okay. And you said when you took everything off you
8 looked around?

9 A Oh, yeah. When you took the covers off, you make an initial
10 assessment and a -- that you --

11 Q Did you check the energized busses?

12 A Yes. The energized -- it's got three busbars going down the
13 middle. And then above the busbars there's this fiber insulating board,
14 and it's the neutral bus above that. So the energized stuff, I could clearly
15 see all of it and --

16 Q Okay. Are there any issues with clearance of the energized
17 busbars?

18 A No, no issues.

19 Q Okay. The piece of fiberglass, was that above your head?

20 A Yes, it was.

21 Q Okay. Were you aware of anything that was up there?

22 A Typically that wouldn't concern me to doing this procedure.

23 Q Is that something that's solid, or is it --

24 A It's like a panel, that piece of fiberglass for insulating
25 material. And it covers the whole -- pretty much the -- separates that top

1 section from the rest of it.

2 Q I mean, could you put tools up there?

3 A Well, you could but I wouldn't.

4 Q Would they stay up there or was it strong enough to hold
5 tools?

6 A A screwdriver or something, yeah.

7 Q Something small. Okay. When you took the front cover off --

8 A Uh-huh.

9 Q -- you took the screws out. What did you do with them?

10 A Oh, I passed them back to Andrew. He was collecting all the
11 screws.

12 Q Okay. And do you know where he put them?

13 A It was behind me somewhere.

14 Q Okay. And then you took the inside runners off?

15 A Yeah, the sides, the top and bottom, then you can access the
16 screws to the dead front.

17 Q Okay. What do you do with all those screws?

18 A They all went back to Andrew.

19 Q Okay. When you were removing the screws, were you using
20 an impact driver or a screwdriver?

21 A I was using my impact -- my cordless impact drill.

22 Q Okay. Was there any screwdrivers in the area where you
23 were working?

24 A I had my tool bag next to me or behind me.

25 Q On the floor?

1 A Yes.

2 Q Okay. And you're taking out the impact driver to use?

3 A Yeah, it's -- that's a better choice, I think, when you're
4 working on an energized gear like that because it's completely plastic.
5 So there's less chance of bumping something.

6 Q So it's insulated?

7 A Yes.

8 Q Okay. And then you're wearing gloves as well?

9 A Oh, yes. Yeah, the high-voltage gloves.

10 Q Okay. So now you said you were just about putting
11 everything back together. The first thing was to reinstall the breaker.

12 A Typically, you would bolt the breaker back in, the new
13 breaker, and then land the conductors. And I was somewhere in that
14 process when it just -- all hell broke loose.

15 Q Okay. Other than the impact driver, did you have anything in
16 your hands?

17 A No, I wouldn't.

18 Q Okay.

19 A I mean -- I mean, I would've had -- I would've put the breaker
20 installed with the bolts. It bolts to these busbar fingers. The come off
21 the main busbar have had to put the breaker installed with the bolts to
22 bolster these first four fingers to come off the main busbars so --

23 Q Okay.

24 A -- put three of those bolts in. And I probably would set the
25 drill down and start stripping the ends of the wires, prepared the wires,

1 then I would've impacted those down.

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

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

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

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

15 Q Were the lights on?

16 A The lights never went off.

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

18 A The breaker never tripped.

19 Q Okay. In your experience with a short like that, should the
20 breaker --

21 A Oh, absolutely. Especially there because the inrush current,
22 the transformer was sitting right outside the door in the sidewalk. And
23 the main breaker -- I know there was one question about the trip setting
24 on that breaker. And in order to calculate that, to know where to set it,
25 you would need to factor in all the length of the conductors, the size, and

1 number of conductors. It's quite a mathematical process. But
2 everything was so close together, the service, the transformer, the inrush
3 current would have been incredible. And that breaker, it should have
4 tripped for sure. No matter what that setting was set at.

5 Q Okay. And you're saying that that it was high because there
6 was no resistance because of no length of wire?

7 A It was very short runs.

8 Q Okay.

9 A So there would've -- yeah, it was very low.

10 Q So whatever is coming out of the transformer is not being --

11 A It just comes.

12 Q -- lowered because resistance?

13 A Which is why it created such a big fireball, I guess.

14 Q Okay. Any idea in your recollection how long this event
15 lasted?

16 A It seemed to me like a long time, but it probably wasn't more
17 than 10 or 15 seconds. The arc had to just -- it worked its way up that
18 side of the panel from the fingers behind the breakers. It just works its
19 way -- and once it got to the top it extinguished itself.

20 Q Okay. At that moment, do you know what caused it?

21 A I had no idea. Okay, I never saw any screws.

22 Q Okay. So you go from there, you go into the lobby. What
23 happens in there?

24 A There was nobody around. I just sat down in the waiting
25 room and waited for the ambulance. I mean there was -- there was a

1 janitor I think or somebody walking around.

2 Q Okay. At some point --

3 A They had no idea anything had happened.

4 Q Right. Because the lights never went off.

5 A Uh-huh.

6 Q Somebody called the 911?

7 A I believe, yeah, one of ILP employees.

8 Q Ambulance comes?

9 A Uh-huh.

10 Q You said you had skin hanging off your elbow?

11 A Yeah. I didn't feel that thing at that point. I must --

12 obviously, I was in shock.

13 Q Okay. Were they -- who greeted the ambulance?

14 A I think they gave me something for the pain and I just laid

15 down on the gurney and we went to the hospital.

16 Q Okay. Now, you get to the hospital. They take you to the

17 emergency room. What did they do for you there?

18 A The first thing they did was give me a big shot of morphine,

19 which made me sick to my stomach. And then they were just checking

20 me out the whole time. They were real concerned about if I had inhaled

21 at the time when that was in front of my face, which obviously, I didn't. I

22 held my breath or -- it wasn't long enough to really need to take in a

23 breath.

24 Q Okay. So as far as you know, there's no injury to your lungs?

25 A No.

1 Q That's correct?

2 A Apparently, they said some nasal hair was --

3 Q Okay. But other than that the --

4 A I had no problem breathing, no.

5 Q Okay.

6 A And the reason my eyes, you know, weren't -- weren't

7 injured was because of those safety glasses.

8 Q Where were the bad burns on your face?

9 A My neck and apparently my ears and my forehead. All my
10 hair was -- it was all around my face basically, just except for across here
11 so much [witness indicating].

12 Q Okay. Any burns on your hands?

13 A No, I had the gloves on.

14 Q Okay. There was a burn inside your shirt?

15 A Oh, there was one burn in my armpit. I guess some scrap
16 metal or something -- molten copper hit me in the armpit but -- and they
17 didn't notice it right away at that hospital because I guess it cauterized
18 itself or -- but later on I had problems with ingrown hairs and -- or
19 abscess in my armpit.

20 Q Let's go back to the -- you're in the emergency room. How
21 long are you in there?

22 A In the emergency?

23 Q Yeah.

24 A That night, that evening. I don't -- and then I went from there
25 right up to the burn unit.

1 Q Okay. And Dr. Ozobia treated you?

2 A I was -- I was, like, yeah, I don't remember anything until the
3 next day. And then, yeah, at some point he saw me. Mostly it was just
4 the nurses coming in and checking on me.

5 Q Okay. They were checking your breathing?

6 A Yeah. They were giving me breathing treatments and pain
7 medication. Then it's when it got really painful.

8 Q Okay. What was really painful?

9 A The burns. This one -- the skin was gone so it was extremely
10 painful. Worst pain I ever had in my life.

11 Q Okay. And how about the burn on --

12 A The face was --

13 Q Okay.

14 MR. KUDLER: May I approach, Your Honor?

15 THE COURT: Yes.

16 MR. KUDLER: Looking for the color copies. I don't know
17 why they're not colored in there. Looking at Exhibit 3.

18 MR. A. GIOVANNIELLO: Exhibit 3?

19 MR. KUDLER: Yes.

20 MR. A. GIOVANNIELLO: Will you give me a chance to get
21 there please?

22 MR. KUDLER: Certainly.

23 THE WITNESS: It's hard to tell anything from this.

24 MR. KUDLER: Yeah.

25 MR. A. GIOVANNIELLO: I'm on Exhibit 3.

1 MR. KUDLER: Thank you.

2 BY MR. KUDLER:

3 Q These are black and white, but do you recall having
4 photographs taken of your injuries?

5 A Yes.

6 Q Okay.

7 A I believe I took these pictures.

8 Q Were these after the hospital?

9 A Yeah, these were a couple of weeks after.

10 Q Okay. And those show the burns and the injuries?

11 A Yeah, I think it was when I was talking to you and I -- so I took
12 some pictures. So yeah, these are at least two weeks after, three weeks
13 probably. The skin had closed -- it took a long time for this skin to grow
14 back. It grows from the outside in, so it took several weeks for it to
15 finally close up.

16 Q How long were you in the hospital for?

17 A Nine days.

18 Q Okay. What did they do for you there?

19 A They just -- as far as cleaning and putting stuff on my
20 wounds.

21 Q Okay. Did they put some kind of a bandage or something on
22 your arm?

23 A Well after -- when I went to outpatient, they put this kind of
24 material on there that they left on there. It -- you know, it would absorb
25 the liquid or whatever and it got -- or like a scab and you would just trim

1 off the edges as it filled and closed in. It's a -- it was like -- it's like a scab
2 on there until it finally got so small that it was done.

3 Q How long did that take?

4 A Six -- five to six weeks maybe.

5 Q Okay. Did -- was there a time that they said once you meet a
6 certain criteria, we'll discharge you from the hospital?

7 A Well, yeah, the doctor -- basically after nine days, I asked him
8 when I would be able to go home. And he told me, well, when you can
9 handle a dressing change without the morphine, I'll let you go home.

10 Q Were they doing the dressing changes or were you?

11 A They were.

12 Q Okay.

13 A I went -- when I did leave, I went to outpatient and I was
14 going there, at first, every day and they were doing it every day.

15 Q They were changing your dressing?

16 A Uh-huh.

17 Q Was that painful?

18 A Oh, yes.

19 Q Okay.

20 A It was incredibly painful. And I was still taking some pills at
21 that time.

22 Q Okay. Before this, had you had any injuries or accidents or
23 any need to take morphine or anything of that nature?

24 A Oh, no, no. No.

25 Q How long did you take morphine for in total as a result of

1 this?

2 A Well, the morphine, that was while I was in burn unit. And
3 then they changed it to some -- one of the pills, some opiate pill, which I
4 took at -- I took those for -- until they discharged me from the outpatient.
5 And then I believe there was some period of time I was still taking those
6 but then I went to see the doctor again just a few weeks after at some
7 point and he said, well, as soon as you stop taking the pills, I'll let you go
8 back to work.

9 Q Okay.

10 A So that's when I stopped taking the pills.

11 Q Okay. Was that easy to get -- stop taking the pills?

12 A No, that was not easy.

13 Q Okay.

14 A It was another horrible experience.

15 Q Okay. What was horrible about it?

16 A Just coming off the opiates.

17 Q Okay.

18 A It's very addictive medication.

19 Q When you were taking them how many were you taking a
20 day?

21 A About three, or four, or five, something like that.

22 Q Did you quit cold turkey or how did you get off?

23 A Yeah, when he told me I can go back to work when I stop, I
24 told him, well, don't give me anymore.

25 Q Okay. And then you returned to your work.

1 A Yeah, a week, or something after.

2 Q Okay. Was that after the last time you saw the doctor in the
3 burn center?

4 A Honestly, the -- that series of events, eight years is a long
5 time to try and remember exactly how that went down.

6 Q Now there was a mention that in October 2014, the doctor
7 wanted you to come back.

8 A I don't remember that. Or I don't remember not showing up
9 for an appointment.

10 Q Okay. At that point, were you 100 percent?

11 A Obviously, he had already released me to go back to work at
12 that point and I was working with Andrew. You know, we -- in fact, were
13 working on a brand new nursing home from the ground up for the same
14 company.

15 Q Was that here in town?

16 A That was -- yeah, here.

17 Q Okay. The PPE that you were wearing at the time, goggles
18 gloves?

19 A Gloves.

20 Q Fire retardant --

21 A Fire retardant clothes, yep. That's what --

22 Q Where does the requirement for that equipment come from
23 in 2014?

24 A It was a OSHA -- it was arc flash rating. The number or the
25 rating determined what the level of PPE you're required to wear from

1 OSHA.

2 Q And this'll be the same PPE you wore when working on other
3 category one boxes that were hot?

4 A Yeah, if it was under 240 volts, yes.

5 Q Okay.

6 A 240 and under. Typically, if that breaker had worked the way
7 the manufacturer intended it to, there would have been no injuries,
8 nobody would have got hurt.

9 Q It would have been a loud noise?

10 A A loud noise, some smoke, and sparks and that was it. It
11 would've been over in an instant.

12 Q In your career, have you maintained breakers, done routine
13 maintenance on them?

14 A Me, not so much because I'm mostly involved in the new
15 construction. But there are -- yeah, I mean, I'm sure Andrew had some
16 maintenance contracts, maybe, with the customers afterwards. It's up to
17 the owner to put a maintenance and testing policy or plan in action, in
18 use.

19 Q Did you have problems after you were discharged with your
20 armpit?

21 A I believe it, yeah, I felt an abscess or something --

22 Q Okay.

23 A From ingrown hairs maybe, or I'm not sure why.

24 Q And where did you go?

25 A To the emergency room. I think it was actually twice. I went

1 for some in the emergency room. They told me not to come there
2 anymore. Or no, I went to the burn unit the first time and they told me to
3 go to the emergency, not -- that I was discharged and not to come there
4 anymore.

5 Q Did you go to UMC or another hospital?

6 A UMC Emergency, yeah.

7 Q You don't -- you don't recall going to Valley?

8 A That's Valley -- well, it's right next door to it or same.

9 Q Okay.

10 A Yeah.

11 Q And that's where you went twice?

12 A I believe I went there twice.

13 Q And that was just -- you were there just for a little bit?

14 A Just the guy lanced it.

15 Q Okay. Do you have any current symptoms with your arm?

16 A Well, yeah, there's the sensation of feeling in here is -- is not
17 normal anymore. So it's hard to tell. It's just different. If something
18 touches it or rubs here, it's - or kind startle -- if I'm working on
19 something, it startles me a little bit.

20 Q Okay.

21 A Because I can't tell what's going on.

22 Q Have you ever gotten a scratch or a cut and not really felt it
23 like that?

24 A Yeah.

25 Q Okay. During the time you were in the hospital, obviously,

1 you weren't working? Do you know how long it was you continued not
2 to work?

3 A It was until -- I went back to work for Andrew at the new job
4 site.

5 Q It was -- do you know --

6 A It's hard to remember the exact dates.

7 Q Okay. Was that when you last saw Dr. Ozobia, and he said
8 kick the drugs?

9 A Yes. It was some period or days after that, yes.

10 Q Okay. So sometime after that last time you saw him?

11 A Yes.

12 Q Okay. What were you making at that time?

13 A \$40 an hour, I believe.

14 Q Okay. And --

15 A I was a foreman for the --

16 Q Okay. Up until the 6th of June, how many hours a week
17 were you working?

18 A The 6th of June.?

19 Q Up until this injury were you working, how many hours a
20 week were you working?

21 A Full time, yeah.

22 Q Okay. Were you going to continue to work full time?

23 A Yeah.

24 Q Okay. And would you expected to continue to work 40 hours
25 a week?

1 A Yeah, they were already well into that project when I came
2 on to it. So yeah, I would have been there from the beginning.

3 Q Okay. That was the next project?

4 A Uh-huh.

5 Q Also for the same company?

6 A Yes, same company.

7 Q The -- do the burns on your face affect you at all?

8 A Well, I mean, one time I asked a girlfriend of mine -- she did
9 -- you know, she asked me if I was burned and then, I go, you don't
10 notice this, you know, the colored -- discoloration. And she told me she
11 thought, oh, I just thought you were dirty. That's kind of discouraging,
12 you know. So yeah, I was a little self-conscious about it all.

13 Q Okay. Are there times of the year that's it's more visible than
14 it is right now?

15 A Oh, yeah, when I was in Alaska it -- I mean, you get some
16 suntan here and it kind of hides it a little bit, but it's still -- I don't know if
17 you can see this but --

18 Q You want to go up a little closer and show them. And while
19 you're there, can you --

20 MR. KUDLER: Your Honor, can he approach the jury?

21 THE COURT: Any objection?

22 MR. A. GIOVANNIELLO: No objections.

23 THE COURT: You may.

24 BY MR. KUDLER:

25 Q And then -- if I show them your arm.

1 UNIDENTIFIED SPEAKER: Just make sure he's by a
2 microphone if he's going to talk.

3 MR. KUDLER: You got to speak up a little bit Jeff.

4 THE WITNESS: I was lucky they didn't do skin --

5 MR. A. GIOVANNIELLO: Objection.

6 THE COURT: Just demonstrate and don't narrate.

7 MR. KUDLER: Jeff, just show them.

8 MR. A. GIOVANNIELLO: Your Honor, objection to the
9 narration, Your Honor.

10 THE WITNESS: Huh? Okay.

11 BY MR. KUDLER:

12 Q Do you have any physical problems today as a result of the
13 injury other than the sensation and being startled?

14 A No, I'm -- I mean, they gave me a disability rating at the time.
15 I forget what it was -- a few percent. But that was mostly because the
16 scarring was pretty tight for a while.

17 Q Has it loosened up?

18 A It's loosened up a little bit, yeah.

19 Q Okay. You do -- you do --

20 A I can -- I can --

21 Q You did physical therapy or occupational therapy?

22 A Well, I had to wear a compression thing on my arm for
23 several months.

24 Q Okay. Do you do, like, stretching of your arm or been
25 working out your arm to make sure it stays limber?

1 A Not specifically, it's okay now.

2 Q Okay. Did you do that in the past?

3 A Yeah.

4 Q Okay. Was there a time that you weren't able to do things
5 around the house?

6 A Oh, for a long time.

7 Q Okay. Did this -- these injuries affect you personally?

8 A Yeah, at first, when I got out of the outpatient I -- it was
9 horrible. I couldn't -- it was weeks and weeks.

10 Q What couldn't you do around the house?

11 A I didn't -- I did as little as possible, just my own personal
12 hygiene and yeah, stayed inside because I couldn't go outside because
13 the sun -- they said to stay out of the sun.

14 Q Okay. And this was in the summer?

15 A Uh-huh.

16 Q Okay. So you had to stay out of the sun, so you stayed
17 inside? Other than personal hygiene, what things were you able to do
18 around the house?

19 A Turn the TV on.

20 Q Okay.

21 A I didn't -- I didn't really -- it was for a while before I was able
22 to return to a normal life.

23 Q Did the pain in your arm or in your face wake you up at
24 night?

25 A I'm sure at first, but I was taking the medication. The pain

1 pills and I was medicated pretty heavily for quite a while.

