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Feb 10 2023 08:42 AM
Elizabeth A. Brown
Clerk of Supreme Court

Appellants,

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

Respondents.

Appeal from the Eighth Judicial District Court for Clark County
District Court Case No. A-16-735550-C
(Honorable Mark Gibbons)

Nevada Bar No.: 5041
CAP & KUDLER
3202 West Charleston Blvd.
Las Vegas, NV 89102
(702) 878-8778
Counsel for Appellants
Jeffrey A. Myers and Andrew James

APPELLANTS' APPENDIX
VOLUME 8
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]		
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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		
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15	Trial - Day 3, Thursday, 06/02/2022		AA000559
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24	Recorder's Partial Transcript of Jury	7	AA000810 -
25	Trial - Day 4, Friday, 06/03/2022:		AA000854
26	Testimony of Leroy Comstock		
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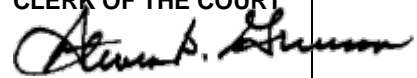
ALPHABETICAL ORDER

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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
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Jury Instruction No. 29 8.4 Landowner Liability: Duty [05/31/2022 Jury Trial - Day 1]	1	AA0000041
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6	Notice of Order Denying Plaintiffs' Motion for	8	AA000997 -
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17	Plaintiffs' Third Motion to Compel Discovery	1	AA000008 -
18	Responses		AA000030
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14	James		
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DISTRICT COURT
CLARK COUNTY, NEVADA

JEFFREY MYERS, ET AL.,

Plaintiffs,

vs.

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

Defendants.

CASE#: A-16-735550-C

DEPT. XVII

BEFORE THE HONORABLE DAVID BARKER
DISTRICT COURT JUDGE
MONDAY, JUNE 6, 2022

RECORDER'S PARTIAL TRANSCRIPT OF JURY TRIAL - DAY 5

APPEARANCES

For the Plaintiffs:

DONALD C. KUDLER, ESQ.

For the Defendants:

ALEXANDER F. GIOVANNIELLO, ESQ.
CHRISTOPHER J. GIOVANNIELLO, ESQ.

RECORDED BY: AIMEE CURAMENG, COURT RECORDER

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1 Las Vegas, Nevada, Monday, June 6, 2022

2

3 [Case called at 10:58 a.m.]

4 THE COURT: Ready when we are.

5 THE MARSHAL: Yes, sir. Please rise for the jury.

6 [Jury in at 10:58 a.m.]

7 THE COURT: Please be seated, ladies and gentlemen. Be
8 comfortable. Sorry, I just stepped on Marshal Walker's efforts this
9 morning.

10 We are on the record in A735550, Myers v. THI. And all
11 records should reflect the presence of representatives of Plaintiff and
12 Defense, all members of the jury panel do appear to be present.

13 Will the parties stipulate to the presence of the entire panel?
14 Plaintiff?

15 MR. KUDLER: Yes, Your Honor.

16 THE COURT: And Defense?

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

18 THE COURT: Thank you.

19 Good morning, Ladies and gentlemen. I'll remind you it's my
20 intention that this morning before we take our luncheon break to
21 complete the evidence portion of the trial. Once both sides have rested
22 and the evidence is closed, then we're going to take our lunch break.

23 In that time, I'm going to have the lawyers and I meet, confer
24 and finish up tightening up the jury instructions to you. When we'll
25 bring you back after lunch you should find a package of instructions for

1 your review. I'll head into the reading of the instructions, which I must
2 do under the rules. I'll read the instructions into the record with you
3 following along, if you wish, on your copies. And then we'll move
4 immediately into closing argument and then right after closing argument
5 we'll send it in -- send you out for deliberation in the jury room.

6 So that's where we're headed this afternoon. The balance of
7 the day right now we remain in the evidence phase in Defendant's case
8 in chief.

9 Call your next witness.

10 MR. A. GIOVANNIELLO: Defendant calls Thomas LaFronz.

11 THE COURT: I'm sorry, I missed that name.

12 MR. A. GIOVANNIELLO: I'm sorry. Tommy LaFronz.

13 THE COURT: Tommy LaFronz?

14 MR. A. GIOVANNIELLO: LaFronz, Thomas LaFronz. I'll have
15 him spell it.

16 THE MARSHAL: Remain standing, raise your right hand, face
17 the clerk to be sworn in, please.

18 THOMAS LAFRONZ, DEFENDANT'S WITNESS, SWORN

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

21 THE WITNESS: My name is Thomas LaFronz, last name is
22 spelled L-A-F-R-O-N-Z, first name's T-H-O-M-A-S.

23 THE COURT: Counsel, your witness.

24 DIRECT EXAMINATION

25 BY MR. A. GIOVANNIELLO:

1 Q Mr. LaFronz, please state your profession.

2 A I do private investigation for Elite Investigations.

3 Q Okay. And I was going to ask you by who are you employed.

4 It's by Elite Investigations?

5 A Yes.

6 Q Okay. What are, like, your duties and responsibilities?

7 A Usually just to go out and document anything I see when the,
8 you know, when the subject's in view.

9 Q What do you mean by document anything you see?

10 A I just -- I film it. I film any time the subjects in view. So --

11 Q Okay. You go out and follow subjects and film them?

12 A Yes.

13 Q Now, what were you retained to do in this matter?

14 A Exactly that. Just obtain any video I could.

15 Q Okay. And is that of any one of your subjects right here?

16 A I believe it's the gentleman in the middle.

17 Q And the gentleman in the middle is Andrew James?

18 A I believe so, yes.

19 Q Thank you. Now, did you accomplish this task?

20 A I believe I saw him on one day out there.

21 Q Okay. And did you film Mr. James?

22 A Yes.

23 Q Okay. And can you describe the neighborhood?

24 A Just normal, nice new construction neighborhood. Nothing
25 particular out of the ordinary, just kind of normal neighborhood.

1 Q By normal neighborhood, is it a gated community?
2 A No.
3 Q Okay. Is it a regular street that you could just drive down?
4 A Yeah, yeah.
5 Q Okay. When you drove down that street did you see any
6 signs prohibiting filming or taking photos?
7 A No.
8 Q Okay. And did you look for any signs like that?
9 A I didn't look for any, I just pulled in at crack of dawn and
10 parked.
11 Q Okay. Well, you said the crack of dawn. What time did you
12 get there?
13 A I believe I was out there probably around 5:00, 5:30,
14 something like that.
15 Q A.m.?
16 A Yeah.
17 Q And how long did you stay?
18 A Usually eight hours.
19 Q Okay. And what date was that?
20 A I believe that was the September 20th.
21 Q 2000 what?
22 A 21.
23 Q Okay. And did you provide that film to me?
24 A Yes.
25 Q Okay. And did this film capture Mr. James?

1 A It did, yes.

2 Q Okay.

3 MR. A. GIOVANNIELLO: Your Honor, I would like to show
4 Exhibit 230 to the jury.

5 THE COURT: 230 is offered, any objection?

6 MR. KUDLER: No, Your Honor.

7 THE COURT: 230 will be received.

8 [Defendant's Exhibit 230 admitted into evidence]

9 (Whereupon, a video recording, Defendant's Exhibit 230 was
10 played in open court from 11:03 a.m. to 11:04 a.m., not transcribed)

11 BY MR. A. GIOVANNIELLO:

12 Q Without commenting, is this the film you took?

13 You shook your head. Is that a yes, sir?

14 A Yes.

15 Q Okay. Thank you.

16 MR. A. GIOVANNIELLO: Your Honor. I have no further
17 questions for this witness.

18 THE COURT: Cross-examination?

19 MR. KUDLER: Just a couple.

20 CROSS-EXAMINATION

21 BY MR. KUDLER:

22 Q The video that you did produce is about five minutes long?

23 A Yes.

24 Q And it's over three days?

25 A Yes, I believe so.

1 Q And there's a black truck in Mr. James' driveway. Did that
2 remain there the entire time that you were there?

3 A I believe it did.

4 Q Over all three days?

5 A I believe so, yeah.

6 Q Okay. Do you know whose truck that is?

7 A I believe it's the Plaintiffs'.

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

9 THE COURT: Any redirect?

10 MR. A. GIOVANNIELLO: No redirect, Your Honor. Thank
11 you.

12 THE COURT: Any questions for this witness from the jury?

13 Seeing no hands, please step down.

14 Defense, call your next witness.

15 MR. A. GIOVANNIELLO: Your Honor, Defense rests.

16 THE COURT: Defense rests.

17 DEFENDANT RESTS

18 Rebuttal, Plaintiff?

19 [Testimony of Andrew James, transcribed under separate cover]

20 THE WITNESS: Thanks.

21 THE COURT: Call your next witness.

22 MR. KUDLER: That would be it, Your Honor.

23 THE COURT: So Plaintiff rests on rebuttal?

24 MR. KUDLER: Absolutely.

25 THE COURT: Is there any sur-rebuttal from the Defense

1 perspective?

2 MR. A. GIOVANNIELLO: No sur-rebuttal, no. Your Honor, I
3 would like to approach.

4 THE COURT: Okay.

5 [Sidebar begins at 11:08 a.m.]

6 MR. A. GIOVANNIELLO: Now that the evidence is concluded
7 and outside the presence of the jury, Your Honor, I would make an NRCP
8 Rule 50 motion for judgment as a matter of law as to fundamental
9 administrative services and health care realty, not a scintilla of evidence
10 has been presented on any of these two Defendants. Plaintiff has not
11 presented any evidence connecting them to College Park or whether
12 they had any duty.