2 Q And how'd that make you feel?

3 A Tired.

4 Q Okay. And how'd it make you feel?

5 A It didn't -- yeah, I wasn't looking forward to stopping that's
6 for sure. But I knew what I had to do.

7 Q Okay. Stop the medications?

8 A Uh-huh.

9 Q Okay. How did it make you feel to have to rely on the
10 medications?

11 A It's an addiction like anything else. I mean, you try to -- you
12 start to rationalize why you need more or -- so I just stopped. I had my
13 girlfriend with me. She helped me through it.

14 Q Okay. Normally, before this, what things did you do around
15 the house?

16 A Oh, everything, fixed things. I did hobbies.

17 Q Did you cook?

18 A Yes.

19 Q Did you clean?

20 A Oh, yes.

21 Q Did you work on your car?

22 A Yes.

23 Q Wash your car?

24 A Yes. All that.

25 Q Okay. During this time that you were healing and on

1 medication --

2 A She was handling most of the cleaning and cooking.

3 Q Okay. Normally, before this and since you've healed what
4 kind of things do you do for fun, relaxation?

5 A I mostly work on things. Fixing cars, I like to fix my cars, fix
6 them up.

7 Q Okay.

8 A I got a metal detector. I like to go metal detecting. Hiking in
9 the mountains, stuff like that.

10 Q Did you do any of that during the time were recovering?

11 A Oh, no, no. I didn't.

12 Q Okay. You got back to all that stuff?

13 A Huh?

14 Q You got back to all that stuff?

15 A Somewhat. Yeah.

16 Q Okay. And what do you mean, somewhat?

17 A I don't have time for most of it now but --

18 Q Okay. You busy working?

19 A Uh-huh.

20 Q Okay. Do you have any issues currently or since this working
21 on panels?

22 A Well, it's something you never forget. And I just work and
23 got through it. You know, yeah, you get scared or fear or it makes you a
24 lot more aware of what you need to watch out for that's for sure.

25 Q Okay. When you went into the box that day, did you do

1 everything that you would normally do?

2 A Yes. I didn't -- I didn't do anything wrong.

3 Q Okay. You looked everywhere that -- should have been a
4 safety hazard?

5 A Uh-huh. It's -- yeah, it's pretty straight forward. It's much --
6 yeah.

7 Q Okay. Normally, how long would this take?

8 A Half an hour, 45 minutes.

9 Q Okay. Open, wrap up, and then go home?

10 A Put it back together and turn it on.

11 MR. KUDLER: Okay. That's all I have, Your Honor.

12 THE COURT: All right. Ladies and gentlemen, we're going to
13 take our lunch and recess at this time.

14 During this recess, you must not discuss or communicate
15 with anyone including fellow jurors in any way regarding the case or its
16 merits, by either voice, phone, email, text, internet, or other means of
17 communication or social media. You may not read, watch, or listen to
18 any reports of or commentary on the trial by any means. Do not do any
19 research, consult dictionaries, internet, use reference materials, make
20 investigations, test theories, recreate any aspect of the case or do any
21 investigation on your own.

22 Do not form or express any opinion regarding this case until
23 it's finally submitted to you. It's a quarter to noon. Let's come back to
24 work at 1:00 ladies and gentlemen. Have a good lunch. Follow the
25 officer, please.

1 [Jury out at 11:48 p.m.]

2 [Outside the presence of the jury]

3 THE COURT: All right. The record should reflect we're
4 outside the presence of the jury. Any additional record need be made by
5 either side on the witness' examination this morning. Plaintiff?

6 MR. KUDLER: None, Your Honor.

7 THE COURT: Defense?

8 MR. A. GIOVANNIELLO: Not at this time.

9 THE COURT: All right. Have a good lunch. We'll see you at
10 noon -- or see you at 1.

11 [Recess from 11:48 a.m. to 12:57 p.m.]

12 [Outside the presence of the jury]

13 THE COURT: We're on the record in A-735550, Myers v. THI.
14 The record should reflect the presence of the representatives of the
15 Plaintiff and Defense. Outside the presence of the jury.

16 Just as we're on the record I was, again, reviewing Judge
17 Villani's decisions regarding a prior -- an effort by the Defense to
18 examine on a prior felony conviction for Myers. Is that fair?

19 MR. A. GIOVANNIELLO: No.

20 MR. KUDLER: No, it was for James.

21 MR. A. GIOVANNIELLO: James.

22 THE COURT: It was for James? Okay. Then that's not
23 relevant here. But he ruled that you can't go there.

24 MR. A. GIOVANNIELLO: He ruled I can't, yeah.

25 THE COURT: Okay.

1 MR. A. GIOVANNIELLO: Yeah, I'm aware of that.
2 THE COURT: All right.
3 MR. A. GIOVANNIELLO: That's what Lee [phonetic] filed the
4 writ on.
5 THE COURT: Right.
6 MR. A. GIOVANNIELLO: Yeah.
7 THE COURT: We're ready.
8 THE MARSHAL: Stand for the jury.
9 THE COURT: Yes.
10 [Jury in at 12:58 p.m.]
11 THE COURT: Please be seated, ladies and gentlemen. We
12 are on the record in A-735550, Myers v. THI. The record should reflect
13 the presence of the representatives for Plaintiff and Defense. All
14 members of the jury panel do appear to be present.
15 Do the parties stipulate to the presence of the entire panel?
16 Plaintiff?
17 MR. KUDLER: Yes, Your Honor.
18 MR. A. GIOVANNIELLO: Yes, Your Honor.
19 THE COURT: Thank you. The record should reflect the
20 remaining case is the Plaintiffs' case in chief. Cross-examination of the
21 witness.
22 Mr. Giovanniello, you have the floor. Cross-examination.
23 MR. A. GIOVANNIELLO: Thank you, Your Honor. May I have
24 Mr. Giovanniello over here, go up there, and get a book for the witness?
25 THE COURT: Certainly.

1 MR. A. GIOVANNIELLO: Thank you.

2 Let's get 230 -- Exhibit 232.

3 MR. A. GIOVANNIELLO: Good afternoon, Mr. Myers. I'm
4 going to ask you a couple of questions here.

5 THE WITNESS: Okay.

6 CROSS-EXAMINATION

7 BY MR. A. GIOVANNIELLO:

8 Q I just want to put a couple of things in perspective first. I'm
9 going to show you some photographs of -- we've been talking about this
10 room, and we've been talking about this panel. I just want to show you
11 some photographs. Look at Exhibit 2 -- you're on Exhibit 232.

12 A Dash 1?

13 Q Yeah, Dash 1, but go to Dash 13.

14 THE COURT: Are these in?

15 MR. A. GIOVANNIELLO: I would put them in, Your Honor.

16 THE COURT: So let's make a formal record on what you're
17 offering.

18 MR. A. GIOVANNIELLO: Your Honor, I'm not going to offer
19 every single one of these, I'm just going to offer them piecemeal.

20 THE COURT: Well, with foundation or without objection. So
21 we're focused on your collection in Defense 232; is that fair?

22 THE WITNESS: It's a picture outside the electric room.

23 MR. A. GIOVANNIELLO: Oh, wait for the Judge.

24 THE COURT: 232. All right. And you're looking at which
25 232?

1 MR. A. GIOVANNIELLO: Number 13, Your Honor, first.

2 THE COURT: 13. Just don't publish it until its admitted or
3 decisions are made on admission. Are you offering --

4 MR. A. GIOVANNIELLO: I'm offering it, yes.

5 THE COURT: -- 13?

6 Offering 232 -- Defense 232-13, any objection?

7 MR. KUDLER: These were taken in 2021, but as long as they
8 verify that they represent the -- similar condition at the time of 2/14, I
9 have no issue.

10 THE COURT: So I'm hearing no objection to 13?

11 MR. KUDLER: As long as -- yeah, as long as they verify that
12 its similar to the condition --

13 THE COURT: Well, there is an --

14 MR. KUDLER: -- in 2014.

15 THE COURT: -- objection to verification or --

16 MR. A. GIOVANNIELLO: Well, Your Honor, Judge Villani
17 already ruled that these could come in.

18 THE COURT: Oh, so --

19 MR. A. GIOVANNIELLO: This was a prior ruling. These
20 pictures can come in.

21 THE COURT: Is that correct?

22 MR. KUDLER: I believe.

23 THE COURT: Then they're admitted.

24 MR. A. GIOVANNIELLO: Thank you.

25 THE COURT: All the photographs under 232?

1 MR. A. GIOVANNIELLO: All of them, but some of them are
2 not as relevant as others, that's why --

3 THE COURT: All right. So --

4 MR. A. GIOVANNIELLO: -- I want to do it piecemeal.

5 THE COURT: -- 13 is in. 232-13 is admitted based upon prior
6 ruling.

7 [Defendants' Exhibit 232-13 admitted into evidence]

8 BY MR. A. GIOVANNIELLO:

9 Q And Mr. Myers, I just want to put this in perspective really for
10 the jury, as well as you, and to show that -- what does this depict, this
11 picture?

12 A This is the -- outside the electrical room. The door that's
13 open, I believe, is the electric room.

14 Q Okay. That's the door that leads into the electrical room?

15 A Yes.

16 Q Okay. And that's the site where the arc flash occurred?

17 A That's correct.

18 MR. A. GIOVANNIELLO: Okay. Turn to Page 232-1. And I do
19 want to admit this one, Your Honor.

20 THE COURT: 232-1 offered on the same grounds. Any
21 additional record need to be made?

22 MR. KUDLER: No, the Judge has already ruled.

23 THE COURT: 232-1 is admitted.

24 [Defendants' Exhibit 232-1 admitted into evidence]

25 BY MR. A. GIOVANNIELLO:

1 Q And this is more of a closeup of the room, sir?

2 A Yes.

3 Q Okay. I'm going to show you 232-2. Is that the panel?

4 Electrical panel in question.

5 A I believe so.

6 Q Okay. And then this is more of a picture showing the size of
7 the room that you were in, correct?

8 A Yes.

9 Q Okay. And then the panel that we're talking about --

10 THE COURT: What's the exhibit number for the record?

11 MR. A. GIOVANNIELLO: I'm sorry, Your Honor. 232-3.

12 BY MR. A. GIOVANNIELLO:

13 Q And that's the panel right there that you were working on?

14 A That's the one to the right, yes. That I had the covers off.

15 Q That you had the covers off over there. Okay. I want to show
16 you 232-8. More of a close up of that panel?

17 A Yes.

18 Q Okay. And obviously, the panel is gone here, right? So this
19 is an open --

20 A Right.

21 MR. A. GIOVANNIELLO: Right? Okay. And that's it from that
22 exhibit, Your Honor. Do we have the photographs from the expert?

23 [Counsel Confer]

24 BY MR. A. GIOVANNIELLO:

25 Q I wanted to show you some photographs that I believe Mr.

1 Gifford -- Gilford? Gifford? That Mr. Gifford took on the inside of the
2 panel. But while we're looking for those, let me move on and ask you a
3 couple of other questions. How long -- you were at that job for about a
4 week, right, before this arc flash happened?

5 A Yeah, I was helping them. When I got there they were
6 already into correcting the -- separating the electrical systems, fire
7 safety, the critical care, and the regular power.

8 Q Right, because that was the initial job.

9 A Right.

10 Q That was the initial phase of the job --

11 A Correct.

12 Q -- right? To do that, to separate the live --

13 A This was just a service call that they -- we got after they were
14 done, I believe.

15 Q Okay. That was after the -- Phase 1?

16 A Yes.

17 Q Okay. And what -- and was the purpose to bring College Park
18 up to code?

19 A Well, the original work was, yes.

20 Q Right. It was to bring them up to code, right?

21 A Well, to correct the violations that the state inspector called
22 them on.

23 Q Okay. And correct me --

24 A It wasn't -- we couldn't do it and bring the whole building up.
25 That was just far too much work.

1 Q Right, but it was building -- bringing up what the State said
2 needed to be done?

3 A For the power, yes.

4 Q Okay.

5 A Power systems.

6 Q All right. Now, let me ask you about the breaker.
7 Oh, you know what? Before we get there, are you a righty or
8 a lefty?

9 A Righthanded.

10 Q You're righthanded? And it was your left arm that was
11 burned?

12 A Yes.

13 Q Okay. Talking about the breaker, how -- isn't it true that the
14 only way you would know a breaker is faulty is if it doesn't trip, right?

15 A Well, it depends on the breaker. Some of them have a trip
16 setting -- you know, a trip button on it.

17 Q Oh, you just go in and trip, right? And press? But you --

18 A Some of them. The larger ones you can.

19 Q Okay. Did these have that?

20 A I didn't inspect the main breaker.

21 Q No? But you were in there weren't you?

22 A Yeah.

23 Q Okay. You visualized the breaker though, didn't you?

24 A Well, I knew it was there, yeah.

25 Q Okay. Did you know whether or not that was one of those

1 breakers that you could press a button to see whether or not it tripped?

2 A No, because I didn't want to try and test it.

3 Q Why not?

4 A Because we were told not to shut the power off.

5 Q Okay. You're -- but you're --

6 A That wasn't in the scope of our job there that day.

7 Q Okay. But weren't you there working on an energized panel,

8 correct?

9 A Yes.

10 Q I think you said in your direct testimony that you want to be

11 hyper vigilant.

12 A I don't know if I said vigilant, but yeah, something like that.

13 Q Or maybe hyper aware?

14 A Aware, yes.

15 Q Okay. I'm going to use that word and maybe I'll use vigilant.

16 A Okay.

17 Q But you want to be hyper aware? Okay.

18 So isn't it true then that, you know, if you have an electrical

19 breaker, you're not going to know whether or not it trips until it does?

20 A You can count on them tripping if they were installed

21 properly.

22 Q Okay. So -- but if it doesn't, right, you're not -- the question

23 is, if it doesn't, you're not going to know it until it does -- until it doesn't,

24 right?

25 A Correct.

1 Q That's correct, yeah. Okay. Now, you know, this particular
2 breaker; do you know whether or not it had a manufacturing defect? You
3 don't, right?

4 A No.

5 Q Okay. Now --

6 A But I think you should -- I should have been able -- it's safe to
7 assume that it had been tested prior to that.

8 Q Do you regularly go and test breakers?

9 A If that's what they want us to do.

10 MR. A. GIOVANNIELLO: Okay. Do you have the pictures?
11 What exhibits are these, Chris?

12 MR. C. GIOVANNIELLO: I think they're Plaintiffs' 40.

13 MR. A. GIOVANNIELLO: Plaintiffs' 40?

14 MR. C. GIOVANNIELLO: P-40.

15 MR. KUDLER: 40 is Gifford's report.

16 MR. A. GIOVANNIELLO: Yeah, but these don't have numbers
17 on them.

18 MR. C. GIOVANNIELLO: That's what we have. That's what
19 you gave me.

20 MR. A. GIOVANNIELLO: Could you go up there and give him
21 the white book and Exhibit 40? And we'll see what numbers these are
22 for the Court. Show him the inside. I'm not going to show him that one.

23 MR. KUDLER: These ones are not taken by Gifford.

24 MR. A. GIOVANNIELLO: They're not?

25 MR. KUDLER: They may have been attached to the report,

1 but they were not taken by Gifford.

2 [Counsel Confer]

3 MR. A. GIOVANNIELLO: Let's look at Exhibit 5 as well.

4 MR. KUDLER: It's titled nine photos of the scene, I believe.

5 MR. A. GIOVANNIELLO: I'm sorry, Your Honor. This will
6 only take a second.

7 THE COURT: Just following along. I think you're headed for
8 Plaintiffs' 5?

9 MR. KUDLER: 4, Your Honor.

10 THE COURT: 4? Okay.

11 [Counsel Confer]

12 BY MR. A. GIOVANNIELLO:

13 Q Okay. So looking at -- this is Plaintiffs' Exhibit 4. And I'm
14 only going to show you four -- it looks like five pictures -- four pictures
15 from there. So looking at --

16 THE COURT: I just want to make sure. These are all already
17 in either by direct ruling on a previous effort or foundation laid or
18 objection addressed?

19 MR. KUDLER: No objection to Exhibit 4 coming in.

20 THE COURT: All right. So --

21 MR. A. GIOVANNIELLO: It's by stipulation.

22 THE COURT: -- 4 is in by stipulation.

23 [Plaintiffs' Exhibit 4 admitted into evidence]

24 BY MR. A. GIOVANNIELLO:

25 Q Okay. Let me show you the first one that we marked. This is

1 Exhibit 4-20, for the record, of Plaintiffs' Exhibit 4-20. Is this -- what does
2 this depict? Is that depicting the inside of the box?

3 A That's the inside of the panel, yeah.

4 Q Okay. And that's with the panel off, right?

5 A With -- yeah.

6 Q Obviously, see inside; there's no panels on it, right?

7 A Yes.

8 Q Okay. And these are the breakers?

9 A Yes.

10 Q Okay. Let me show you a bit of a better picture. 4-21, same
11 thing. That's what the inside of the panel looks like?

12 A Okay. Yeah.

13 Q Okay. 4-23. Is that the breakers?

14 A Sure.

15 Q Is the breaker that you say didn't go off located here
16 anywhere?

17 A Nope.

18 Q No? Where would that be located?

19 A In the next section over.

20 Q The next section over?

21 A The standup section over.

22 Q Okay. And that would not be this one either, right, 4-24?

23 A No.

24 Q Okay. But this is still the inside of the panel, correct?

25 A Yes.

1 Q Okay. You said you went back to work, you just don't
2 remember when, right?

3 A Not the exact date.

4 Q Okay. But you went back full-time?

5 A Yes.

6 Q Doing okay now?

7 A Yeah. Yeah.

8 Q Good. You're still working full-time?

9 A Yes.

10 Q You're still a, I guess, master electrician without the title?

11 A Sure.

12 MR. A. GIOVANNIELLO: Okay. One second. I think that's all
13 I have for you, Mr. Myers. Thank you very much.

14 THE COURT: Redirect?

15 REDIRECT EXAMINATION

16 BY MR. KUDLER:

17 Q Does it have a location of a backup electrical system?

18 A Yes, it has a backup generator.

19 Q Okay. And if the power goes off --

20 A It has emergency power to them, yeah.

21 Q Okay. If the power goes off --

22 A The generator will energize the life safety panel.

23 Q Okay.

24 A Which is lighting and -- basically, just exit lighting.

25 Q Okay. Would that also power the lifesaving equipment?

1 A Life -- I don't believe they had lifesaving equipment. They
2 weren't allowed to treat patients there.

3 Q Ventilators and things like that. Would it --

4 A That would be critical care power needs.

5 Q Okay. Would the generator power those?

6 A I don't really recall exactly.

7 Q Okay. You mentioned that these things should be tested?

8 A Yes.

9 Q Okay.

10 A There's several agencies that require it.

11 Q Okay. And when you went in, did you assume that these
12 people followed those agency requirements?

13 A Well, you have to.

14 Q Okay.

15 A You know, I can't check every panel of the building before I
16 start working on it.

17 Q And you didn't try and trip the main breaker?

18 A No.

19 Q Okay. Have you ever just gone in and as a part of changing a
20 breaker like in this -- in this here box, tripped the main breaker?

21 A Sure.

22 Q To test it?

23 A When it's -- when you're able to, yeah.

24 Q Okay. And in this case --

25 A You don't trip it; you just turn it off.

1 Q Right, but I mean I'm saying you didn't -- Defense counsel
2 was asking if you tested it to see if this thing would trip.