13 THE COURT: Let's do it outside the presence of the jury.
14 And I'll see where we go.

15 MR. A. GIOVANNIELLO: I have a written motion, too, Your
16 Honor, if you would like it.

17 THE COURT: We'll see where we go. All right. Let's do this
18 outside the presence.

19 MR. A. GIOVANNIELLO: Thank you.

20 [Sidebar ends at 11:09 a.m.]

21 THE COURT: All right.

22 Ladies and gentlemen, that concludes the evidence is closed,
23 as I indicated to you about ten minutes ago. So we're going to take our
24 luncheon recess at this time. In that meantime I'll be working on the
25 instructions, and I anticipate, again, heading you directly into

1 instructions and deliberation this afternoon. And we're going to do an
2 hour and -- I'm going to bring you back to work at 12:30 just so I have
3 plenty of time to do what I have to do.

4 So remember during this recess you must not discuss or
5 communicate with anyone, including fellow jurors, in any way regarding
6 this case or its merits by either voice, phone, email, text, internet, or
7 other means of communication or social media. You are not to read,
8 watch, listen to any report or commentary on this trial by any medium or
9 information including, without limitation -- strike that.

10 Do not do any research, consult dictionaries, internet or use
11 reference materials, make an investigation, test theory of the case,
12 recreate any aspect of the case or in any way investigate the case or
13 learn about the case on your own. Do not form or express any opinion
14 on any subject connected with the case until it's finally submitted to you.

15 12:30 ladies and gentlemen, follow the marshal, please.

16 THE MARSHAL: All rise for the jury.

17 [Jury out at 11:10 a.m.]

18 [Outside the presence of the jury]

19 THE COURT: All right. We're outside the presence of the
20 jury.

21 All right. So you approached -- the minutes should reflect
22 the parties approached and Defendants interposed a motion in 50A.
23 Let's go on the record on it.

24 MR. A. GIOVANNIELLO: Yes, Your Honor. We make the
25 motion based on NRCP 50(a) for a judgment as a matter of law as to

1 Fundamental Administrative Services and Health Care Realty. There's
2 not -- has been absolutely no evidence presented by the Plaintiff
3 concerning those two entities at all. Other than me naming them in that I
4 represented them, Plaintiff had the obligation to present evidence that
5 these entities had a duty in this case, or that they were in any way
6 connected with College Park and had a duty. No evidence was
7 presented whatsoever as to them.

8 So I believe that that absolutely fills the requirements of
9 NRCP 50(a).

10 THE COURT: Mr. Kudler, your response?

11 MR. KUDLER: Yes, Your Honor. We were never able to get
12 this information while the case was pending. And therefore the jury
13 instruction, the average instruction was to all Defendants. Because of all
14 the Defendants failure, yes, it was a group. It is the Defendants are liable
15 if it's liable. Not any particular Defendant, the Defendants are liable.
16 They had the opportunity to resent this during the course. They had the
17 opportunity to come in and say, this is what we did. We have an adverse
18 instruction as to all Defendants. And therefore, they're all on the hook --

19 THE COURT: There's absolutely -- there's been no mention
20 of these two Defendants during the entirety of the trial. In terms of the
21 adverse instruction, it's -- the focus of it is on this transaction more than
22 it is on an individual party responsible.

23 I'm going to grant the 50(a) as to those two, but you still have
24 the actions pending against THI. Anything else?

25 MR. A. GIOVANNIELLO: That's it, Your Honor from me.

1 THE COURT: All right. So I'm going to grant that motion.
2 I'm going to have to go change the verdict form. It stays on the caption,
3 but with that special verdict form I need to strike those two identified
4 entities and it's just THI that will remain on the special verdict form.

5 Gentlemen, I need you to go through those instructions.
6 You're not -- you can't leave. You can order lunch, but I need to settle up
7 and number these instructions. All right? And I'll go work on that
8 special verdict form.

9 MR. A. GIOVANNIELLO: Your Honor, one other thing.
10 Would you be instructing the jury that those two entities have been
11 dismissed?

12 THE COURT: No. I'm not going to -- I'm going to read those
13 instructions as written with the caption changed --

14 MR. A. GIOVANNIELLO: Okay.

15 THE COURT: -- and then it's your responsibility to argue
16 your case based upon the evidence and the decisions that have been
17 made. But I'm not going to step out and say these two entities have
18 been dismissed.

19 MR. A. GIOVANNIELLO: Can I say that in closing?

20 THE COURT: Yes, because they have been.

21 MR. A. GIOVANNIELLO: Thank you.

22 THE COURT: You bet.

23 [Recess taken from 11:13 a.m. to 11:34 a.m.]