3 A There's really no way to do that.

4 Q Okay. Like, you know, when I'm in the bathroom of my
5 house and there's a little red button, I can push that and --

6 A A fire breaker, yeah.

7 Q Yeah.

8 A Certain breakers you can.

9 Q Right, and this doesn't have something like that?

10 A Like I said, I didn't inspect that breaker so I'm not really
11 familiar with --

12 Q Okay.

13 A -- exactly what it was.

14 Q Do those kind of breakers have a way of just testing them or
15 you just have to manually shut it down?

16 A Oh, most of the -- well, like, in Alaska for example in the
17 processing facility, yeah, most of those large breakers, you can trip them
18 to turn them off.

19 Q Okay.

20 A Or the lever will turn it off, but there is also a trip button to
21 test it.

22 Q You don't know if this particular breaker had a test button?

23 A I don't think it did.

24 Q Okay.

25 A It just had a trip rating setting on it.

1 Q Okay. And you don't -- you don't recall what that was set at?

2 A I didn't, no.

3 Q Okay. But it never broke?

4 A I wouldn't change it anyways because it should be set prior
5 to --

6 Q Okay.

7 A -- when it was installed.

8 Q That would be the manufacturer's standards?

9 A Well, the manufacturer -- they build it to have a certain range
10 of where you can trip it off at. It'd be an -- an engineer would do the
11 calculations for the -- the cascade of -- it's so the 20 amp breaker doesn't
12 trip the main breaker. It trips -- you know, the one -- they go in a certain
13 order.

14 Q Okay. So the --

15 A But it would be an engineer thing that's on the prints.

16 Q Okay. Not something an electrician would do?

17 A Not typically, no.

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

19 THE COURT: Recross?

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

21 RECROSS-EXAMINATION

22 BY MR. A. GIOVANNIELLO:

23 Q You had testified earlier that the way the to alter a breaker is
24 you had to look at the numbers on the breaker.

25 A To find the model number, yeah.

1 Q Find the model number? Couldn't you also find that in, say,
2 a manual for the panel?

3 A In the blueprints?

4 Q Yeah. Often the panel comes with a manual.

5 A The panels do come with manuals, but those typically get
6 lost pretty soon on in the building's life.

7 Q Yeah --

8 A But maybe -- yeah, maybe it had it.

9 Q Okay. You can't assume it was lost.

10 A Okay.

11 Q I'm just asking the question. If --

12 A Yeah, you could find it in the manual.

13 Q You could find it in the manual, right?

14 A Yes.

15 Q And obviously, you're familiar with the internet too, right?

16 A Sure.

17 Q It's been around for a long time. It was around --

18 A Yeah.

19 Q -- in 2014 --

20 A Right.

21 Q -- right? Could you also look on the internet and find the
22 breaker for that --

23 A I suppose.

24 Q -- particular panel? You suppose so?

25 A Well --

1 Q All right. So there's at least two different ways now we can
2 find it.

3 A -- now, the panel is made by a manufacturer, but there's
4 different types of breakers you can install in that, so --

5 Q But --

6 A -- knowing the difference between one or the other, I mean,
7 you would know which ones are able to go in there; you wouldn't
8 actually know which one that is of those ones that are able to go in there.

9 Q And you could look at the manual. So now we know there's
10 two ways to do it. You can look in the manual, you can go online, and
11 then the third way you said was to open the panel and look.

12 A Yeah.

13 Q Okay. So you don't necessarily have to open that panel
14 because you can look at the other two --

15 A Well, I --

16 Q -- ways as well, right?

17 A -- just explained to you that you won't be able to tell the
18 difference between two of them if -- they could be different model
19 numbers.

20 Q But the manual might have the right manual number though,
21 right?

22 MR. KUDLER: Your Honor, he's getting argumentative.

23 THE WITNESS: This -- the manual is not going to show the --

24 THE COURT: Sustained.

25 MR. A. GIOVANNIELLO: I'm done, Your Honor.

1 THE WITNESS: Okay.

2 MR. A. GIOVANNIELLO: No further questions.

3 THE COURT: Anything else for this witness? I see two,
4 three, four hands up.

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

6 MR. KUDLER: We knew there'd be questions.

7 THE COURT: [Indiscernible] quite a bit happening there
8 [indiscernible]. Factual as well. He might not know.

9 MR. A. GIOVANNIELLO: I'm fine with that as well.

10 THE COURT: No, I know. At least it's not legal or procedural;
11 it's factual. Any objection?

12 MR. KUDLER: No objection.

13 THE COURT: They're all coming in [indiscernible].

14 MR. A. GIOVANNIELLO: Some of these are pretty good
15 questions I should have asked.

16 THE COURT: Factual. This one we can't ask, I don't think.

17 MR. A. GIOVANNIELLO: Yeah, I agree.

18 MR. KUDLER: Yeah.

19 THE COURT: Okay.

20 [Sidebar ends at 1:24 p.m.]

21 THE COURT: As a master electrician, is working on a hot box
22 the most dangerous part of your job? If so, would it be prudent to check
23 all your surroundings, including what is above your head in line of sight?

24 THE WITNESS: I've been in much dangerous -- more
25 dangerous situations than that like falling from heights or something, but

1 yeah, typically, you should check the panel and I did. I didn't look above
2 that divider because typically that's a grounded section of the panel.
3 Those wires up there. So there shouldn't have been any hazard and I
4 didn't need to mess with those. I was looking at the section where I was
5 going to be working on it and I determined that that was safe to work on.

6 THE COURT: Was there an arc flash calculation or
7 assessment done?

8 THE WITNESS: Well, the arc flash rating is by the voltage of
9 the -- the panel and 208 volts is the lowest voltage a panel could be, so
10 you're required for the PPE, I assume, you're referring to -- is that arc
11 flash rating determines what the PPE you're required to wear. I don't
12 know. Did that answer it?

13 THE COURT: Were arc flash boundaries set?

14 THE WITNESS: Well, that -- the boundaries -- okay, the
15 different ratings have different distances from the exposed bus bars
16 that -- where you have to be wearing your PPE. And that room is so
17 small that, I mean, you can't -- anywhere in front of that panel you're
18 required to wear the PPE, which I had on.

19 THE COURT: Were there arc flash labels on the sub -- on the
20 switch gear?

21 THE WITNESS: You can see right here that they're not on
22 there, but when this gear was installed they probably weren't required.
23 But if -- but the code requires it now, so they -- they should have had
24 somebody do that already.

25 THE COURT: Is it part of your process to check maintenance

1 logs before you perform work on a breaker? Were those logs checked?

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

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

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

10 THE COURT: The third employee on the job during the
11 event, his qualifications, duties or purpose?

12 THE WITNESS: Can you repeat that?

13 THE COURT: The third employee on the job during the
14 event, his qualifications, duties or purpose?

15 THE WITNESS: I believe that was Jason, and he was -- he
16 was an apprentice. And he was to keep people -- anybody from trying to
17 walk into that room while we were in there working.

18 THE COURT: Any additional questions from the jury as a
19 consequence of the questions asked? I see two more hands up.

20 [Sidebar begins at 1:27 p.m.]

21 MR. A. GIOVANNIELLO: I'm going to object to that one. It's
22 going to call into question some hearsay testimony.

23 MR. KUDLER: Not necessarily.

24 MR. A. GIOVANNIELLO: Oh, yeah.

25 THE COURT: How do we get to -- brief me on -- how do we

1 get the screws falling into the panel? Was it just -- was there a screw
2 recovered somewhere?

3 MR. A. GIOVANNIELLO: No.

4 MR. KUDLER: The screw -- the screw evaporated.

5 THE COURT: Evaporated. That's your theory of the case.

6 MR. A. GIOVANNIELLO: That's his theory.

7 THE COURT: And you're saying no screw ever existed?

8 MR. A. GIOVANNIELLO: I say no screw ever existed. I think
9 he --

10 THE COURT: So if I read this question to them, what hearsay
11 do you anticipate him using to try to answer the question?

12 MR. A. GIOVANNIELLO: He's probably going to say that after
13 the fact some fireman said that, oh, this is what must have caused it.

14 THE COURT: Is that all you have?

15 MR. KUDLER: No. Mr. James investigated after the fact the
16 next day and he found that there were two screws that had been up on
17 that ledge. One was still there, and one was gone.

18 MR. A. GIOVANNIELLO: But that --

19 THE COURT: And you're going to -- you anticipate getting
20 that? On the --

21 MR. A. GIOVANNIELLO: But that's not --

22 THE COURT: I'm actually going to -- I'm not going to read
23 this question, but I'll let you [indiscernible] Mr. James. All right. Let's
24 just go with the six. It's factual. See everybody is trying to get -- they're
25 all trying to get in front of the screw. It's really more of a -- it's not really

1 factual. Beyond the scope of the witness [indiscernible] to testify. So
2 that one's out.

3 Mr. Kudler, you'll have to go with your other witnesses,
4 okay?

5 All right. Let's just do this one then.

6 [Sidebar ends at 1:30 p.m.]

7 THE COURT: Were there any -- were there any recent testing
8 stickers on the main breaker indicating it had been tested recently?

9 THE WITNESS: I believe you can see a picture of it in here
10 and there was no stickers on it.

11 THE COURT: Any additional follow-up questions from the
12 jury?

13 Seeing no hands. Follow-up, Plaintiff, to jury questions?

14 MR. KUDLER: No, thank you.

15 THE COURT: Defense?

16 THE COURT: Please step down.

17 [Designation of the record ends at 1:30 p.m.]

18 [Matters continue]

19 [Designation of the record beings at 2:08 p.m.]

20 THE COURT: All right. Call your next witness.

21 MR. KUDLER: At this time, I guess, we have Andrew James.

22 ANDREW JAMES, PLAINTIFFS' WITNESS, SWORN

23 THE CLERK: Please take a seat. Please state and spell your
24 first and last name for the record.

25 THE WITNESS: Andrew James, A-N-D-R-E-W J-A-M-E-S.

1 THE COURT: Counsel, your witness.

2 MR. KUDLER: Thank you.

3 DIRECT EXAMINATION

4 BY MR. KUDLER:

5 Q Mr. James, let's talk about your electrical background. When
6 did you start -- first start working in the electrical field?

7 A Around 1986.

8 Q Okay. And in 1986, what -- how were you work -- what were
9 you doing?

10 A I was an apprentice electrician in New York.

11 Q In New York?

12 A Yes.

13 Q Okay. And in New York, how long did you continue to work
14 as an electrician?

15 A I journeyed. I got my first journeyman's license in 1989 and
16 continued on from there.

17 Q And how long did you continue to work in New York?

18 A On and off -- I was in New York. Then we moved to
19 Washington and then lived in California, lived here. So it was -- I worked
20 in New York probably for a total of two, two and a half years.

21 Q Okay. And then you worked in Washington as an electrician?

22 A Yes.

23 Q Also obtained a journeyman's status?

24 A Yes.

25 Q Anything beyond that in Washington?

1 A No.

2 Q How did you work in Washington?

3 A About three years.

4 Q Okay. And then to California?

5 A Yeah. I worked in California for about a year.

6 Q Did you work as a journeyman?

7 A Yes.

8 Q Okay. In all these, when you're talking about getting --

9 working as a journeyman, is this a test that you have to pass?

10 A Yes.

11 Q And you have to have a certain amount of hours?

12 A Correct.

13 Q And the hours from New York count to Washington and

14 those hours count to --

15 A Generally, yes.

16 Q Okay.

17 A Yeah. There -- there used to be a lot more reciprocity

18 between the states. Now there's more borders. Back then, it was a lot

19 more accepted to be -- if you were licensed in one state, you'd be

20 accepted in others. Federal government is one exception. You're

21 licensed in one state, you're licensed anywhere for the feds.

22 Q Okay. Now, when did you come to Nevada?

23 A 2003, I believe, 2004. Somewhere around there.

24 Q And did you start working as an electrician?

25 A Yes.

1 Q And where were you -- where did you start working?

2 A I can't remember the name of the company. That was a long
3 time ago, the very first company I worked for here. But I've worked for
4 Advantage Electric here, which went into Advantages Services here and
5 then obviously Industrial Light and Power.

6 Q Okay. Now, in California, were you a master electrician as
7 well?

8 A No.

9 Q Okay. How about here?

10 A Here I'm a master electrician. I'm an ICC master electrician
11 and a PEC master electrician.

12 Q Okay.

13 A PEC is -- Clark County used to recognize ICC, which is the
14 International Code Council as a master electrician and that's who
15 basically licenses all of building inspectors, electrical inspectors, that
16 kind of thing. They changed recently to Professional Electrical
17 Consultants, PEC, which is a whole other test. So I maintain master
18 electrician's licenses with ICC and with PEC.

19 Q Okay. Now, you said you started working for ILA,
20 Industrial --

21 A Yes.

22 Q -- Light and power. Tell the jury that company came to be.

23 A My father-in-law basically asked me one day what I wanted
24 to do, and I'd been working for other electricians and have electrical
25 contractors go out of business and just pack up in the middle of the night

1 and that kind of thing and been shafted on paychecks and that kind of
2 thing. So he basically said yeah, why don't we -- you know, you have the
3 skills, and he had the money. Said why don't we put together our own
4 company and actually start an electrical contracting business specializing
5 in commercial and heavy industrial. So that's my background. So that's
6 what we did.

7 Q Okay. And the company is in whose name?

8 A It's 100 percent my father-in-law.

9 Q Okay. Who runs the company?

10 A I do.

11 Q Okay. Where does -- and your father-in-law is Doug Smith?

12 A Yes. Yes.

13 Q And where does Mr. Smith live?

14 A He lives up in Spokane, Washington.

15 Q Okay. And he's lived up there the --

16 A Yes.

17 Q -- the whole time?

18 A Comes down here a couple times a year, but yes, he lives up
19 there --

20 Q Okay.

21 A -- full time.

22 Q Do you -- when you guys started, did you guys talk about
23 bids on jobs and things like that and was he involved in any of that
24 portion of it?

25 A Yeah. He still gets the final say on any financial decisions.

1 It's his name. We go -- we do a large project, you have to do what are
2 called payment performance bonds for municipalities in the federal
3 government, that kind of thing. And you have to have extremely good
4 credit and extremely good levels of liquid funds in the bank, so anything
5 like that, if it's a large expenditure for the company, if it's a cap ex, a
6 capital expenditure for the company, any kind of bonding issues, any
7 kind of large, municipal jobs that are, you know, hundreds of thousands
8 of dollars. Our bid limit is three million. But he has the final say in those
9 and he takes -- you know, he does like his own risk analysis and decides
10 whether or not we proceed.

11 Q So he wants to decide if he's going to put his --

12 A Correct.

13 Q -- his butt on the line?

14 A Correct.

15 Q Okay. When the company first started, you obtained a
16 contractor's license?

17 A Yes.

18 Q Electrical contractor's license. Are there any requirements
19 in -- for a person to act as the qualified employee for that?

20 A Yeah. You have to take the construction management course
21 for the State of Nevada, which is basically construction industry law,
22 rules on liens, that kind of thing. And then you have to take a qualified
23 employee test, which is -- so if you're a plumber, you have to take the
24 plumbing qualified employee test. If you're an electrical contractor, you
25 have to take the electrical qualified employee test. I took both and I am

1 the qualified employee for Industrial Light and Power. I'm the
2 construction management expert and I am the electrical expert for the
3 company.

4 Q Okay. And that's been the case since the company was
5 formed?

6 A Correct.

7 Q And when was it formed?

8 A 2010.

9 Q Okay. Doing that and -- as part of your job, do you keep track
10 of codes?

11 A Oh, yes.

12 Q Okay.

13 A Very much so.

14 Q Just -- if you can just name a few of those codes off the top
15 of your head.

16 A Well, the electrical industry is governed by the NEC, which is
17 the National Electrical Code, which is written and published by the
18 National Fire Protection Association, which is referred to as NFPA. The
19 specific section for electrical safety is NFPA 70(e). So we have NFPA
20 70(e), which basically publishes the NEC, the National Electric Code,
21 which every state in the United States has, you know, brought into their
22 understanding is that that's what they want to have their electrical
23 installations installed to. They've adopted it. Excuse me. And then
24 OSHA. There's various parts of OSHA that are requirements. And
25 there's -- obviously, for healthcare facilities, there's other certain

1 regulatory agencies that are dictating certain safety procedures.

2 Q Okay. What was your first contact with College Park?

3 A We were hired to build -- actually, we were invited to bid on a
4 65,000 square foot ground up brand new nursing home for the
5 Defendants. And we were solicited by a general contractor out of Tyler,
6 Texas, to submit a bid for this job. We submitted a bid. We won the bid.
7 You go through all the processes with requests for information, which
8 are called RFIs with the architect, the engineers, everybody.

9 And while we were waiting for all that to happen, they had --
10 because they worked for the Defendants, they had some work that
11 needed to be done at College Park, so they asked us to give them a quote
12 to do the electrical portion of the work at College Park. And there was
13 some other drywall work and some other, you know, ancillary things that
14 had to be done, but we gave them the bid to do the electrical work while
15 we were kind of waiting for the large ground-up nursing home facility to
16 stop.

17 Q The bid at College Park, what was the purpose of that work?
18 Initially, the first phase was they wanted to add ventilators in one wing of
19 the facility, so they wanted to add critical branch circuits in certain
20 rooms. There's three power systems, I think as Mr. Myers discussed.
21 There's life safety, critical branch and normal power. Those additional
22 circuits they wanted to add were on the critical branch circuit and they
23 were for -- basically for ventilation -- for ventilator equipment, because
24 they wanted to start offering ventilator service to one wing of the
25 patients in the facility. That was the very first phase of the job was to

1 add these critical branch circuits.

2 Q And that went fine?

3 A That went fine.

4 Q Okay. Was there some state requirement in regards to what
5 needed to be done in the complex to come up to code?

6 A So what happened is during phase two of the project, which
7 was an upgrade of the generator automatic transfer switches and a
8 couple of panelboards inside the facility, they -- and I don't believe that
9 was a state requirement. I think that was just something that College
10 Park wanted to upgrade, because the ATS, automatic transfer switches,
11 that switched the power over to generator was old. They were having
12 issues with it. And in the scope of that part of the job, we had an
13 electrical inspector come out to inspect what's called roughing electrical.
14 The one -- you know, just basically doing the initial inspection.

15 And while the inspector was there, he saw that they had what's
16 called intermingled, comingled life safety, critical branch and normal
17 power circuits were in the same junction box as panelboards and
18 conduit, raceways and that violates code. He would not give them any
19 inspections until that was corrected. And so I then went to SCI
20 construction and said we're -- here's where we're at. We can't get
21 anything done unless you guys fix this. And then they asked me for a
22 quote to fix that. We gave them a quote they signed it and we
23 proceeded and did it.

24 Q Okay. And was that done before June 6th?

25 A Yes.

1 Q Were you -- did you actually touch this kitchen breaker at that
2 time?

3 A Yeah. It was under the scope of that second job that they
4 then asked us to change a circuit breaker that they were going to supply.
5 And we -- it was just a change order under that job. I think it was
6 changer order number 3, because there were two previous change
7 orders. But I believe it was change order 3. And it was just a change
8 order just to install a customer supplied breaker.