24 [Outside the presence of the jury]

25 THE COURT: On the record in A735550 Myers v. THI of

1 Nevada, et al. Record -- actually THI of Nevada at Cheyenne, LLC a
2 foreign corporation d/b/a College Park Rehabilitation Center. The record
3 should reflect the parties participate in the reading of the jury
4 instructions.

5 Is Plaintiff familiar with instructions 1 through 36?

6 MR. KUDLER: Yes, Your Honor.

7 THE COURT: Does the Plaintiff object to the giving of any of
8 these instructions?

9 MR. KUDLER: No, Your Honor.

10 THE COURT: Does the Plaintiff have any additional
11 instructions it wishes to offer the Court's refused to give?

12 MR. KUDLER: No, Your Honor.

13 THE COURT: Is Defense familiar with -- excuse me. Is the
14 Plaintiff familiar with the verdict form?

15 MR. KUDLER: Yes, Your Honor.

16 THE COURT: Any objection to the verdict form?

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

18 THE COURT: Is the Defense familiar with instructions 1
19 through 36?

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

21 THE COURT: Does the Defense object to the giving of any of
22 these instructions?

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

24 THE COURT: Does the Defense have any additional
25 instructions they wish to offer that the Court's refused to give?

1 MR. A. GIOVANNIELLO: Yes, Your Honor. That would be
2 special jury instructions 1 through 4 that we presented to the court.

3 THE COURT: Do you have them handy? These are the OSHA
4 regs?

5 MR. A. GIOVANNIELLO: I actually do.

6 THE COURT: So we're going to mark them as D1, offered
7 and not given.

8 [Defendant's Exhibit D1 marked for identification]

9 MR. KUDLER: I assume those are the same ones I have seen.

10 MR. A. GIOVANNIELLO: Oh, yes, exactly the same.

11 MR. KUDLER: Okay, I would assume that.

12 MR. A. GIOVANNIELLO: I wouldn't pull the wool over your
13 eyes.

14 THE COURT: Mark those as Defense Exhibits D1.

15 Do you wish to build any additional record on the reason that
16 you're offering these instructions?

17 MR. A. GIOVANNIELLO: The only record I would do, Your
18 Honor, is that OSHA is a regulation that has the regulations that are
19 followed in the industry. All witnesses have testified that they rely on
20 OSHA, and I believe that, therefore, they are the rule of the law in the
21 case.

22 THE COURT: Plaintiff, do you have any response?

23 MR. KUDLER: Yes, Your Honor, as the Court noted, there is a
24 case that says OSHA regulations are not supposed to come in at
25 negligence per se, what they're doing is the reverse. Theory of

1 negligence per se is saying the Defendants are contributorily negligent
2 per se as a result of violations of OSHA, therefore, they shouldn't be
3 allowed as well as an argument. Thank you.

4 THE COURT: All right. Yes, in essence in reviewing what
5 case authority I could find, I could find none in Nevada or in the 9th, and
6 none was proffered to the Court in support. Other than a request that
7 these regulations have been discussed in a specific sense in some ways
8 or other OSHA issues have been discussed in a broader sense, the only
9 case I could find was the *Knapp* decision out of Colorado and it really, as
10 Plaintiff's counsel indicated, was focused on whether a new cause of
11 action - it had -- wasn't relevant to this case, this is really an inverse that
12 because these OSHA regulations, the argument from Defense, because
13 these OSHA regulations were not followed, that there's either
14 contributory negligence or no negligence at all on the part of the
15 Defendant and I can't find a single case that talks about including them
16 and making them a jury instruction.

17 So that's the reason I've denied their reduction to a jury
18 instructions in the first instance.

19 All right. Any additional instructions the Defense is wished
20 to give that the Court is refused?

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

22 THE COURT: Have you reviewed the verdict form?

23 MR. A. GIOVANNIELLO: I have, Your Honor.

24 THE COURT: Any objection?

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

1 THE COURT: All right. Well, so we've settled up instructions.
2 I'll be making photocopies of these 36 instructions for your jury. They'll
3 be -- and the verdict form, and they'll be distributed for the jury.

4 We'll move immediately into the read after lunch.

5 MR. KUDLER: Thank you, Your Honor. What time are we
6 back?

7 THE COURT: And we're bringing you back, I think I said,
8 12:30. So you have a little bit of time to get your thoughts together.

9 All right?

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

11 MR. KUDLER: Thank you, Your Honor.

12 THE COURT: Thank you.

13 [Recess taken from 11:38 a.m. to 12:30 p.m.]

14 THE COURT: All right. Let's go to work.

15 [Pause]

16 THE MARSHAL: Please rise for the jury.

17 [Jury in at 12:30 p.m.]

18 THE MARSHAL: Please be seated.

19 THE COURT: Ladies and gentlemen, we're on the record in
20 A735550, Myers v. THI at Cheyenne LLC. The record should reflect the
21 presence of representatives for Plaintiff and Defense, all members of the
22 jury kind of do appear to be present.