9 Q Okay. And did they want that during the day or during the
10 night?

11 A During the nighttime, because of the kitchen. They didn't
12 want the kitchen shut down and they wanted it done at night.

13 Q Okay. Prior to that point, had either you or Jeff or any of
14 your employees touched that kitchen breaker?

15 A No.

16 Q Okay. Had you guys been in that box?

17 A I -- before that point, I don't believe so, no.

18 Q Okay. How much did you bid for that job?

19 A For the -- just changing the breaker?

20 Q Yes.

21 A \$345, I believe was the change order to install --

22 Q And --

23 A -- the breaker.

24 Q -- how much did the breaker itself cost?

25 A Around \$1,000.

1 Q So that \$345, what did it entail? I mean, what was it for?

2 A Installing their breaker. They supplied a breaker. We
3 installed it. That was the price for us to install it.

4 Q That was labor only?

5 A Yes.

6 Q Okay. So you went there that night. Were there other things
7 going on electrically that evening?

8 A Yes. Yeah. We had -- we got there. We finished up. There
9 was a couple of things in the attic that needed to be done from that day,
10 because we worked that day as well. There were a couple of things in
11 the attic that needed to be finished up. Those got finished up that night,
12 because they had a state inspection coming, I believe the following week
13 and they needed some emergency lighting repaired that hadn't been
14 working that the state inspectors called them on. So that got fixed that
15 night and then 11:00 rolls around and we start, you know, really getting
16 into changing the breaker.

17 Q Okay. What -- who was doing the actual work touching the
18 breaker?

19 A Jeff.

20 Q The panel itself?

21 A I mean, Jeff and I both worked on it, but Jeff was the one that
22 was actually changing the breaker.

23 Q Okay. What was your job while you were there?

24 A Oversee and just help Jeff, you know. Parts, you know, that
25 kind of thing and just make sure everything goes smooth and to make

1 sure that the keys got given back to the front desk.

2 Q Okay. And those were keys that were left for you, so that you
3 can get in the room at night?

4 A Yes.

5 Q Okay. Jeff mentioned that when he took the screws out, he
6 gave them to you. Where did you place them?

7 A So on the back -- on the complete opposite wall directly
8 ahead of -- in front of panel MSA where the arc flash incident happened,
9 there's a series of panels. They call them gutters. It's basically just an 8
10 by 8 square box, long box. Almost acts like a shelf. That's where the
11 screws were being set.

12 Q Okay. Take everything off?

13 A Uh-huh.

14 Q Okay. What happens next?

15 A Took everything off. Took the side panels off. Took the dead
16 front off. Start -- pulled off -- you know, saw the damage to the breaker
17 from the burned wires and Mr. Myers testified to. And Jeff started
18 removing the old breaker.

19 Q Okay. Did he get the old breaker out?

20 A Yeah.

21 Q Okay.

22 A He did.

23 Q During this time, was Jeff wearing protective equipment?

24 A We both were.

25 Q Okay. And what code set forth the requirement in 2014 for

1 the protective equipment that was necessary for this type of work on this
2 type of box?

3 A NFPA70 in the 2012 edition would be the -- the in full force
4 and effect code for the date that this happened.

5 Q Okay. What were you required to be wearing?

6 A Safety glasses, flame retardant shirt, flame retardant pants,
7 steel toed shoes and that's it.

8 Q Okay.

9 A And gloves. Sorry.

10 Q Were you wearing those?

11 A Yes.

12 Q Okay. Even though you weren't touching the box --

13 A Yes.

14 Q -- you were wearing them. And was Jeff wearing those?

15 A Yes, he was.

16 Q Okay. Anything else required under the NFPA to be worn --

17 A Not at --

18 Q -- for under 240 volts?

19 A Not at 240 volts or less, no.

20 Q Okay. You know, there was discussions with Jeff by both
21 myself and Defense counsel regarding identifying the proper breaker.

22 A Okay.

23 Q Okay. And Defense counsel said well, the manual is going to
24 show which breakers are which.

25 A Right.

1 Q Okay. How many different types of breakers can be put into
2 that particular box?

3 A Well, you have to go back a little further than that and you
4 have to say, okay, the brand of that panel was manufactured by a
5 company called challenger. Challenger shortly thereafter changed to a
6 company called Zinsco. Zinsco then shortly thereafter was bought by
7 Westinghouse. Westinghouse was then acquired by Cutler Hammer.
8 Cutler Hammer was no acquired by Eaton. That many companies have
9 breakers that'll go in that panel.

10 There's been multiple brands of breakers in that panel. They're not
11 all the original breakers. So if you had the original manual for that
12 challenger panel and looked at the model number of the breaker, it's not
13 the breaker you'll get, because you'll never buy that breaker right now,
14 because it's completely discontinued.

15 Q Were they discontinued in 2014?

16 A Yes.

17 Q Okay. So you would have to -- if you were replacing
18 something, you would have to know exactly what -- well let me ask this.
19 What are the variables on the types of breakers?

20 A Multiple. I mean, the easiest way to do that would be to look
21 at the front of the breaker, see if it's a, you know, F70SK, what -- you
22 know, whatever frame size the breaker is and you can quickly say, okay, I
23 know an Eaton, you know, F frame breaker fits in this panel. And that's
24 all you need to know.

25 Q Okay.

1 A But you have to take the dead front off to be able to find that
2 out.

3 Q Right. But are all Eaton breakers that fit the F70 panel the
4 same, or are there different breakers with different power loads and
5 capabilities?

6 A No, there's different breakers.

7 Q Okay.

8 A There's what are called KAIC ratings, which is the amount of
9 -- the amount amps that'll -- basically the breaker will withstand under a
10 dead fall.

11 Q Okay. Is that -- let's say if you did have the original manual --

12 A Uh-huh.

13 Q -- for that, would you be able to identify the breaker number
14 A or B or whatever it is, exactly what kind of breaker that was? Just by
15 looking at the manual?

16 A It would give you a part number. It would give you -- it
17 might. Okay. Challenger is old. It might give you a part number. It
18 might say this panel uses this Westinghouse breaker, but then you have
19 to go find that breaker and try to find a modern day breaker that fits
20 where that breaker goes --

21 Q Okay.

22 A -- you know. And it's a tricky thing to do. It's not something
23 -- when you get into these old Westinghouse, Zinsco Challenger
24 panelboards, they're just -- they're old. There's -- you know, that's the
25 only fault is that they're just old, you know. And technology changes

1 and all these old breakers are just -- they're discontinued.

2 Q Being an electrician, how would you -- if somebody had a
3 bad breaker --

4 A Uh-huh.

5 Q -- how would you determine which one to buy?

6 A Pull the dead front off. Get -- take a picture of the front of the
7 breaker and then go order that exact breaker. I mean, that's what would
8 I do. And then if I can't find it, you have to start doing the work, you
9 know, start to cross-reference it into something that'll fit in that panel.

10 Q Okay.

11 A But it's a drawn-out process.

12 Q Right. And getting the right amperage load?

13 A Yes.

14 Q Okay. And can you tell that from the dead front with the
15 dead front on?

16 A No. If the dead front is installed property and there aren't,
17 you know, components missing from the dead front, you can't tell that.

18 Q Okay. And the breaker was supplied by?

19 A Roy Comstock at College Park supplied the breaker.

20 Q Now during the time that you were there before this night --
21 because Roy wasn't there that night, correct?

22 A Correct.

23 Q Prior to this, had you had conversations with Roy?

24 A Yes.

25 Q Did you ever talk to Roy, did ever talk about the types of work

1 that he did there?

2 A Many times.

3 Q Did he ever say that he was in that panel?

4 A Many times.

5 Q Okay.

6 A More times that he can remember is -- were his exact words.

7 Q Okay. So he told you I've been in this panel more times than
8 I can remember?

9 A That's correct, sir.

10 Q Okay. What were your thoughts on --

11 A Eye roll. I mean, looked at the other guys and just be like,
12 you know, great, you know. But that was -- I mean, really, that's -- you
13 know, he shouldn't be in that panel.

14 Q Okay. So you opened up the panel. You were in your PPE.
15 Are you qualified to be in that panel with the power on?

16 A Absolutely.

17 Q Okay.

18 A For any code on planet Earth, I'm qualified to be in that panel
19 fully energized.

20 Q Okay. At that time, did you, along with Jeff, take a look at the
21 area you were going to be working in?

22 A Absolutely.

23 Q Did you look at the energized bus?

24 A Completely inspected the energized bus when the -- as soon
25 as the dead front was off.

1 Q And any issues with the energized bus?
2 A None.
3 Q Okay.
4 A Other than melted wires on this one breaker. That was the
5 only obvious sign of anything wrong.
6 Q And that was the breaker you were replacing?
7 A Correct.
8 Q Okay. And when Jeff was reinstalling it, he resolved that
9 situation?
10 A Correct.
11 Q Okay. When this actually occurred, when the flash occurred,
12 where were you looking?
13 A I was turning. He was on the last screw to install this breaker
14 and I was turning away from him to get the screw off the panel, off the
15 gutter that was right behind me when to quote Jeff, all hell broke loose
16 and that's when -- like it was like the end of the world in that room.
17 Q Okay. Did you see a screw fall?
18 A No, absolutely not.
19 Q Okay. At that time, where were your tools?
20 A In my tool bag.
21 Q Okay.
22 A They were sitting actually right outside the electrical room.
23 Q Okay. None of your tools were damaged?
24 A None.
25 Q Did you at some point after look at Jeff's tools?

1 A Yes.

2 Q Were any of --

3 A No.

4 Q -- his tools damaged?

5 A We did a full tool count. There was nothing damaged.

6 Q Nothing missing, nothing gone?

7 A No. Nothing.

8 Q Any of the screws that you guys had removed, were any of
9 those missing?

10 A No.

11 Q Okay. When this occurred, this flash, okay, you didn't know
12 exactly what happened?

13 A Correct.

14 Q Okay. You then went into the building?

15 MR. A. GIOVANNIELLO: I'm going to object. That's kind of
16 leading.

17 MR. KUDLER: Okay.

18 THE COURT: Sustained.

19 BY MR. KUDLER:

20 Q What did you do next?

21 A Went into the building.

22 Q Okay. What'd you do in the building?

23 A We went into the -- there's a side door right to the left of
24 where that pit photo was earlier, the evidence of the electrical room.

25 There's a side door that goes down a maintenance hallway kind of by the

1 janitorial services and the cafeteria. Make a right and you can go
2 straight down into like the main lobby where the receptionist is, the night
3 receptionist.

4 Q Okay.

5 A We went down there. And that's where Jeff had a seat in the
6 waiting room. And you know, we were trying to get somebody to call
7 911. It took a bit, but ultimately, one of my guys ended up calling 911.

8 Q Okay. And then ambulance shows up?

9 A Yes, sir.

10 Q What'd they do? What do you recall them doing?

11 A They -- I mean, they treated us. You know, they got us right
12 into the ambulance and gave us -- gave me -- I don't know exactly what
13 they gave Jeff in the ambulance. They gave me a shot of morphine in
14 the ambulance and --

15 Q Where were you feeling pain?

16 A In my arm.

17 Q Okay. Where in your arm?

18 A Right there. Elbow, right where I got burned.

19 Q Could you roll up your sleeve?

20 MR. KUDLER: And without saying anything, you know, if he
21 could approach the jury and show them.

22 THE COURT: Any objection?

23 MR. KUDLER: No objection.

24 BY MR. KUDLER:

25 Q Any other burning that you recall?

1 A I don't recall the ear, but not -- I was kind of out of it that
2 night, so I don't -- I didn't have any like lasting burns on my ear.

3 Q Okay. You get in the ambulance. Where do you go?

4 A UMC to the burn center, the trauma center at UMC.

5 Q Okay. How long were you there?

6 A I was there for several hours, I believe. They got me in.
7 They -- I called my wife and she came over from Pahrump. I started
8 getting treatment at the -- at UMC.

9 Q Okay.

10 A And they watched me for a little while and then they decided
11 to discharge me, as was testified to earlier.

12 Q Okay. You went home that night?

13 A Yes, I did.

14 Q Okay. Did you go back to the jobsite the next day?

15 A I did.

16 Q Okay. When you left the jobsite, you say you -- well, did you
17 close everything up?

18 A No.

19 Q Okay. What'd you do?

20 A Well, we had two other guys there with us that night,
21 actually. There was -- I mean, I know it was testified to there was three
22 guys there. There were four guys there that night. But they closed up
23 the electrical room, locked it up and took the key and then I came back
24 the next morning.

25 Q Okay. When you went back the next morning -- well, let me

1 ask you this. So at UMC there was a form that was shown that you filled
2 out that said you didn't know what happened --

3 A Correct.

4 Q -- but there was an arc flash?

5 A Right.

6 Q When you wrote that at UMC on the 6th, was that true?

7 A That was true. I did not know what happened.

8 Q Okay. Did you wonder what happened?

9 A Absolutely.

10 Q Okay. Did you investigate what happened?

11 A The next day, I did.

12 Q Okay. What did you actually do and what did you actually
13 see?

14 A I actually saw -- I was informed that --

15 Q I just want to know what you saw.

16 A Okay. I saw on the -- I -- it's kind of like a fiberglass slash
17 phenolic insulator under the neutral bus, got up on a ladder and saw
18 evidence. There was one screw laying up there and this insulator, this
19 panel, again, is old. It's from the 80s. Insulator is covered, you know,
20 eighth of an inch thick of dust on it. And you could see two outlines,
21 basically. And one is where one screw was still at and the other outline,
22 where another screw used to be wasn't there. So you could clearly see
23 that there used to be two screws laying there and one of them was not
24 there.

25 And then, when you hold that screw up to the fingers that Don

1 Gifford and others have talked about before, that screw was just long
2 enough to span the gap between two fingers in the -- between B and C
3 phase on this -- on this bus on the right hand side and cause the dead
4 short on B and C phase.

5 Q If you look in your book at Exhibit Number 4 and I want you
6 to look at the first picture. It's Bate stamped 19.

7 A Yes. Yes.

8 Q Is that your fingers?

9 A Yes.

10 Q Okay. Is that you holding the screw?

11 A Yes, it is.

12 Q And all of these pictures, these nine pictures in Exhibit 4 you
13 took?

14 A Yes, I did.

15 Q And these were taken the next day?

16 A Yes.

17 Q Okay. And this was documenting your investigation?

18 A Correct.

19 Q And so that first picture is one of the screws? The screw that
20 was still there?

21 A Yes.

22 Q Was that one of the screws you guys removed?

23 A No, it was not.

24 Q And then it's hard to see, but looking at the last picture there
25 that's marked 27 --

1 A Yes, sir.

2 Q -- that's the screw in the place where you found it?

3 A Correct.

4 Q And there was another kind of shadow where another screw

5 was?

6 A Correct.

7 Q And when you're talking about a shadow, you're talking

8 about where dust wasn't?

9 A Cor -- that is correct.

10 Q Okay. So dust had settled and left an area that --

11 A Right.

12 Q -- under the screws? Did you look for that second screw?

13 A Yes.

14 Q Did you ever find it?

15 A No.

16 Q Okay. The arc flash itself, do you know where in the panel

17 that occurred?

18 A From the evidence, I do.

19 Q Okay. And what evidence do you have that shows you

20 where it occurred?

21 A Well, just from when we were standing -- where we were

22 standing in front of the panel, the arc flash started roughly knee height,

23 because that's where the blast of energy came from was that low. And

24 then it propagated up the panel as it jumped bus to bus to bus between

25 these breakers. This panelboard has -- you know, as you've photos or I

1 don't know if the jury's seen them or not, but it has banks of breakers. In
2 the very bottom of the right side of the panel are what are called these
3 fingers, which is where the breakers mount.

4 There was an open position for a future breaker, where the fingers
5 are just -- there's just three fingers sticking out like this. I believe that
6 screw -- based on the fact that the tips of those fingers are completely
7 blown away and don't exist anymore, I believe the screw fell
8 miraculously all the way down through the center of the gears, where all
9 these other fingers hit these last two fingers, exploded and then the
10 plasma arc jumped breaker to breaker to breaker.

11 And the evidence of that is all the nuts -- all the fastening hardware
12 for those breakers within, I think the five breakers above the break, the
13 bottom part, where I saw the fingers burned, all of those breakers are
14 welded to the finger kits. You can't even tell it's a nut or a bolt. It just
15 looks like a glob of shiny metal, because the breakers are permanently
16 welded to the panel, because they all melted.

17 Q Okay. Were they like that when you inspected it before you
18 did the job?

19 A No. Absolutely not.

20 Q You said those fingers at the bottom. Had you looked at
21 those before this happened?

22 A Yes.

23 Q Were the tips of those blown off at that point?

24 A No. They were not deformed in any way.

25 Q Okay. Was anybody working on those bottom fingers?

1 A No. We had -- we weren't doing anything near the bottom.

2 Q And all the screws, are -- were they accounted for?

3 A Yes, they were.

4 Q Okay. And all the tools were accounted for?

5 A Yes, they were.

6 Q Okay. Was that the extend of the investigation you did into
7 the cause?

8 A Yeah. I mean, yeah. For the next day, yeah, just trying to
9 figure out what had happened, because like the night of -- the night that
10 it happened as I said in the UMC paperwork, I didn't know what
11 happened. So full inventory of all the tools. Nothing was burned.
12 Nothing was arced. No evidence of anything that we did was damaged
13 from any kind of arc or any kind of contact between energized buses or
14 anything. And therefore, just logic dictates to me that you know, it was
15 this one screw that was obviously on the neutral bus at one point fell and
16 caused this arc flash. And then screw completely vaporized.

17 Q Okay. When you say it was on the neutral bus, you're talking
18 about that --

19 A The insulate. I'm sorry, yes. The insularly right before the
20 neutral bus.

21 Q Okay. I want to look at -- it's in a different book. The third
22 book is Exhibit 39.

23 MR. A. GIOVANNIELLO: It was, yes.

24 MR. KUDLER: Thank you. And I was just checking to verify
25 that that's already been admitted into evidence.

1 BY MR. KUDLER:

2 Q Exhibit 39 is the energized electrical work permit?

3 A Yes, sir.

4 THE COURT: My clerk's indicating --

5 MR. KUDLER: Oh.

6 THE COURT: -- differently. Is it --

7 MR. A. GIOVANNIELLO: It's admitted as Exhibit 40?

8 MR. C. GIOVANNIELLO: I think it was admitted as one of our
9 exhibits, but let me look. One sec.

10 THE CLERK: We had 239 admitted yesterday.

11 THE COURT: If there's no objection, it's easy.

12 MR. A. GIOVANNIELLO: There's no objection.

13 THE COURT: Okay. 39 is offered. Is there any objection?

14 MR. A. GIOVANNIELLO: No.

15 THE COURT: Plaintiffs' 39 is offered. Hearing no objection,
16 Plaintiffs' 39 is in.

17 [Plaintiffs' Exhibit 39 admitted into evidence]

18 MR. KUDLER: And it's also in their book and that was the
19 issue.

20 BY MR. KUDLER:

21 Q So this -- who designed this?

22 A It's a template that we've used for a long time. There's
23 electrical companies that make electrical form templates, safety
24 meetings, weekly meeting sheets, that kind of thing and energized
25 electrical work permits.

1 Q And at some point, were you told that they didn't want the
2 power shut off?

3 A Yeah. Yes.

4 Q Okay. And then you generated this?

5 A Yes.

6 Q Okay. It's got your signature on there twice?

7 A It does.

8 Q Okay. It also has another person's signature. Do you know
9 who that is?

10 A It was sent to Darrin Cook, who was the administrator, I
11 believe, or the director at the time. I can't read what that says, so I'm
12 assuming that's his signature. It was emailed to him and emailed back
13 to us from him, so I believe that's his signature.

14 Q Okay. And was he the person who told you that it needed it
15 needed to stay hot?

16 A Yes, he is.

17 Q Okay. So that's why you sent it to him?

18 A Correct.

19 Q Okay. And it says here that you're supposed to check the
20 energized bus?

21 A Yes.

22 Q And you guys -- did you do that?

23 A Yes, we did.

24 Q Okay. It also notes on the second page there's a note under
25 evidence of completion of a job briefing, including discussion of any job-

1 related hazards?

2 A Uh-huh.

3 Q What does that say?

4 A It says, "12208 three phase gear has no existing arc flash
5 information. Boundary -- boundary unknown. Fault current unknown."

6 Q And is that something that should be available to a person
7 that goes into that room?

8 A It's required.

9 Q Okay. What is required?

10 A It's required. It's actually the property owner's responsibility
11 to label all equipment that's not in a dwelling with the available arc fault
12 current, the arc flash boundary, the system operating voltage. And I
13 believe that's it per the most recent NFPA.

14 Q Was that true also in 2014?

15 A Yes, it was.

16 Q Was there any labeling?

17 A No, there was absolutely no labeling.

18 Q Okay. You understood that it was a 110208 box?

19 A Yeah. Yes.

20 Q Okay. Had anybody advised you that none of the breakers
21 had been tested?

22 A No.

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

25 A Yes.

1 Q Why?

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

11 Q Were you ever offered a log book, a maintenance book?

12 A No.

13 Q Did you ever ask for one?

14 A No.

15 Q Do you know if anybody ever asked for one?

16 A That day?

17 Q At any time.

18 A I know you did.

19 Q Okay. Did you see their response?

20 A I did.

21 Q What was their response?

22 A We have no such log book.

23 Q Okay. So even if you had asked for one --

24 A They -- yeah, they wouldn't have been able to produce one.

25 Q Okay. In a normal event of this, where there is a short, what

1 should happen?

2 A Breaker should trip instantaneously. I mean, within less than
3 a -- far less than a second.

4 Q Okay. What's that breaker there for? I mean, what's the
5 purpose of having a breaker like that to trip?

6 A To protect against exactly what happened.

7 Q Okay. Did this breaker trip?

8 A It never tripped.

9 Q Okay. How do you know that?

10 A None of the lights went off in the building. We didn't have to
11 reset the breaker. Light in the electrical room itself that we were
12 standing in, after the arc flash happened never shut off.

13 Q Okay.

14 A Yeah, the main breaker for feeding panel MSA that should
15 have tripped to prevent the arc flash from really developing into a
16 plasma ball never did.

17 Q Did the generator ever go on?

18 A No.

19 Q Is the generator close to that room?

20 A Yes.

21 Q Okay. Did you check the generator at all?

22 A Not that night, no.

23 Q Okay. Did you hear it running?

24 A No.

25 Q Okay. That -- phase one of the work was making that

1 generator would function?

2 A Yeah. It was not -- it had nothing to do with the generator
3 itself. It had to do with the automatic transfer switches that were
4 mounted within that electrical room.

5 Q Right. So that if the breaker tripped --

6 A It would tell the generator to turn on and power critical
7 safety -- critical branch and life safety.

8 Q And did that ATS activate at any time on June 6th?

9 A No, it did not.

10 Q Okay. How do you know that?

11 A Power never went off. The power would have had to have
12 gone off with the ATS switches to sense loss of utility power and that
13 would have turned the generator on.

14 Q Okay. Now, Defense counsel asked Jeff if you guys tripped
15 the breaker by a switch --

16 A Right.

17 Q -- similar to a GFI in the bathroom. Did you guys do that?

18 A No.

19 Q Why not?

20 A That would have killed the power to the building, which we
21 were specifically told not to do.

22 Q Okay. After UMC, just the burns themselves, what treatment
23 did you get after that?

24 A I went back to UMC several times to their burn outpatient for
25 dressing changes and Silvadene and that kind of stuff. Seemed like that

1 went on for a couple of weeks. And then it could -- it might not have
2 been that long. It's been eight years. But it was -- you know, I went back
3 several times for treatment and dressing changes and that kind of thing.

4 Q Okay. And then you were released?

5 A Yes.

6 Q Okay. Tell the jury, in that time period -- so a few weeks after
7 the accident, what were you feeling in your arm?

8 A Pain. Not -- it's developed into a worse pain, but it was
9 constantly bothering me. It was a constant irritant all day long. Hard to
10 sleep.

11 Q Did that get worse over time?

12 A It did.

13 Q Okay. Did you seek treatment for that?

14 A Yes.

15 Q And who did you treat with?

16 A Dr. Patti, we just heard from. And subsequently, Dr. Taylor.

17 Q Okay. And for the -- do you recall how many times you saw
18 Dr. Taylor?

19 A I believe it was once or twice.

20 Q Okay. And you saw Dr. Taylor for other things unrelated?

21 A Yes, I did. That how I met him under another unfortunate
22 wrist fracture that I had, and I went to see him to get a second opinion on
23 the surgery that Dr. Patti had originally wanted to do.

24 Q Okay. And he looked at you?

25 A Uh-huh.

1 Q Checked you out?

2 A Yes, he did.

3 Q What was his recommendation?

4 A He concurred with Dr. Patti almost completely that I'm more
5 than likely a surgical candidate and that surgery may be required down
6 the road and that -- you know, he read the MRI basically said, I believe --
7 if I remember the report correctly, he basically said exactly the same
8 thing as Dr. Patti said.

9 Q Did you get that surgery?

10 A I have not gotten that surgery.

11 Q Why not?

12 A Well, because both Dr. Patti and Dr. Taylor -- Dr. Patti was the
13 first one that gave me this prognosis and confirmed it with Dr. Taylor. I
14 asked Dr. Patti flat out if I get the surgery done, is it going to fix it. And
15 he -- his exact response, which if I could have questioned him earlier, I
16 would have asked him is it I'll either get better, get worse or stay the
17 same. And he said it more than likely will get better. I can't imagine this
18 getting worse. And therefore, I can't risk having the surgery.

19 Q Okay. What about a friend of yours that had an issue?

20 A Well, that was -- yeah, that was the first reason why I did
21 cancel the surgery with Dr. Patti actually on the job that we were doing
22 the Defendants, the ground-up nursing home. One of the electricians
23 that we hired went in for a very, very minor back surgery from a
24 trampoline accident, left on a -- on like a Wednesday, needed to take a
25 week off and his wife called us the following Monday and said he died

1 on the table.

2 Q Okay.

3 A And that just scared me.

4 Q Okay. Prior to this explosion, would you have that same
5 reaction?

6 A I don't know.

7 Q Okay. At some point, did you start having anger issues?

8 A Yes, I did.

9 Q Okay. Your wife, how long have you known her?

10 A I've been with her for 28 years.

11 Q Okay. And how long have you guys been married?

12 A 28 years.

13 Q You better get it right? Prior to this accident, how was your
14 relationship?

15 A It was good. You know, ups and downs, like everything else,
16 I think. But you know, we're soul mates and we get along and it's -- you
17 know, we love each other.

18 Q Ever have any outbursts of anger?

19 A Yes.

20 Q Prior to this event, I'm talking about.

21 A Oh, no. Not prior to this event. I'm sorry.

22 Q Okay. You have a child?

23 A Yes, I do. We do.

24 Q Yeah. And tell us about the child.

25 A Twenty-five year-old daughter currently living at home

1 because my wife's going through a cancer recurrence right now and
2 COVID shut down her school in Arizona. She was going to ASU. Shut
3 down her job, because she worked at a gym, so timing, the stars all kind
4 of aligned and it was just easy for her to come home, help us, help my
5 wife going through chemotherapy. And you know, she lost her job and
6 got booted out of her school, so she came home and did schooling
7 online.

8 Q When you say booted, it's because it was cut down -- closed
9 down, not because --

10 A Yeah. Yeah. Exactly.

11 Q -- she did anything wrong.

12 A No. No. No. No. Yeah. She just couldn't attend campus
13 anymore.

14 Q Right. Do you have a family doctor out -- or did you mid-
15 2010s have a family doctor?

16 A Yeah.

17 Q And who is that?

18 A Well, I don't know -- I don't -- exactly what year I started with
19 him, but Dr. Craig was my primary care physician for --

20 Q Okay. And you continued to treat with him until he passed
21 away?

22 A Yes, I did.

23 Q Okay. What kind of things did you see him for?

24 A Anything from a cold to allergies to -- you know, to this,
25 PTSD stuff, mood disorder, elbow pain, basically anything. Checkups. I

1 got testosterone shots from him. Pretty much everything. He was my
2 PCP, my primary care provider.

3 Q Okay. Did you talk to him about mood disorders?

4 A I did.

5 Q Okay. When did you start noticing changes in your mood?

6 A Well, I think my wife noticed changes in my mood more than
7 I noticed it, but she started really bringing it up. It was maybe six
8 months, beginning to mid-2015. I started to have some outburst,
9 irritable outbursts. Started to kind of affect me with our, you know,
10 electricians that we work with and started to just be kind of just irritable
11 and just a jerk sometimes.

12 Q Okay. Ever be a jerk prior to this?

13 A Well, of course, but this was -- you know, I was just -- I was
14 just blowing up over simple things, you know, that's not like me.

15 Q Has that continued?

16 A Yes.

17 Q Okay.

18 A It's better with medication, but, it's still there, yes.

19 Q Are you medicated today?

20 A Yes, I am.

21 Q And what are you taking today?

22 A Depakote, gabapentin, and I took a hydrocodone this
23 morning when I got up, because I have to, because my arm is killing me
24 when I wake up in the morning.

25 Q The gabapentin, what does that do? What do you notice that

1 that does for you?

2 A It's a nerve -- it's a nerve pain medication, and you know, I
3 have hydrocodone, I have oxycodone, for -- for breakthrough pain they
4 call it, when I just -- like in the middle of the night, if I wake up and my
5 arm is killing me, and I'm half asleep, but I have to get up, oxycodone
6 works. I can't do anything else on oxycodone, because I just -- I can't
7 drive, I can't work, I can't do anything.

8 So I don't trust myself on the computer emailing people, I don't
9 trust myself on Amazon, you know, I just -- it's bad. Gabapentin is a
10 nerve pain medication, and it's even got to the point where I didn't know
11 if it was working or not, and I stopped taking it, only to realize within
12 maybe two weeks, that, oh, it was absolutely still working, because my
13 pain got dramatically worse.

14 Q Okay. So when you take it the pain in the elbow is down?

15 A Yes.

16 Q Okay. Is it gone?

17 A It's -- no, it's definitely not gone, it's been a life changing
18 event, it's 24/7.

19 Q Okay. The Depakote.

20 A Yes.

21 Q What does that do for you, what do you feel?

22 A It's a -- it levels me out a little bit. It just makes me not as on
23 edge, and not as irritable.

24 Q Okay.

25 A Not as quick to temper, is how my wife describes it.

1 Q Does it help with any anxiety or depression?

2 A No.

3 Q Okay. Do you take anything for those?

4 A No. I mean, I've tried a lot of stuff. I've tried a lot of PTSD
5 medications, and -- and either they don't work, or they give terrible side
6 effects, or, you know, it's -- I'm trying new therapy right now, but, you
7 know, it's just, you know, all experimental stuff right now.

8 Q Okay. For the elbow we talked about, Dr. Patti, Dr. Taylor
9 and Dr. Craig; anybody else give you any treatment for your elbow?

10 A I don't think direct treatment for my elbow, other than
11 therapy, you know,

12 Q Okay.

13 A Yeah. You know, I've gone to -- you know, had therapy and
14 working on a cold treatment, that kind of stuff after; that's what Dr. Patti
15 was referring to.

16 Q Okay. You have the elbow pain. Does that prevent you from
17 holding things in your arm?

18 A Not from holding things in my arm, no.

19 Q Okay. What kind of effect does that have on your left hand?

20 A Grip strength, primarily.

21 Q Okay.

22 A It's extremely diminished, and then pretty much exactly as
23 Dr. Patti described it, lifting, pulling, pushing, that kind of motion is what
24 really aggravates the nerve whatever it is, but it's -- that's what really
25 causes me the most pain.

1 Q Okay. You have seen, first, a psychiatrist -- well, that's a
2 psychiatrist second, but you've seen a psychotherapist?

3 A Correct.

4 Q And that was --

5 A Lindsey Coombs.

6 Q Okay. And that was the woman who testified earlier?

7 A Correct.

8 Q What kind of things did Lindsey Coombs do for you, what do
9 you do when you go in there?

10 A We -- well, I mean, she been just helping me deal with, you
11 know -- the worst thing about PTSD and -- I was having symptoms of
12 PTSD long before I even told my wife about it, because I'm just -- I was
13 kind of embarrassed and ashamed about it, because I just think that
14 PTSD is something you get when you go to war, you know.

15 And I've since learned that's not the case, but Lindsey has been
16 helping me, you know, trying to help me deal with getting through
17 nightmares and trying to find out triggers, and things like that that, that
18 affect me, and trying to find out patterns, and why I have the nightmares
19 some days and why I don't have them other days. So that's really what
20 we've been working on.

21 Q Okay. Have you worked in panels like this, since then?

22 A No.

23 Q Why not?

24 A Apprehension, avoidance, just you know -- just don't feel -- I
25 just don't feel safe doing it.

1 Q Have you worked on these kind of panels while they were
2 cold?

3 A Not since the -- no, not -- no. Not since the incident in 2014.

4 Q Other than Ms. Coombs, who have you seen for the PTSD?

5 A Dr. Craig was the original provider that -- that first diagnosed
6 me, who suggested PTSD to me. Then I started seeing Lindsey Coombs,
7 for therapy, and then I started getting more concerned that there might
8 be something deeper going on, so I started to see a clinical psychiatrist
9 and psychologist, a Dr. Zand.

10 Q Okay. And Lindsey Coombs doesn't prescribe?

11 A No, she does not.

12 Q Okay. Has Dr. Zand prescribed medications for you?

13 A Yes.

14 Q What kind of medications has he prescribed?

15 A All psychotropic, you know, PTSD, based-medications, I
16 couldn't even tell you the list. I'd have to look at my phone to tell you
17 even a list of medications that we've tried. But they've ranged from, you
18 know -- they've all just had really, really undesirable side effects for me,
19 or -- or they did nothing; one of the two.

20 Q What was your most recent medication attempt?

21 A I am -- I am taking Lyrica right now, which is a pain
22 medication, but also has some, you know, I don't know how -- I'm not a
23 psychiatrist, I don't know what the word is, but it has some, you know,
24 mental affecting properties. And then I'm doing a Ketamine Therapy
25 right now, which has been recently approved by the FDA, to treat combat

1 PTSD and PTSD from explosions, and stuff like that, so --

2 Q That Ketamine Therapy, it's in like little groups?

3 A Yeah. I know, I do it -- I do it once a week, and it's just an
4 oral dissolving tablet, and it's designed to -- again, I'm not a psychiatrist,
5 I'm just telling you what I was told, but it's designed to basically --

6 Q Well, just tell me, what do you experience, when you -- when
7 you do the treatment?

8 A When I take Ketamine?

9 Q Yeah.

10 A Oh, on another planet. It's an intense, out of this world, out
11 of your body experience.

12 Q Okay. Are there visions, or something like that, that you see?

13 A Yes.

14 Q Can you describe those to the jury?

15 A A lot of it for me, for some reason is in space. I don't know
16 why, I'm not -- I'm not a big space nut, I'm not a big fan of, you know,
17 but a lot of times for me, once it starts to kick in I'm in outer space
18 floating, seeing things, a lot of waves, a lot of levels of darkness.

19 It's pretty intense, and it's just designed to try to erase
20 neuropathways that have been created in my mind, due to this arc flash
21 explosion, that's causing the PTSD and the nightmares. It's trying to
22 reset my brain and get my brain away from going back to those bad
23 memories, that's what the whole process -- that's the -- that's the goal.

24 Q And how long have you been doing that?

25 A I've been doing it for about four months maybe, five months.

1 Q Okay. Once a week?

2 A Yes.

3 Q Okay. Do you do that at home?

4 A Yes. I would, yes.

5 Q Okay. Is that something you do, let's say in the evenings,

6 or --

7 A Yes.

8 Q Okay. Are you capable, when you're taking the Ketamine, of
9 doing anything else?

10 A Absolutely not.

11 Q Okay.

12 A I wouldn't be able to even stand up.

13 Q Does it seem to be helping you?

14 A It's -- that's a complicated question, because it seems like,
15 like for a day or two after I take it, I don't have as intense nightmares, or I
16 don't have nightmares at all, but then they come back. So Dr. Zand, the
17 people at Dr. Zand's office that do these Ketamine, you know,
18 treatments, they seem to think that that means that it could be working,
19 it could be helping, but I'm still having nightmares.

20 Q Okay. And you're still on that program?

21 A Yes, I am.

22 Q Before the Ketamine, how often were you having
23 nightmares?

24 A If not every night, you know, three times a week, four times a
25 week.

1 Q What are those nightmares like? Is it a recurring nightmare,
2 are they typical?

3 A It's -- it's 99 percent of the time a recurring nightmare at the
4 Defendants' facility, in the electrical room slight variations of what's
5 going on. Sometimes -- it's just weird. Sometimes there's, you know,
6 kids playing soccer outside the room, so it's just -- it's -- but it's always
7 around -- not always, 90 percent of the time it's based around that
8 electrical room.

9 Q Okay. And what happens in the nightmares?

10 A Explosion.

11 Q Okay. Do the nightmares wake you up?

12 A Yes.

13 Q Okay. So now you've had a nightmare, you've woken up,
14 what happens?

15 A It depends on the severity of the nightmare, because
16 sometimes I just wake up, and it's like, oh, thank God, you know, that's --
17 I'm in bed, and that's not really happening, and I just get up. I might
18 have to watch TV for a few minutes, or something, and I'll go back to
19 sleep.

20 Other times I wake up, and I'm completely soaked in sweat,
21 and I have to actually change my clothes, and I have to go out and sit in
22 the sofa in our living room, turn the TV on, get something to drink, and
23 just basically just calm down, and then I go back to sleep. And all of this
24 happens, of course, when I have to get up at 4:30, 5:00 in the morning.
25 So it's been, like I said, life changing, because I'm exhausted all the time

1 and it just sucks.