23 Do parties stipulate to the presence of the entire jury panel?

24 MR. KUDLER: Yes, Your Honor.

25 THE COURT: Defense?

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

2 THE COURT: Thank you. Ladies and gentlemen, each of you
3 should have in your hands now a copy of jury instructions that are
4 prepared for your convenience in this case. These instructions are such
5 important to the action that they're reduced to this formal writing. The
6 copies you have are for you to keep. You can make notes on them and
7 carry them with you for the length of the trial in the deliberative phase.

8 The rules require now that I read these instructions to you.
9 You can follow along if you wish; you don't have to if you don't want to.
10 It's my intention to read these to the best of my ability, and so we're
11 going to move to that read. Immediately after the read of instructions,
12 then we'll move into closing argument.

13 The instructions are as follows.

14 Number 1. Members of the jury, it is now my duty as judge
15 to instruct you on the laws that apply to this case. It is your duty as
16 jurors to follow these instructions and apply the rules of law to the facts
17 as you find them from the evidence. You must not be concerned with
18 any wisdom of any rule of law stated in these instructions, regardless of
19 any opinion you may have as what the law ought to be. It would be a
20 violation of your oath to base a verdict on any other view of law of that
21 given in the instructions.

22 Instruction number 2. If in these instructions any rule,
23 direction, or ideas repeated or stated in different ways, no emphasis
24 thereon is intended by me, and none may be inferred by you. For that
25 reason you are not to single out any certain sentence or any individual

1 point or instruction and ignore the others, but you are to consider all the
2 instructions as a whole and regard each in light of all the others. The
3 order in which the instructions are given has no significance as to a
4 relative importance.

5 Number 3. One of the parties in this case is a corporation. A
6 corporation's entitled the same fair and unprejudiced treatment as an
7 individual would be under like circumstances and you should decide the
8 case with the same impartiality you would use in deciding a case
9 between individuals.

10 4. Although you are to consider only the evidence in the
11 case when reaching a verdict, you must bring to the consideration of the
12 evidence your everyday common sense and judgment as reasonable
13 men and women. Thus, you are limited solely by what you hear and see
14 as the witnesses testify. You may draw reasonable inferences from the
15 evidence which you feel are justified in light of common experience,
16 keeping in mind that such inferences should not be based on speculation
17 or guess. A verdict may never be influenced by sympathy, prejudice, or
18 public opinion. Your decision should be the product of sincere judgment
19 and sound discretion in accordance with these rules of law.

20 Instruction number 5. If, during this trial, I have said or done
21 anything which has suggested to you that I'm inclined to favor the claims
22 or position of any party, you will not be influenced by any such
23 suggestion. I have not expressed nor intend to express, not have I
24 intimated, intended to intimate any opinion as to which witnesses are or
25 are not worthy of believe, what facts are or are not established, what

1 inference should be drawn from the evidence. If any expression of mine
2 seemed to indicate an opinion related to any of these matters, I instruct
3 you to disregard it.

4 6. You are admonished that no juror may declare to any
5 fellow juror a fact relating to this case with his own knowledge, and if
6 any jurors discovers during the trial after the jury has retired that he, she,
7 or any other juror has personal knowledge of any fact in controversy in
8 this case, he or she must disclose that situation to myself in the absence
9 of other jurors. This means if you learn during the course of the trial that
10 you are acquainted with the facts of this case or the witnesses that you
11 have not previously told me of this relationship, you must declare that
12 fact to me, to communicate to the Court, to the marshal or the
13 bailiff/marshal.

14 During the course of the trial the attorneys from both sides
15 and court personnel, other than the bailiff/marshal, are not permitted to
16 converse with members of the jury. These individuals are not being
17 antisocial, they are bound by ethics and the law not to talk to you. To do
18 so might contaminate your verdict.

19 You are admonished additionally that you are not to visit the
20 scene of any of the acts or occurrences made mention during this trial
21 unless specifically directed to do so by the Court. Do not undertake any
22 investigation of the case on your own or endeavor to research legal or
23 factual issues on your own.

24 7. You must decide all the questions of fact from the case
25 from the evidence received in this trial and from no other source. You

1 must not make any independent investigation of the facts or the law or
2 consider or discuss facts which were -- of which there's no evidence.
3 This means, for example, you must not on your own visit the scene,
4 conduct experiments, or consult reference works for additional
5 information.

6 8. The credibility or believability of a witness should be
7 determined by his or her manner upon the stand, his or her relation to
8 the parties, his or her fears, motives, interest, feelings, his or her
9 opportunity to observe the matter to which he or she has testified, the
10 reasonableness of his or her statements, and the strength or weakness of
11 his or her recollection. If you believe a witness has lied about any
12 material fact in the case, you may disregard the testimony of that
13 witness and any portion of his testimony which is not proved by other
14 evidence.