2 Q After this incident, did you limit or change your duties on the
3 work -- at work?

4 A Yes.

5 Q Okay. What did you do, what did you change?

6 A I completely stopped working in the field. I mean,
7 completely -- a total change of job duties from an active in-field master
8 electrician doing, you know, master electrician level work in the field,
9 bending conduit, you know, installing switch gear, installing
10 transformers, whatever, to a senior project manager position, which
11 basically means I'm in the office 90 percent of the time, go to job sites for
12 job visits, but that's it, I don't work in the field.

13 Q Why did you do that?

14 A A couple of reasons. One, I couldn't, my arm hurts too
15 much. I can't -- I don't -- I mean, I can't even barely, you know, hold a
16 tool for very long in my left hand. I definitely can't pull wire, and I can't
17 lift anything, heavy tuggers, that kind of thing. And apprehension of,
18 you know, working around energized or non-energized electric
19 equipment, it just -- it just -- it's a trigger; I don't, what else to say.

20 Q Did you try and work in the field after this incident?

21 A Yes.

22 Q How'd that go?

23 A Not good. I mean, it was just a couple of times we tried to
24 work, when I just had to kind of have the realization that I can't do this.

25 Q Were there any incidents where there were safety issues

1 because of your limitations?

2 A No. There was no, because I knew my limitations, and
3 I just knew I just couldn't -- I couldn't push myself to like, you know,
4 install a new switch gear that weighs, you know, four, 500 pounds or,
5 you know, do something like that, because my left hand's -- my left arm
6 is just not up to it.

7 Q Okay. If you could look at the third book, at Exhibit 33, and --

8 A Okay. I'm there.

9 Q Without saying what it is, do you recognize Exhibit 33?

10 A I do.

11 Q Okay. Is that something that -- it is produced for or by ILP?

12 A Yes.

13 Q Okay. And, and who instructs the creation of these?

14 A Our payroll company.

15 Q Okay. And they do that at your -- at your request?

16 A Yeah. Actually my wife is who submits time to our payroll
17 company, and the payroll company processes it, does the tax
18 processing, and takes out taxes and then issues payroll. We've gone
19 through a couple payroll processors, but, you know, that's -- it's never
20 been to us directly.

21 Q Do these indicate your wages for the years, throughout the
22 years?

23 A For 2014? Yes, it does.

24 Q Okay. And it goes through to -- through 2021?

25 A Yes. It does.

1 MR. KUDLER: Okay. I'd offer these for admission, Your
2 Honor.

3 THE COURT: Any objection, Plaintiffs' 33?

4 MR. A. GIOVANNIELLO: No.

5 THE COURT: So received.

6 [Plaintiffs' Exhibit 33 admitted into evidence]

7 BY MR. KUDLER:

8 Q In 2014, even with some missed time following this injury,
9 limited, missed time, what did you make, for that year?

10 A That's -- that's one, the gross wages, \$88,029.25.

11 Q Were you able to keep that up after 2014?

12 A No, I was not.

13 Q Okay. And 2015, what did you make?

14 A \$55,068.75.

15 Q And 2016. Was that because of the job change?

16 A Yes. It was.

17 Q Okay. And how about 2016?

18 A 2016 was \$32,070.80.

19 Q Was that solely because of the job change, or was it related
20 to other things?

21 A No. That was because of the job change, sir.

22 Q And for 2017?

23 A 52,000.

24 Q Okay. And that's on a salary?

25 A Yes.

1 Q Okay.

2 A 2017 was when I transitioned into full, like, you know,
3 salaried, just, you know, senior project manager.

4 Q Okay. And, and the same for 2018, 2019?

5 A Yes. 2018, 2019, 2020, 2021 are all exactly the same. Exactly
6 the same wages.

7 Q And that's the salary position, because you're no longer
8 working in the field?

9 A Correct.

10 Q Okay. When you were doing both jobs did you get paid for
11 the administrative duties, as well?

12 A No.

13 Q Okay. So that was just -- the 88,000 was just -- this is my
14 hourly wage?

15 A Right.

16 Q And the other part you don't get paid for is --

17 A Right.

18 Q Okay. Part of your agreement with your father-in-law?

19 A Correct.

20 Q Okay. And then after this, you are getting paid a salary for
21 running the company --

22 A Correct.

23 Q -- and being a project manager? Did this accident, first we're
24 going to talk about, physically affect you around the house?

25 A Yes.

1 Q How so?

2 A Yeah. I'm just -- my body can't except, it's just a different
3 life. I mean, I, you know, from chores to playing with my dogs, to
4 washing my hair, I mean, it's affected just about every aspect of my life.

5 Q Okay. Before this accident you guys lived in a home?

6 A Yes.

7 Q How much property?

8 A It's on a quarter of an acre.

9 Q Okay. How big a home?

10 A It's 2,000 square feet.

11 Q Okay. You took care of -- what were your duties, what did
12 you actually do?

13 A Pull weeds. I mean, we live in an HOA, so, you know, if you
14 let weeds grow in the front of your house, you get a nasty letter in the
15 mail. So, you know, I pull weeds, take the garbage out on Wednesday
16 night for Thursday pickup. You know, we have a decent size, you know,
17 backyard for an HOA in a, you know, community. And play -- you know,
18 we have two fairly large dogs and play with the dogs and, you know, just
19 maintain the house.

20 Q Okay. How many cars did you guys have then?

21 A Two.

22 Q Okay. Who took care of the cars?

23 A I would do the small repairs on them before, I don't -- I don't
24 anymore.

25 Q Okay. Any problems doing that before the accident?

1 A No.

2 Q Why don't you do them anymore?

3 A It's just uncomfortable getting under a car, like the arm pain,
4 and --

5 Q Before this incident, what did you do outside of the house,
6 other than work?

7 A The, you know, the general stuff, go to movies, dinner with
8 friends, you know, that, that kind of stuff, support my wife and her
9 fundraising. You know, she was a member of Rotary and did events for
10 Rotary, and I would support her fully and go to events and go to
11 fundraisers and stuff with her, and that kind of thing.

12 Q Okay. Any issues doing that before the accident?

13 A No.

14 Q Did you continue to do that, support your wife and go to
15 rotary events after?

16 A She was already pretty much out of -- well, not out of rotary
17 after, but she was kind of slowing down, but I lost pretty much all
18 interest in doing any major social activity. It just started going away. I
19 just -- I just started to not want to do things out. It wasn't an immediate,
20 like one day I was doing it and the next day I wasn't. But when you're in
21 constant pain and, you know, you've got -- I've got this irritability thing
22 going on, I just didn't want to be with anybody.

23 Q Okay. But did you attend events?

24 A Yes, I did.

25 Q Okay. Did you smile?

1 A Yeah.

2 Q Okay. Were you having a great time?

3 A No.

4 Q Okay. You said you were there to support your wife?

5 A Yes.

6 Q Okay. Did you, before this, do any physical activities, sports?

7 A I'm not a big sports guy, but, you know, walk, you know, that

8 kind of stuff. But, yeah, it's kind of -- it's -- well, not kind of, it's affected

9 that as well.

10 Q Okay. Do your motions always show?

11 A I would have to say now more than -- now, more than before.

12 Q Okay. They show?

13 A Yeah.

14 Q Okay.

15 A I mean --

16 Q Can you --

17 A -- I hide them, you know, if I'm, you know, bummed out or in

18 pain, I put on a good face and, you know, and I don't -- I don't want

19 people feeling sorry for me, you know.

20 Q Okay. You say that you were having mood issues, but you

21 didn't know where it was coming from originally?

22 A Correct.

23 Q Okay. And eventually you were told where it came from?

24 A Correct.

25 Q Knowing where it was coming from, just being told, hey, this

1 is what it is, how did that make you feel?

2 A Honestly, it would piss me off, because I didn't do anything
3 wrong.

4 MR. KUDLER: That's all I have, Your Honor,

5 THE COURT: Ladies and gentlemen, we're going to take our
6 afternoon recess at this time. During this recess you must not discuss or
7 communicate with anyone, including fellow jurors, in any way regarding
8 this case or its merits, by voice, phone, email, text, internet, or other
9 means of communication, or social media.

10 You may not read, watch, listen to any report or commentary
11 on the trial by any medium, or do any research consult, dictionaries,
12 internet, use reference materials, make investigation, test theories,
13 recreate any aspect of the case, or in any way invest the case on your
14 own. You may not form or express any opinion regarding this case until
15 it's finally submitted to you.

16 This is a 15-minute afternoon recess. Ladies and gentlemen,
17 follow the Marshal, please.

18 THE MARSHAL: Stand for the jury.

19 [Jury out at 3:15 p.m.]

20 [Outside the presence of the jury]

21 THE COURT: All right. The record should reflect we're
22 outside the presence of the jury, any additional record need be made by
23 either side, as a function of the witness examination?

24 MR. KUDLER: The Defendant has something we've
25 discussed, and we wanted to talk to you before we went into cross-

1 examination. Yes.

2 THE COURT: Okay. Noting for the record again, the witness
3 is on the witness -- remains on the witness stand. You have a record you
4 need to build, or a question we need to answer?

5 MR. A. GIOVANNIELLO: No, Your Honor. We just have a
6 photograph that we disagree on, whether or not it's going to be
7 admissible, and I think that's something that we might need your ruling
8 on.

9 THE COURT: All right. Show me the picture. Tell me what
10 you --

11 MR. KUDLER: We did come to one agreement, on one of the
12 two photos that were at issue.

13 THE COURT: Okay. Are we assuming foundation is going to
14 be met, but it's a relevance -- more of a relevance or analysis?

15 MR. KUDLER: It being a disclosure issue.

16 MR. A. GIOVANNIELLO: It's more of when it was disclosed.
17 We disclosed this at an ECC, the same as he did, with but a bunch of
18 records after discovery cutoff. So I'm thinking what's good for the goose
19 is good for the gander, if he could do it, so could I.

20 THE COURT: Do you have a goose or a gander in the fight? I
21 don't understand?

22 MR. KUDLER: I mean, you know, there's a difference
23 between disclosing continuing treatment of medical records, which is
24 what we disclosed after the discovery cut-off, and probably should have
25 disclosed more than we wouldn't have had a problem this morning,

1 but -- and something that was available. That's it. I mean, they really
2 think it's vital to their case, you know.

3 THE COURT: I don't see it. In terms of balancing, it's just a
4 picture of the Plaintiff engaged in a social action. I'm going to let in.

5 MR. KUDLER: Thank you.

6 THE WITNESS: Oh, can I get down? Sorry.

7 THE COURT: Yes, sir.

8 THE WITNESS: Okay.

9 THE COURT: About 15 minutes, for this recess.

10 [Recess taken from 3:17 p.m. to 3:27 p.m.]

11 [Outside the presence of the jury]

12 MR. A. GIOVANNIELLO: Your Honor, just to bring up I guess
13 some points for scheduling?

14 THE COURT: Or we can talk about it now, I don't want to
15 rush the jury, any more than I rush everybody else.

16 We're off the record, folks.

17 [Off the record at 3:27 p.m./On the record at 3:29 p.m.]

18 THE MARSHAL: All right. They're back in.

19 [Jury in at 3:29 p.m.]

20 THE COURT: Please be seated, be comfortable. I'm counting
21 to ten, and I'm not there yet, but we will be.

22 All right, ladies and gentlemen. We're back on the record in
23 A-735550, Myers v. THI. The record should reflect the presence of
24 representatives, Plaintiff and Defense. All members of the jury panel do
25 appear to be present. Will parties stipulate to the presence of the entire

1 panel? Plaintiff?

2 MR. KUDLER: Yes, they're here.

3 THE COURT: And Defense.

4 MR. A. GIOVANNIELLO: Oh, yes, stipulated. Yes.

5 THE COURT: Thank you. The record should further reflect
6 we remain in Plaintiffs' case in chief, cross-examination of the witness.

7 Mr. A. Giovanniello, you have the witness on cross.

8 MR. A. GIOVANNIELLO: Thank you.

9 CROSS-EXAMINATION

10 BY MR. A. GIOVANNIELLO:

11 Q Mr. James, do you remember in 2017, you were given some
12 interrogatories to respond to?

13 A Yes.

14 Q Okay. And you responded to those interrogatories, right?

15 A Yes.

16 Q And you signed the verification that -- under oath, that these
17 are true and correct responses?

18 A Correct.

19 Q Okay. Now you gave us -- on direct you told us a story about
20 how you did an investigation --

21 A Correct.

22 Q -- after the fact, and found the screw and divined that that's
23 what caused the accident?

24 A Correct.

25 Q Do you recall saying something completely different when

1 you responded to your interrogatories?

2 A No.

3 Q Do you want to turn to exhibit -- look at the black book, the
4 black book.

5 A Oh, I'm sorry.

6 Q Exhibit 238.

7 A Okay.

8 Q Okay. When you look at Exhibit 238, and you have a long
9 response, but interrogatory number 5, asked: "Please describe the time
10 at which you arrive" -- are we there?

11 A Yes.

12 Q It says, "Please describe the time at which you arrived at
13 College Park on the date of the subject incident, the reason why you
14 were performing electrical services at College Park, by whom you were
15 contracted to perform electrical services at College Park. Your activities
16 from the time you arrived at College Park to the time of the subject
17 incident occurred, and a detailed description of how the subject incident
18 occurred."

19 A Right.

20 Q It was a really compound question, but you did answer it.

21 A Okay.

22 Q Okay. Let's everything here. I want you to go to page 6.

23 A Okay.

24 Q Which is Exhibit 238-6.

25 A Okay.

1 Q Okay. And I know you were sitting in court when I read that
2 part that said, "on line 4"?

3 A On page 6?

4 Q Yeah. On page 6, line 4.

5 A Oh, yes.

6 Q Where it says: "Jeff was in the corner of the room. His face
7 was blackened by the explosion, and we did not have any idea at that
8 time" --

9 A Yes.

10 Q -- "what exactly had happened."

11 A Right.

12 Q Correct?

13 A Correct.

14 Q Then if you go down to line 11.

15 A Uh-huh.

16 Q All right. Now if you read line 11, down to line 20; can you
17 do that for us?

18 A Okay. Okay.

19 Q Can you read that for us out loud?

20 A Oh, read line 20?

21 Q No read line -- I want you to read line 11 to line 20, out loud.

22 A Okay. "As the medics were taking care of myself and Jeff,
23 the other two guys working that night, finished talking with the fire
24 department, they all, the other electricians in the firemen, located two
25 long wood screws laying on the fiberglass insulator at the top of the

1 panel by the neutral bar, and the fire department agreed that one of
2 these screws likely had fallen and shorted out two phases on an empty
3 breaker mounting bracket at the lower right side of the panel; which is
4 agreed where the arc was started.

5 The empty fingers for a future breaker were not insulated with heat
6 shrink as they should have been. The screws that were found in this
7 neutral bus fiberglass insulator, after the event happened, were just long
8 enough to short the distance between the two phases, and it is clear one
9 of them must have rolled off the fiberglass insulator while we were
10 installing the new breaker, as the impact drill vibrated the panel."

11 Q Okay. Thank you. That's a little different than what you
12 testified to, isn't it?

13 A No. It's not at all.

14 Q Here, it says that the fire department was the ones who
15 found it, and you testified that it was you who went the next day.

16 A No, I said I had some information regarding it, and I looked
17 the next day. I was told that night that the fire department guys found
18 screws.

19 Q Okay. You didn't testify to that on direct either?

20 A I wasn't asked.

21 Q No. Okay. Look at Exhibit 4. No, go to the -- no, now I'm
22 going to jump over to the white book.

23 A Which white book?

24 Q The one that has Exhibit 4.

25 A Okay.

1 Q Look at Exhibit 4-22, which is the actual -- does it show the
2 ladder?

3 A Yes.

4 Q That ladder was on the jobsite?

5 A That ladder was the maintenance man's ladder at the job
6 site.

7 Q Oh, it was the maintenance man's ladder at the job site?

8 A Yes. It's not our ladder.

9 Q Okay. You took this picture; you said the next day?

10 A No. I don't know when that picture was taken.

11 Q Okay. This is not your pictures?

12 A These are our -- these are my pictures, but I don't know if this
13 picture was taken. I don't buy it, it's eight years ago. I have no idea
14 exactly the date that that picture was taken.

15 Q Okay.

16 A This is when the work was in process.

17 Q Right.

18 A So --

19 Q And you were shown some pictures on direct that were part
20 of this exhibit; weren't they all taken on the same day?

21 A I don't remember. I don't recall.

22 Q Okay. There's a ladder present. Did you think about using
23 that ladder to -- well, you said you couldn't look at the top of that, it was
24 too high. Did you think about using a ladder to go up and look at that?

25 A No. There'd be no reason to do that.

1 Q Okay. No reason to check all clearances?

2 A We did check all clearances around the energized bus. The
3 screw was nowhere near the energized bus.

4 Q Except you didn't check the clearances up top, correct?

5 A There's not an energized bus up top.

6 Q But you didn't check anything up top, correct?

7 A There's not an energized bus up top.

8 Q Well, the question is, did you check anything up top?

9 A Didn't need to.

10 Q Okay. But you didn't do it?

11 A We didn't need to, it wasn't required.

12 Q Is that a yes, or no, sir?

13 A I answered the question.

14 MR. A. GIOVANNIELLO: Your Honor?

15 THE COURT: It's cross-examination, he answered it to his
16 satisfaction. Whether you agree or disagree is up to you.

17 MR. A. GIOVANNIELLO: Oh, okay. It was an exhibit, so I take
18 it, it's a yes or no question, that's why I'm not getting a yes or no.

19 THE COURT: Your objection as non-responsive is overruled.

20 MR. A. GIOVANNIELLO: Okay.

21 BY MR. A. GIOVANNIELLO:

22 Q Now you also testified that Roy Comstock bragged that he'd
23 been in that panel more times than he could remember?

24 A That is correct.

25 Q Correct. Now, if that was -- and you said you rolled your

1 eyes?

2 A Oh, yeah. This is just a typical maintenance man trying to be
3 cool amongst the electricians.

4 Q Right. And the maintenance man, and you're the master
5 electrician, and it's not really his field, right?

6 A Correct.

7 Q Okay. So anyway, if he said that to you, right, wouldn't you
8 think he'd be -- wouldn't you be a little bit more careful when you went
9 into that panel? Wouldn't you have some apprehension about going into
10 that panel, if Mr. Roy, or somebody who's not qualified said, "I've been
11 in it so many times"?

12 A Well, yeah. I mean, yeah, we have a apprehension going into
13 any energized panel, that's why we wore PPE; that's required for the
14 voltage, and that's why we check around the energized components.

15 Q Sure. Now, you also testified that there was no labeling?

16 A Correct.

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

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

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

1 A Evidence in this case, yes.

2 Q But what's that?

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

5 Q Well, Roy will testify, so we'll see what he says --

6 A Oh, yeah, we will.

7 Q -- about that. Well, let me ask you, how did you know the
8 price of the breaker? You said it was a thousand bucks, how do you
9 know, that?

10 A A fair -- a fairly standard frame, breaker size; that breaker's
11 around a thousand bucks.

12 Q Okay. Did you question at all -- well, who gave you the
13 breaker?

14 A Roy.

15 Q Okay. Did you question him at all, on how he got apparently
16 the correct breaker?

17 A No.

18 Q Okay. Why not?

19 A He just -- it was a customer supplied breaker and we gave
20 him a price to install it, that was it.

21 Q You said that you work with Industrial Light and Power,
22 correct?

23 A Correct.

24 Q Now that is a business started by your father-in-law?

25 A Correct.

1 Q Is your father -- and you said father-in-law is a hundred
2 percent owner?

3 A He is.

4 Q What part did you play in that business?

5 A I'm a senior project manager, right now.

6 Q Okay. So would you be an employee?

7 A I'm an employee.

8 Q You always have been an employee?

9 A Always have been an employee.

10 Q Okay. You don't own any part of the business at all?

11 A I own no part of the business.

12 Q Okay. When you were working in the field as a master
13 electrician you were being paid how much?

14 A About \$73 an hour, I believe, somewhere around there.

15 Q Who was paying you that?

16 A Industrial Light and Power.

17 Q Okay. And then after you had your -- after you had this
18 incident --

19 A Twenty-five dollars an hour.

20 Q Okay. I was about to ask you that.

21 A Okay. I'm sorry, I didn't --

22 Q That's right. I'm not trying to be hostile here.

23 A Okay. No, I'm not trying to be either.

24 Q All right. Okay. So then you went down to \$25 an hour.

25 A That's correct, sir.

1 Q So essentially your father-in-law demoted you?

2 A He absolutely did.

3 Q Okay. And did you have any, you know, qualms about that?

4 A I mean, no, he was faced with the -- with the choice of
5 shutting down the company, or continuing on to be in a lower role, and
6 you can ask him tomorrow when he does his testimony.

7 Q Right.

8 A But, no. He -- he did it, and that was it.

9 Q Okay. Now at the time, were you the only -- well, it was you
10 and -- it was you and Jeff, were you and Jeff the only electricians?

11 A Licensed electricians?

12 Q Yes.

13 A At that time, yes.

14 Q Yeah. Okay.

15 A Yes.

16 Q And then would you have some apprentices?

17 A Yes.

18 Q And those are the other two guys who were on the --

19 A Yes.

20 Q -- job site?

21 A Uh-huh.

22 Q You know what, do me a favor? Let me finish my question
23 before you --

24 A I'm sorry.

25 Q -- respond.

1 A I'm sorry. I'm sorry, right.

2 Q Because what you're doing is, you're jumping in, and she has

3 to take everything down.

4 A Okay. I'm sorry.

5 Q And she's going to yell at us.

6 A Right.

7 Q Okay. All right. So Jason and I forgot his last name --

8 A Robert --

9 Q -- Jason what?

10 A Jason Farris --

11 Q Jason.

12 A -- and Robert Cory, yes.

13 Q And Jason Farris. When you two were working in the room,

14 was Jason Farris supposed to be outside the room?

15 A Yeah, he -- yeah. Well, Robert Cory was outside the room

16 basically the entire time.

17 Q Uh-huh.

18 A Jason was going back and forth inside and outside, but he

19 was -- he happened to be outside the room, right when the explosion

20 happened, and he's the one that actually called 911 for us.

21 Q Okay. And where was Robert?

22 A Outside. Outside the room.

23 Q So both of them were out there?

24 A Yes.

25 Q Okay. And did you know if they witnessed anything?

1 A Jason witnessed the bright light and the flash, and heard the
2 explosion himself, so --

3 Q Okay. Now after the incident, you started to go to some
4 physicians, correct?

5 A Correct.

6 Q And you went to doctor -- Dr. Craig, you said was your PCP?

7 A He was, yes, sir.

8 Q Okay. I'll just look at his records. It's Dr. Patti. Dr. Craig, is
9 Reflections Healthcare, right?

10 A Correct.

11 Q For '16. How long have you been seeing Dr. Craig?

12 A 2015, '16. I don't exactly recall the start date with my
13 treatments with him, or when he started to be my PCP, up until the date
14 of his death. Well --

15 Q Which is --

16 A -- a little before -- it was September of last year. Well, a little
17 bit before that, because he was in the hospital with COVID.

18 Q Now Dr. Craig was the one that I guess diagnosed you with
19 mood disorder?

20 A He did, yes, sir.

21 Q Okay. And he's the one who gave you the Depakote? He did,
22 yes, sir.

23 A Okay.

24 Q And that was in 2016?

25 A I believe so, yes.

1 Q Okay. And at the time when you were treating with Dr. Craig,
2 did you ever tell him that your medication was working, you don't have
3 depression, medication successful?

4 A Not that I recall,

5 Q No.

6 Okay. I'm going to show you some photographs that were
7 taken, and this is going to be Exhibit 225.

8 A In -- oh, in the black book?

9 Q In the black book.

10 A I'm sorry. Okay. I've got it.

11 BY MR. GIOVANNIELLO:

12 Q You shared this first photograph? It looks like it was taken
13 November 7, 2014, Rotary Club?

14 A Yes, sir.

15 Q Okay. And is that you in the photograph?

16 A That is me.

17 Q And is that your wife in the photograph?

18 A That is.

19 Q Okay. And is that you smiling in the photograph?

20 A Smirking? Yes.

21 Q Smirking?

22 A Yes.

23 Q Okay.

24 THE COURT: Just so we're clear here, 225 is in by stipulation
25 or agreement, correct?

1 MR. A. GIOVANNIELLO: Sorry, Your Honor. I'm offering 225
2 as evidence.

3 THE COURT: 225 is admitted.

4 [Defendants' Exhibit 225 admitted into evidence]

5 MR. A. GIOVANNIELLO: And it's 225? Yes. Just 225. Okay.
6 And I believe 226 is okay, as well.

7 THE COURT: 226 is offered, any objection?

8 MR. KUDLER: Your Honor, just making things simpler, 26,
9 27, 28 were the ones that are subject to the prior order and are already
10 in.

11 THE COURT: Then they are admitted by prior order?

12 [Defendants' Exhibit 226 to 228 admitted into evidence]

13 BY MR. GIOVANNIELLO:

14 Q Okay. And this is you in the photograph, as well, right?

15 A It is correct.

16 Q I'm going to assume the lady kissing you, is your wife?

17 A You would be correct.

18 Q Okay. Otherwise I think you'd be in big trouble?

19 A I definitely would, yes.

20 Q And that's taken on a beach somewhere?

21 A Yes. I don't know what year this is. I mean, I look thinner,
22 but I don't know, I can't tell what year it is.

23 Q Okay. You don't know whether that's after 2014?

24 A Honestly, I don't know.

25 MR. A. GIOVANNIELLO: Okay. I'm going to offer that into

1 evidence, Your Honor. I think I already did.

2 THE COURT: They're all in.

3 BY MR. A. GIOVANNIELLO:

4 Q I'm showing you another picture. This is 227, offered it into
5 evidence. You're sort of on the side of that. Is that you, can you identify
6 yourself?

7 A That is me, on the right hand side, yes.

8 Q Right. And that's you clapping?

9 A Yes.

10 Q Okay. And is that your wife?

11 A That is, yes.

12 Q Is this taken at the Rotary Club?

13 A I believe it is, yes.

14 Q Okay. This is one of the events you talked about on direct?

15 A Yes, it is.

16 Q Okay. Thank you. Finally, I'll show you the last picture. This
17 is Exhibit 228.

18 A Yes, sir.

19 Q Now to me, this looks like you all the way at the end?

20 A That is me all the way at the end, on the right hand side of
21 the table. Yes, sir.

22 Q And that's your wife there too?

23 A That is correct, sir.

24 Q Okay. And that's also at the Rotary Club?

25 A That is a Rotary Club event? Yes, sir.

1 Q Okay. And that's after 2014?

2 A Yes. It is.

3 Q Okay. And you know the guy right over here up front, looks
4 like an actor?

5 A Right in the very front?

6 Q Yeah.

7 A Oh, he would be pleased, you said that.

8 Q He would be pleased?

9 A He would be pleased. Yes.

10 Q I forgot the name of the actor, but I know who it is. As far as
11 the PPE you were wearing, that you testified to?

12 A Yes.

13 Q The shirt was short-sleeved, correct?

14 A Correct.

15 Q Okay. Should you have been wearing long sleeves?

16 A It depends on the CAL rating of the of the -- of the panel
17 you're working on, but, yes. If it's -- if it's above calorie, which is how
18 they count thermal units for the PPE ratings --

19 Q Uh-huh.

20 A -- you would wear a long sleeve; you would sometimes wear
21 a full arc hood. Sometimes -- it just all depends on -- on the available
22 fault current.

23 Q Okay. Now, as far as the physician is concerned, Jeff Myers
24 was the one who was in front of the panel, right, with the impact?

25 A Correct.

1 Q Okay. Did you -- and he was actually putting in the third
2 screw when the flash happened?

3 A Correct.

4 Q Okay. Was there any markings on that impact driver at all?

5 A No.

6 Q Should there have been, if he was the -- if he was right there
7 when it happened?

8 A No.

9 Q Why not?

10 A Because he moved out -- he had it in his hand, and he moved
11 out of the way. I mean, it didn't burn anything, like didn't burn the tool,
12 you know? There was no arcs to the tool.

13 Q Okay. You were showed some pictures and you also, I think,
14 testified that some of the rods were molded together?

15 A The fingers that hold --

16 Q Yeah, the fingers.

17 A -- the breakers are actually -- are actually welded to the actual
18 tab of the breaker, yes, sir.

19 Q Okay. Did you take a picture of that?

20 A I believe there's pictures of that, yes.

21 Q And haven't been produced here yet, no, right?

22 A I've provided them. I don't know.

23 Q Okay. But none were shown to you yet.

24 A No, no. None of them was shown to me yet.

25 Q Okay. Just want to look at some records here. Hold on one

1 second.

2 A Yes, sir.

3 Q Do you recall -- you said you saw Dr. Craig up until 2021,
4 right?

5 A Correct.

6 Q Okay. Did you ever tell Dr. Craig that you were not having
7 any delusions, hallucinations?

8 A I don't think I've ever had any hallucinations.

9 Q No? What about delusional thoughts, or compulsive
10 behavior?

11 A Compulsive behavior, I've had more recently, yes.

12 Q More recently, okay. Did you ever tell Dr. Craig that you did
13 not have any compulsive behavior?

14 A Not that I recall.

15 Q Okay. Now, as far as you said you were having nightmares
16 at night?

17 A Yes.

18 Q Do you have them every single night?

19 A No. Multiple times a week.

20 Q Just multiple times a week? And it's always sort of the same
21 nightmare, but a little variation of the sort?

22 A Variation of the same thing.

23 Q Okay. When did that start?

24 A It started in early to mid-2015, and I just kind of buried it, was
25 embarrassed about it, like I'd testified to earlier in direct.

1 Q Sure.

2 A And, so it was 2015, early to mid.

3 Q Okay, but you didn't -- you didn't tell any -- you were seeing
4 a lot of physicians at the time. Did you tell that to any of the physicians
5 that you saw?

6 A No.

7 Q In 2015?

8 A Not until I started talking about the mood disorder with Dr.
9 Craig in 2016.

10 Q Excuse me a minute, I'll get some water.

11 A That's fine.

12 Q I'm doing a lot of talking [indiscernible]. Okay. You waited
13 until 2016 because you were embarrassed?

14 A Yeah, I was -- yeah. I've never been around anybody that's
15 been to war, that's had PTSD. I always heard it. Vietnam, that kind of
16 thing. Didn't really relate PTSD to being involved in an explosion, so I
17 just didn't -- it never even crossed my mind. The nightmares, I thought,
18 was just something I was telling myself, I got to get over this, I got to get
19 past this. But now, of course, I've learned through mental health
20 professionals, that's not exactly what happens.

21 Q Now, you said your income, and we've looked at that,
22 decreased.

23 A Yes, sir.

24 Q From 2014 to 2015?

25 A Yes.

1 Q Is that because you were not being paid by the hour?

2 A Oh, no. I was being paid by the hour.

3 Q Okay. And that's when you were making \$25 an hour.

4 A No, that's when I was making \$73 an hour.

5 Q In 2015?

6 A No, in 2014 --

7 Q Yeah, I know that.

8 A It reduced down, but I was working less hours because of

9 this injury.

10 Q Okay, let me just get this straight so I understand it. In 2014,

11 you were still out there working as a master electrician, correct?

12 A Correct.

13 Q Making \$75 an hour.

14 A 73 something an hour, yes, sir.

15 Q Something like that.

16 A Yeah.

17 Q Okay, that's fine. And then, in 2015, you had a marked drop

18 in your income.

19 A Yes.

20 Q Okay. Why was that?

21 A Less hours worked.

22 Q Less hours worked?

23 A Yes.

24 Q But you were still working as a master electrician?

25 A I was still trying to in the field, yes. But working less because

1 I couldn't do as much.

2 Q Okay. Are you right-handed?

3 A Yes, I am.

4 Q Okay. Were you working in the office at the time?

5 A Yes and no. I mean, yes.

6 Q Yeah, we -- then --

7 A Not -- not -- not to the capacity that I am now.

8 Q No. Now you're completely in the office.

9 A Now I'm completely in the office.

10 Q Yeah, okay. So at the time, though, you still working outside
11 of the -- as an electrician, you were working a little bit in the office?

12 A Just a little bit in the office, just still working outside as an
13 electrician, but with limited hours.

14 Q Okay. Any reason why you were not being compensated by
15 your father-in-law for working in the office at that time, in 2015?

16 A That was all just part of, you know, doing the day-to-day stuff
17 of the business, you know? Have to -- someone has to order materials
18 and that kind of thing, and, you know, I was the guy running the job, so
19 I'm the guy goes back to the office, gets on the email, and orders
20 materials.

21 Q Okay.

22 A Pretty standard part of an electrician's job.

23 Q Okay. But, that still is an administrative function.

24 A Yes. I was being --

25 Q And what --

1 A -- paid for it. That was all -- that's all included in my hourly
2 wage. I was -- not like I just did that for free. That was still part of my
3 hourly wage.

4 Q Okay, but he reduced your hourly wage from 70-something
5 to 25.

6 A Correct.

7 Q Even though you were still doing that same function in the
8 office?

9 A He reduced it down to 25 when I decided I could not work in
10 the field any longer in any capacity.

11 Q Wasn't that in 2015?

12 A That was in 2016.

13 Q 2016.

14 A I believe, yes.

15 Q Okay. And now you're making \$52,000 a year?

16 A Correct.

17 Q Okay. Do you have any income from any other source?

18 A I do not.

19 Q And --

20 A Well, COVID relief, I mean, you know, that's the only thing
21 that I've received, like everybody else, you know, just the stimulus, you
22 know?

23 Q Whatever that stimulus package was --

24 A Yeah, yeah, yeah, yes.

25 Q -- you got from the government?

1 A Yes.

2 Q Okay. Hold on one second. They've also had some other
3 issues, too, other than, I guess, other medical issues, other than what
4 we've discussed, right? Like, you broke your arm?

5 A I broke my wrist.

6 Q You broke your wrist. Okay.

7 A Broke my right wrist, yes.

8 Q You break your finger, too?

9 A No.

10 Q Oh, you didn't have a finger fracture?

11 A Oh, I -- yeah, oh, yeah, actually the tip of one finger, yes.

12 Q Okay.

13 A But that was not -- it was nothing that I had treated for
14 anything other than I had a suture on a -- on the side of my finger.

15 Q Okay. How did that happen?

16 A Working on a -- on something at the house. Piece of metal
17 landed on the tip of my finger.

18 Q Okay. And then how did you fracture your wrist?

19 A Stepping off the bottom rung of a ladder at my house. I just
20 stepped down, rolled my ankle, and went right down onto my right wrist.
21 Tried to grab onto the ladder, couldn't do it, and went right down on my
22 right wrist, and just did a complete dislocation and fracture. My wrist
23 was like an inch this way. It was disgusting.

24 Q And you're not claiming that as part of the damage in this
25 case, right?

1 A No, sir.

2 Q Okay. Same thing with the finger?

3 A Yes. Oh, yes. Yeah, yeah, no. Yeah.

4 Q Okay. And then I think you've rolled your ankle a couple

5 times?

6 A Yes. Yes, sir.

7 Q Not claiming that either?

8 A No, sir.

9 Q Okay. All right. I think I'm just about done. Hold on one

10 second. One second, let me just --

11 A Sure.

12 Q I kind of did some checking on you. Did you used to go by a

13 different name?

14 A Yes.

15 Q Andrew James Hensley [phonetic]?

16 A Yes.

17 Q That was you?

18 A That was disclosed in my interrogatory, yes, sir.

19 Q Okay. Is that your given name?

20 A That's my given name, yes.

21 Q Okay. And then you changed it?

22 A Yes, sir.

23 Q Any reason?

24 A I was always known by Andy James. That was just my

25 middle name. And then when our daughter was born, we actually

1 named her Indiana Elizabeth James. So, we -- we just preferred that last
2 name, so we legally had it changed. My wife had her name legally
3 changed last name to James. I had mine legally changed last name to
4 James. My daughter's birth certificate from birth was last name was
5 James.

6 Q Okay. All right. Mr. James, I think I'm done. Thank you so
7 much.

8 A Thank you, sir.

9 THE COURT: Redirect?

10 MR. KUDLER: Yes, Your Honor. I want you to look at 238-6
11 in the black book.

12 MR. A. GIOVANNIELLO: What are you looking at? 238?

13 MR. KUDLER: 238, yeah.

14 THE WITNESS: Okay. Yes, sir.

15 REDIRECT EXAMINATION

16 BY MR. KUDLER:

17 Q You remember yesterday when Mr. Gifford was being
18 questioned?

19 A Yes.

20 Q Okay. And you remember he was asked about the part
21 where it says "This time, Jeff's face was black. I had a large flap of skin
22 hanging on my left elbow. Jeff was in the corner of the room. His face
23 was blackened by the explosion. We did not have any idea at the time
24 what exactly happened."

25 A Yes.

1 Q You remember Defense counsel reading that?

2 A Yes. Yes, sir.

3 Q You remember me trying to read the rest of it in?

4 A Yes.

5 Q And was I allowed to do that?

6 A No.

7 Q Okay. The -- what -- the Judge upheld objections that I can't
8 ask you about that stuff, because it's hearsay?

9 A Yes.

10 Q Okay. Did I ask you, you know, what prompted your
11 investigation?

12 A Yes.

13 Q No. Did I ask you to tell the jury what prompted your
14 investigation?

15 A Oh, no. No.

16 Q Okay. And if I had asked you what prompted, you would
17 have given that description?

18 MR. A. GIOVANNIELLO: Well, objection.

19 THE COURT: What's the basis?

20 MR. A. GIOVANNIELLO: Well, one of the basis is leading.

21 THE COURT: It's foundational. I'll rule on that -- on leading.
22 So, overruled. Counsel, you can ask the question.

23 BY MR. KUDLER:

24 Q Thank you. And so were you -- is it listed in your actual
25 investigation as compared to what prompted it?

1 A No.

2 Q Okay. Just want to make sure I -- the jury is clear. When you
3 had the incident with the ladder, where you're twisted your ankle, or
4 your ankle rolled, and you broke your wrist. Which wrist was it?