15 9. In determining whether any proposition has been proved,
16 you should consider all evidence bearing on the question without regard
17 to which party produced it.

18 Instruction number 10. We also permit jurors to ask
19 questions, however, asking questions is the primary responsibility of the
20 attorneys, not jurors. The procedure for a juror to ask a question is
21 somewhat complicated and has a tendency to prolong the trial. Any
22 question that a juror asks must be factual in nature and designed to
23 clarify information already presented. You will not be permitted to
24 become a third attorney or advocate a position, and I have the discretion
25 to preclude you from asking excessive numbers of questions.

1 If you feel that a question -- that you must ask a question of a
2 witness, you must write the question on a piece of paper and do so while
3 the witness is still present, raise your hand before the witness leaves,
4 and the Court -- leaves the courtroom, and give the question to the
5 marshal/bailiff. I will then halt the trial, review the questions with the
6 attorneys, if the question is appropriate, I will ask the question on your
7 behalf. Attorneys will then be permitted to ask follow-up questions.

8 Do not feel disappointed if your question is not asked. Your
9 question may not have been asked for a variety of reasons, for example
10 a question may call for an answer that is not allowed for legal reasons.
11 Also, you should not try to guess the reason why the question was not
12 asked or speculate what the answer might have been because the
13 decision whether to allow a question is mine alone. Do not hold it
14 against any of the attorneys or their clients if your question is not asked.
15 I caution you not to place undue weight on the responses to your
16 questions as opposed to other evidence in the case.

17 11. You should decide the case for and against each Plaintiff
18 separately as if it were a separate lawsuit. Each Plaintiff is entitled a
19 separate consideration of these claims and defenses. Unless I tell you
20 otherwise, all instructions apply to each Plaintiff. You should decide the
21 case for and against each Defendant separately, as if it were a separate
22 lawsuit. Each Defendant is entitled the same consideration of their own
23 claims and defenses. Unless I tell you other otherwise, all instructions
24 apply to each Defendant.

25 12. Plaintiff is seeking damages based upon claims of

1 negligence. Plaintiff has the burden of proving by a preponderance of
2 the evidence all the facts necessary to establish negligence. The
3 Defendant has the burden of proving by a preponderance of the
4 evidence all facts necessary to establish contributory negligence.
5 Preponderance of the evidence means such evidence as when
6 considered and weighed that opposed to it has more convincing force
7 and produces in your mind a belief that what is sought to be proved is
8 more probably true than not true. In determining whether a party has
9 met its burden you will consider all the evidence, whether introduced by
10 the Plaintiff or the Defendant.

11 13. A party must persuade you by the evidence presented in
12 court that he or she is required to prove is more likely to be true than
13 not. This is referred to as the burden of proof. After weighing all the
14 evidence, if you decide that something is more likely to be true than not
15 true, you must conclude that the party did not prove it. If you -- you
16 should consider all the evidence, no matter which party produced the
17 evidence.

18 14. The evidence which you are to consider in the case
19 consists of the testimony of witnesses, the exhibits, and any facts
20 admitted or agreed to by counsel. There are two types of evidence;
21 direct and circumstantial. Direct evidence is direct proof of a fact such as
22 testimony of a witness about what the witness personally saw, heard, or
23 did. Circumstantial evidence is a proof of one or more facts from which
24 you could find another fact.

25 The law makes no distinction between the weight to be given

1 either direct or circumstantial evidence. Therefore, all the evidence in
2 this case, including the circumstantial evidence, shall be considered by
3 you in arriving at your verdict.

4 Statements, arguments, and opinions of counsel are not
5 evidence in the case, however, if the attorneys stipulating, and meaning
6 to agree to the existence of fact, you must accept the stipulation of
7 evidence and regard that fact as proved. Questions are not evidence,
8 only the answer is evidence. You should consider a question only if it
9 helps you understand the witness's answer. Do not assume that
10 something is true just because a question suggests it. You must also
11 disregard any evidence which an objection was sustained by the Court
12 and any evidence ordered stricken by the Court.

13 Anything you may have seen or heard outside the courtroom
14 is not evidence and must also be disregarded. If the Court has instructed
15 you, you must first accept a fact as proven or draw a particular inference,
16 you must do so. If the Court has instructed you regarding a presumption
17 regarding evidence, you must consider that presumption, as well.

18 15. What relevant evidence which is -- where relevant
19 evidence which would properly be a part of litigation is within the control
20 of one party, those whose interest would naturally be to produce it, and
21 they fail to do so without satisfactory explanation, the jury may draw an
22 inference that such evidence would have been unfavorable to that party.
23 The same can be from improperly altered evidence.