5 A It was my right wrist.

6 Q Okay. Was your left hand injured at all in that incident?

7 A It had already been injured in this arc flash incident, but it
8 didn't get injured further in that incident, no.

9 Q Okay. It was strictly your right wrist, not your left arm?

10 A Correct.

11 Q Okay. The ladder that's in the photograph that you were
12 shown --

13 A Uh-huh.

14 Q Was that in the room the night of the explosion?

15 A No.

16 Q Okay. That picture showed a lot of wires out.

17 A Uh-huh.

18 Q Was that picture taken prior to the explosion?

19 A I believe it was, because that was when we were still -- we
20 were still changing out panels. You could tell in that picture that the
21 conduit is not even ran for the ATS switches that are in the back of the
22 room, and it's -- it's still underway. Construction's still underway.

23 Q Okay.

24 A And there is an access door in the ceiling of that room that
25 goes into the attic, that Roy goes into quite often, and that's why that

1 ladder was there. That ladder's directly underneath the access door that
2 goes up through the attic.

3 Q Did you guys use that ladder in your job?

4 A No, we don't use aluminum ladders at all.

5 Q Because?

6 A They conduct electricity.

7 Q Okay. When you got the panel open, before you installed the
8 new breaker, did you verify that it was the correct replacement?

9 A Yes.

10 Q Okay. And how did you verify that?

11 A Visually.

12 Q Why do you prefer the name Andy James as opposed to
13 Andy or Andrew Hensley?

14 A I just think it sounds better. I mean, I -- you know, I was
15 younger, too, you know. It was one of those things. Age. You know? I
16 was -- 20 some years ago, you know? So, it was just one of those things
17 where I thought it sounded cooler, and that. Silly, I know.

18 Q The photograph that's in the black book, 225?

19 A Yes, sir.

20 Q Okay. What are you doing with your arms?

21 A I'm actually holding my left arm.

22 Q Okay. Why?

23 A Because it hurts.

24 Q Okay, thank you.

25 MR. KUDLER: That's all I have, Your Honor.

1 THE COURT: Recross?

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

3 THE COURT: Anything else for this witness?

4 [Sidebar begins at 4:05 p.m.]

5 THE COURT: Don't trip. I'm going to take my glasses off so I

6 can read these. Both factual. Any objection?

7 MR. A. GIOVANNIELLO: No.

8 THE COURT: Okay. Next one appears factual. And no

9 objections?

10 MR. A. GIOVANNIELLO: Hang on, so I can read it.

11 MR. KUDLER: I'm sorry.

12 THE COURT: [Indiscernible] 10, same direction.

13 MR. A. GIOVANNIELLO: I'm okay with it if you are.

14 MR. KUDLER: I don't think they -- union is.

15 MR. A. GIOVANNIELLO: I don't do that.

16 MR. KUDLER: Well --

17 THE COURT: Your objection [indiscernible].

18 MR. A. GIOVANNIELLO: I agree with that -- him, not to use

19 that.

20 THE COURT: Oh, okay.

21 MR. A. GIOVANNIELLO: We just both agreed.

22 THE COURT: Okay. Good to know. 13. That one, please.

23 MR. A. GIOVANNIELLO: I'm okay with that, too.

24 MR. KUDLER: Good?

25 MR. A. GIOVANNIELLO: You're good? It's amazing we agree

1 sometimes.

2 THE COURT: You guys are just trying to an answer, I know.
3 That question, I think, factual.

4 MR. A. GIOVANNIELLO: Yeah, I'm fine with that, too.

5 THE COURT: Good?

6 MR. A. GIOVANNIELLO: I should have asked some of these.

7 THE COURT: This one works, too, I think. Unless you guys
8 can change my mind. This is duplicative of the others.

9 MR. A. GIOVANNIELLO: I'm okay with this. You okay with
10 this?

11 MR. KUDLER: Yeah.

12 THE COURT: This one, I think.

13 MR. A. GIOVANNIELLO: All right, that's fine. I'm just
14 thinking about it.

15 THE COURT: This one, I'm thinking we already got in
16 another questions.

17 MR. KUDLER: Yeah, he's already answered that one.

18 MR. A. GIOVANNIELLO: He's answered that, yeah.

19 THE COURT: Yeah. So we're just going to -- not going to ask
20 that again, because it's already asked and answered. And, okay. All --
21 they all appear to be factual.

22 MR. KUDLER: Yeah, I mean other than one was a repeat of
23 another, so you don't ask the same question.

24 THE COURT: Which one?

25 MR. KUDLER: Number 3 is a repeat of it.

1 MR. A. GIOVANNIELLO: Yeah, it is.
2 MR. KUDLER: It's the same as [indiscernible].
3 THE COURT: It was?
4 MR. KUDLER: Yeah.
5 THE COURT: So I just marked out --
6 MR. KUDLER: Just number 3.
7 THE COURT: I just marked out number 3, because we don't
8 need to do it twice.
9 MR. KUDLER: Right.
10 THE COURT: But the balance, no objection?
11 MR. A. GIOVANNIELLO: No objection.
12 MR. KUDLER: I just wanted to see the Court -- I just wanted
13 the Court --
14 THE COURT: No, I appreciate that catch.
15 MR. A. GIOVANNIELLO: Did you see 4?
16 MR. KUDLER: I'm fine.
17 MR. A. GIOVANNIELLO: Do you want to look at it?
18 MR. KUDLER: No.
19 THE COURT: What's wrong?
20 MR. KUDLER: I just wanted to see 4 real quick.
21 THE COURT: 4, I'm sorry.
22 MR. KUDLER: Yeah, I got to 3 and stopped.
23 THE COURT: You got it.
24 MR. KUDLER: Okay.
25 THE COURT: What kind of direction are you taking with? I

1 don't know about it.

2 MR. KUDLER: Yeah, you assume a risk part.

3 MR. A. GIOVANNIELLO: I mean, I like it, but I don't think he
4 would do.

5 THE COURT: Which part?

6 MR. A. GIOVANNIELLO: The assumption of the risk.

7 MR. KUDLER: We don't object to [indiscernible]. Just want
8 to take a look. I just got the first part.

9 MR. A. GIOVANNIELLO: I might want to object to that.

10 THE COURT: Andrew, is it a conflict of the law?

11 MR. A. GIOVANNIELLO: Yeah.

12 MR. KUDLER: Yeah, I mean, the first part is fine. The second
13 part isn't.

14 THE COURT: So, if I edit just the first -- I stop here?

15 MR. KUDLER: Yeah.

16 THE COURT: And not do two?

17 MR. KUDLER: Right.

18 MR. A. GIOVANNIELLO: I -- yeah. I agree with that.

19 THE COURT: Okay, so no two, just one.

20 MR. A. GIOVANNIELLO: Yeah.

21 THE COURT: Because the other part arguably question of
22 law.

23 MR. A. GIOVANNIELLO: Yes.

24 THE COURT: Okay. All right.

25 MR. KUDLER: Thank you.

1 [Sidebar ends at 4:10 p.m.]

2 THE COURT: When was the original electrical inspection
3 done to identify the breaker at issue? Strike that. Let me try this again.
4 When was the original electrical inspection done to identify the breaker
5 was an issue, open paren, for change order, close paren?

6 THE WITNESS: I'm not sure exactly. We were approached
7 by College Park to change a breaker on a change order basis. I can't
8 remember the exact date of that change order, but it was brought to our
9 attention there was a problem with the kitchen panel. We knew what it
10 was from Roy. He had already bought the breaker, and we went there
11 that night to replace it, so I'm not exactly sure, if I understand the
12 question fully, but it's -- that's to the best of my recollection, that's all I
13 can tell you, is that it was done on a change order basis for the scope of
14 the job, probably sometime in May of 2014.

15 THE COURT: Juror question number 2. I heard the fire
16 department found screws atop the box that night shortly after incident,
17 period. You said you went back June 7th, 2014 to look at the panel. You
18 found one screw, an outline of another screw. Why would fire
19 department leave them there the night before, if you know?

20 THE WITNESS: I do not know. They saw it, they identified it,
21 they agreed with the other two electricians, so their two guys that were
22 there, that thought that that -- there was a screw laying in the shadow of
23 the dust, and that more than likely that screw fell, and they did not touch
24 the screw that had been -- that remained.

25 THE COURT: The day of the event, how many hours did you

1 -- did both you and Jeff work, question mark?

2 THE WITNESS: We worked that afternoon at the facility and
3 left and came back around 9:00 that night.

4 THE COURT: Did you provide the breaker spec to College
5 Park for purchase, question mark?

6 THE WITNESS: No, we did not.

7 THE COURT: Would the blast be strong enough to shake or
8 dislodge screws on the buffer?

9 THE WITNESS: Potentially, yes.

10 THE COURT: When working on electrical panels, do
11 electricians normally ask to see past maintenance records prior to
12 conducting work on panels?

13 THE WITNESS: No, they do not.

14 THE COURT: Was anyone else with you when you went back
15 to the panel the next day and found the screw and outline of the screw in
16 the dust at the top of the bus?

17 THE WITNESS: Yes, employee Jason Farris was with me.

18 THE COURT: Were any photos taken to confirm findings?

19 THE WITNESS: Yes, those photos are in evidence that we've
20 seen.

21 THE COURT: Would it have been typical to do this type of
22 inspection prior to doing the work to identify any risks?

23 THE WITNESS: The energized bus area was inspected when
24 the panel board was open, and that's the standard process. You don't
25 go, you know, seven feet above the panel to look for screws because

1 screws shouldn't be there, especially in a healthcare facility that has such
2 stringent codes for inspection and maintenance. So, no, that's not
3 something that would normally be done.

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

6 THE WITNESS: So, as I was explaining earlier, so the main
7 breaker in this panel is a -- is -- I'm just going to go into a little bit of geek
8 talk, but it's a Westinghouse Celtronic 1600AT, and it is a manual trip
9 breaker, meaning you can manually turn it on, you can manually turn it
10 off. But there's some breakers, and I'm not sure if this breaker has this
11 feature or not, because it all depends on the trip plug that's in it, if it has
12 a push button to actually test the breaker to see if it'll trip.

13 The reason why they do that is because it takes -- it takes a
14 lot of pressure to actually turn that breaker off. It's much easier to push
15 a button and have the breaker automatically trip to the off position. If
16 you do that, you interrupt power to the building. We were specifically
17 told not to do that. So that's why we didn't do it. Does that answer the
18 question? You could re-read that question for me.

19 THE COURT: Can you hand that one back, please?

20 THE WITNESS: I'm sorry.

21 THE COURT: The witness is requesting a re-read.

22 THE WITNESS: I just want to make sure that I answered it.

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

25 THE WITNESS: So the only real way to test a breaker is to do

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

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

20 MR. A. GIOVANNIELLO: Your Honor, I'm going to object.
21 Move to strike. It's speculation.

22 THE COURT: Overruled. Next question. Since you hold all
23 of this up, all of the licensing, do you not receive additional
24 compensation for being a quote, qualified employee, end quote, for ILP?

25 THE WITNESS: I do not.

1 THE COURT: You testified that you were -- there were no arc
2 flash labels on the equipment indicating a safe PPE level. Given this,
3 wouldn't it have been prudent to wear long-sleeved, fire-retardant shirts,
4 balaclavas, and face shields for working on energized electrical
5 equipment regardless of the voltage level?

6 THE WITNESS: No. Balaclavas, face shields, that kind of
7 thing are only required above a certain voltage. There's been many
8 white papers written on it. There's -- arc flashes below 240 volts are
9 extremely rare, based on the fact the main breaker's supposed to trip,
10 and eliminate the arc flash. The higher the voltage, the greater the
11 incident energy, even if the breaker trips quick, the plasma ball could
12 have already started, because the voltage is higher. And even with the
13 power turned off, the plasma ball can -- can actually continue, because
14 it's burning up material as it develops.

15 On a 120/208 panel, we were wearing exactly the PPE we
16 were supposed to be wearing. Wearing a balaclava and wearing a full
17 face shield, and wearing long-sleeved shirts is not required under the
18 NFPA, under OSHA, under the NEC, or any other safety regulation that's
19 published, and we were wearing exactly what we were supposed to be
20 wearing for the voltage level.

21 THE COURT: Would it be reasonable to assume that the burn
22 injuries could have been reduced or prevented had you been wearing a
23 long-sleeved, fire-retardant shirt?

24 THE WITNESS: It's possible. It's absolutely possible, but
25 again, not required.

1 THE COURT: Any additional questions from the jury as a
2 consequence to these questions asked and answered by the witness?
3 Seeing no hands, follow-up jury questions, Plaintiff?

4 MR. KUDLER: Thank you, Your Honor.

5 FURTHER REDIRECT EXAMINATION

6 BY MR. KUDLER:

7 Q Prior to going there that night, prior to doing the change
8 order, did you or anybody at ILP determine the cause of the issue with
9 the kitchen power?

10 A No.

11 Q Okay. You were told what the cause was?

12 A Yes.

13 Q Okay. And who told you what the cause was?

14 A Roy Comstock.

15 Q Okay. And he told you the cause was?

16 A That there was a burn conductor on that breaker. That
17 breaker needed to be replaced, and he had the breaker.

18 Q Could there be another place that would be causing similar
19 problems, other than that breaker?

20 A It could have been on the kitchen side, because then, you
21 know, on the -- in -- it could have a lug in the kitchen panel, but he
22 seemed to know exactly where the issue was.

23 Q And the change order and request were to change the
24 breaker, not to inspect or examine or --

25 A No, it was strictly a change order, just to install breaker. We

1 do them all the time.

2 Q Okay. But that you were not asked to diagnose the issue?

3 A No.

4 Q Okay. You were told what the issue was.

5 A Correct.

6 Q And then once you opened the box, did that confirm?

7 A Yes.

8 Q What you were told?

9 A Yes, it did. Sorry.

10 Q Thank you.

11 A Yes, sir.

12 THE COURT: Follow-up jury questions to those? None?

13 MR. A. GIOVANNIELLO: None, Your Honor.

14 THE COURT: Please step down.

15 THE WITNESS: Thank you, sir.

16 THE COURT: Parties approach.

17 [Sidebar begins at 4:19 p.m.]

18 THE COURT: Do you think -- is there anything else we can do
19 in the next 40 minutes? All right, so we take our evening recess? We're
20 looking at the follow-up for the RN tomorrow morning at 9, and then
21 what?

22 MR. KUDLER: Douglas Smith in the morning, then we can
23 work on jury instruction in limine two in the afternoon.

24 THE COURT: Okay.

25 MR. KUDLER: One and three.

1 THE COURT: So, you'd need to get a couple hours in the
2 morning, and then extended lunch break, and then back. When do you
3 have your afternoon witnesses lined up for?

4 MR. KUDLER: One and three.

5 THE COURT: One and three.

6 MR. KUDLER: Or one and two, actually.

7 THE COURT: One and two.

8 MR. A. GIOVANNIELLO: If his options don't show up, I'm
9 going to have Roy Comstock come in.

10 THE COURT: Tomorrow afternoon?

11 MR. A. GIOVANNIELLO: Yeah, just in case.

12 THE COURT: That's fine.

13 MR. A. GIOVANNIELLO: I mean, if he doesn't get on it
14 tonight.

15 THE COURT: All right. I'll just tell them that they're going to
16 get an extended lunch, however, tomorrow, so if they want to make -- I
17 don't know, reservations somewhere.

18 MR. A. GIOVANNIELLO: That's funny.

19 MR. KUDLER: Thank you, Your Honor.

20 THE COURT: Thank you.

21 [Sidebar ends at 4:20 p.m.]

22 THE COURT: All right, ladies and gentlemen, we're going to
23 take our evening recess at this time.

24 During this recess, you must not discuss or communicate
25 with any individual -- anybody, including fellow jurors, in any way

1 regarding this case or its merits by voicemail, phone, text, internet, other
2 means of communication or social media. You may not read, watch,
3 listen to any reports and/or commentary on the trial. You may not do
4 any individual research, consult dictionaries, use the internet regarding
5 this case. Use reference materials, investigation, or test theories
6 recreate any aspect of the case, or in any way investigate the case on
7 your own, or form or express any opinions on the case until it's finally
8 submitted to you.

9 Now, we're going to do a 9:00 call for tomorrow. The
10 witnesses -- you know why we're doing 9:00 or who we anticipate, or
11 who they anticipate having first. It's represented to me that in terms of
12 scheduling, you're probably going to have an extended lunch, so it's
13 probably going to be a few hours instead of an hour and 15 minutes, so
14 if you want to bring work or something to fill that time so it's not just
15 dead time for you, I'd suggest that would be a very good idea. Then
16 we'll pick up in the afternoon with the witnesses that remain. Have a
17 good evening.

18 THE MARSHAL: Stand for the jury.

19 [Jury out at 4:22 p.m.]

20 [Outside the presence of the jury]

21 THE COURT: All right. Record should reflect we're outside
22 the presence of the jury. Any additional record need be made by either
23 side as a function of witness examination this afternoon, Plaintiff?

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

25 THE COURT: Defense?

1 MR. A. GIOVANNIELLO: No, no, thank you, Your Honor.

2 THE COURT: All right, good. I have been doing a little work
3 towards answering questions in my own mind regarding how I'm going
4 to instruct the jury. There was efforts made early in the discussion on
5 those OSHA regs that are already matter of component of evidence that
6 come in, been read, but they're also physically in evidence.

7 There's not a heck of a lot of authority I cannot find on
8 whether an OSHA -- other courts across the country have reduced a
9 OSHA reg to a specific instruction. There's discussion out of Colorado
10 that talks about OSHA in context of an independent cause of action
11 under negligence per se, and they said no. But I can't find any authority
12 where I'm turning that instruction -- that reg into an instruction.

13 So, I don't remember which of you was wanting it, but at this
14 point, I'm headed -- it's a component of evidence, and it's arguably in
15 evidence, and as a consequence you're able to argue that regulation, but
16 in terms of an actual instruction that identifies it uniquely as a point of
17 law on -- you're going to have to do better. And I've looked around, but
18 at this point, I'm not finding anything that pushes me that direction. And
19 I just wanted to -- whoever it was, I wanted to give you a heads up.

20 MR. A. GIOVANNIELLO: That was me. Okay.

21 THE COURT: All right.

22 MR. A. GIOVANNIELLO: I'll see if I can find some authority.

23 /////

24 /////

25 /////


1 THE COURT: Have a good evening. We'll see you tomorrow
2 morning at 9 a.m.

3 MR. A. GIOVANNIELLO: See you 9 a.m.

4 THE MARSHAL: Court's adjourned.

5 [Proceedings concluded at 4:24 p.m.]
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio-visual recording of the proceeding in the above entitled case to the
23 best of my ability.

24 

25 Maukele Transcribers, LLC

Jessica B. Cahill, Transcriber, CER/CET-708