24 An inference means a logical and reasonable conclusion of a
25 fact not presented by direct evidence, but by which process of logic and

1 reason a jury may conclude exists from the established facts. In this
2 case the Court has previously ruled that an adverse interest that
3 Defendants are responsible, the screw that fell, if you believe that screw
4 fell, then the Defendant is responsible for the screw that fell.

5 16. Before trial each party had the right to ask the other
6 parties to answer written questions. These questions are called
7 interrogatories. The answers to interrogatories are also in writing and
8 are sworn under oath. You must consider the questions and answers
9 they read you the same as if the questions are asked and had been given
10 here in court.

11 17. A witness who has special knowledge, skill, experience,
12 training, or education in a particular science, profession, or occupation is
13 an expert witness. An expert witness may give their opinion as to any
14 manner in which they are skilled. You should consider such expert
15 opinion and weigh the reasons if any given for it. You are not bound,
16 however, by such opinion. Give it the weight to which you deem it
17 entitled, whether that be great or slight, and you may reject it if, in your
18 judgment, the reasons given for it are unsound.

19 18. An expert witness has testified about his reliance on
20 treatise, articles, or statements that have been admitted into evidence.
21 Reference by the expert witness to this material's allowed, so the expert
22 witness may tell you what he relied upon to form his opinions. You may
23 not consider the material as evidence in this case. Rather, you may only
24 consider the material to determine what weight, if any, to give the
25 expert's opinion.

1 19. A hypothetical question has been asked an expert
2 witness. In a hypothetical question, the expert witness is told to assume
3 the truth of certain facts, and the expert witness is asked to give an
4 additional opinion, give an opinion based upon those assumed facts.
5 You must decide if all the facts assumed in the hypothetical question
6 have been established by the evidence, and you can determine the effect
7 of that assumption upon a value of the opinion.

8 20. The Plaintiff seeks to establish a claim of negligence. I
9 will now instruct you on law related to this claim.

10 21. To prevail on a negligence claim, the Plaintiff must
11 establish: One, that the Defendant owed the Plaintiff a duty of care; two,
12 that the Defendant breached that duty; three, that the breach was the
13 legal cause of the Plaintiff's injuries; and four, that the Plaintiff suffered
14 damages.

15 22. Generally, everyone has a duty to exercise reasonable
16 care when their conduct creates a risk of physical harm to others.
17 Negligence is the failure to exercise that degree of care which an
18 ordinarily careful and prudent person would exercise under the same or
19 similar circumstances.

20 Ordinary care is that care which persons of ordinary
21 prudence exercise in the management of their own affairs in order to
22 avoid injury to themselves or to others. You will note that the person
23 whose conduct we set up as a standard is not the extraordinarily
24 cautious individual, not one, not the exceptionally skillful one, but a
25 person of reasonable and ordinary prudence. While exceptional skill is

1 to be admired and encouraged, the law does not demand it as a general
2 standard of conduct.

3 23. A legal cause of injury, damage, loss, or harm is a cause
4 that is a substantial factor in bringing about the injury, damage, loss, or
5 harm. A substantial factor in causing harm is a factor that a reasonable
6 person would consider to have contributed to the harm. It must be more
7 than a remote or trivial factor. It doesn't not have to be the only cause of
8 the harm.

9 24. The Defendant claims it is the Plaintiff's own negligence
10 contributed to his harm. To succeed in this claim, Defendant must prove
11 both of the following: that the Plaintiff was negligent, and the Plaintiff's
12 negligence was a substantial factor in causing his harm. A Plaintiff may
13 not recover if their comparative negligence has contributed more to their
14 injury than the negligence of the Defendant. However, if the Plaintiff is
15 negligent, the Plaintiff still -- may still recover a reduced sum, so long as
16 their comparative negligence was not greater than the negligence of the
17 Defendant.

18 If you determine that the Plaintiff is entitled to recover upon a
19 theory of negligence, you shall return a general verdict on the total
20 amount of damages sustained by the Plaintiff, and you shall return a
21 special verdict indicating the percentage of negligence attributed to each
22 party. The percentage of negligence attributable to the Plaintiff shall
23 reduce the amount of such recover by a proportion amount of such
24 negligence and the reduction would be made by the Court.

25 25. Every person has a right to expect that every other

1 person will use reasonable care unless he or she knows or should know
2 that the other person will not use reasonable care.

3 26. Evidence as to whether a person conformed or did not
4 conform to a custom that he has grown up in given -- in a given locality
5 or business is relevant and not to be considered, but is not necessarily
6 controlling on the question of whether that person was negligent. That
7 issue must be determined by the standard of care you stated -- stated to
8 you. Excuse me.

9 27. Plaintiff's claim that they were harmed because the
10 Defendants managed their property to -- period. To establish this claim,
11 Plaintiff's must prove all of the following: One, the Defendant's
12 controlled the property; two, the Defendants were negligent in the
13 inspection used for maintenance of the property; three, that the Plaintiff
14 was harmed; and four, the Defendant's negligence was a substantial
15 factor in causing the Plaintiffs harm.

16 28. The owner-occupier of land has the duty to inspect the
17 premises for latent or concealed dangerous conditions not known to
18 them. If reasonable inspection would have revealed a dangerous
19 condition, the owner or occupier of the land is charged with construction
20 notice of it. Constructive notice of a latent defect may be established by
21 circumstantial evidence.

22 29. An owner or occupant of land must exercise ordinary
23 care and prudence in rendering a premise is reasonably safe for the visit
24 of a person invited on their premises for business purposes. And owner
25 or occupant of land who knows or is in exercise of reasonable care

1 should know of a dangerous and unsafe condition, and who invites
2 others to enter upon a property, owes such invitees a duty to warn them
3 of a danger or the perilous, hidden, latent, concealed, or the invitees are
4 without knowledge thereof.

5 30. In determining the amount of losses, if any, suffered by
6 the Plaintiffs as a legal result of the incident in question you must take
7 into consider the nature -- nature, extent, and duration of the injuries you
8 believe from the evidence Plaintiffs have sustained, and you will decide
9 upon a sum of money sufficient to reasonably and fairly compensate
10 Plaintiffs for the following:

11 The reasonable medical expenses Plaintiff has necessarily
12 incurred as a result of the incident, and the medical expenses which you
13 believe the Plaintiff will be reasonably certain to incur in the future as a
14 result of the incident.

15 Plaintiffs loss of earnings from the date of the incident to
16 present, and any loss of earnings or earning capacity which you believe
17 the Plaintiff will be reasonably certain to experience in the future as a
18 result of the injury sustained by the incident; a reasonable value of
19 household services performed by another which, except for the injuries,
20 Plaintiff would ordinarily have performed, which you believe the Plaintiff
21 incurred as a result of the injury sustained in the incident, from the date
22 of the incident to present; the loss of such services which you believe
23 the Plaintiff will be reasonably certain to experience in the future as a
24 result of the incident; the physical and mental suffering, anguish,
25 disability, or loss of enjoyment of life endured by the Plaintiff during the

1 date -- from the date of the incident to the present, and the physical and
2 mental pain, suffering, anguish, disability, and loss of enjoyment of life
3 which you believe the Plaintiff will be reasonably certain to experience in
4 the future as a result of the incident. Loss of household services does
5 not fit in -- within any of the other categories, therefore it qualifies as a
6 separate compensable economic loss.

7 31. No fixed standard exists for deciding the amount of pain
8 and suffering damages, nor is the opinion of any witness required as to
9 the amount of such reasonable compensation. You must use your
10 judgment to decide upon a reasonable amount based upon the evidence
11 and your common sense.

12 32. Where Plaintiffs injury or disability is clear and readily
13 observable, no expert testimony is required for the award of future pain,
14 suffering, anguish, and disability. However, where the injury or disability
15 is subjective and not demonstrable to others, expert testimony is
16 necessary before a jury may award future damages.

17 33. Whether any of these elements of damage have been
18 proved by the evidence is for you to determine. Neither sympathy nor
19 speculation is a proper basis for determining damages. However,
20 absolute certainty as to damages is not required. It is only required the
21 Plaintiff prove each item of damage by a preponderance of the evidence.

22 When you retire to -- 34. When you retire to consider your
23 verdict you must select one of your number to act as foreperson who will
24 preside over your deliberations and be your spokesperson here in court.
25 During your deliberations you will have all written -- all exhibits which

1 were admitted into evidence, these written instructions, and forms of
2 verdict which have been prepared for your convenience.

3 In civil actions, three-fourths the total number of jurors may
4 find and return a verdict. This is a civil action. As soon as six or more of
5 you have agreed upon a verdict, you shall have it signed and dated by
6 your foreperson and then return with it to this room.

7 35. If during these deliberations you should desire to be
8 further informed in any point of law or hear portions of testimony, you
9 must reduce your request to writing, signed by the foreperson. The
10 officer will return you to court where the information sought will be
11 given to you in the presence of the parties or their attorneys.
12 Remember, the Court is not at liberty to supplement the evidence.

13 36. Now you will listen to the arguments of counsel who will
14 endeavor to aid you in reaching a proper verdict by refreshing your
15 minds the evidence, and by showing the application thereof to the law,
16 but whatever counsel may say you will bear in mind that it is your duty
17 to be governed in your deliberations by the evidence as you understand
18 it and remember it to be, and by the law given to you in these
19 instructions, and return a verdict which, and to your -- according to your
20 reasoning and candid judgement is just and proper.

21 Moving into argument, Plaintiff, you have the floor, open in
22 closing.

23 PLAINTIFF CLOSING ARGUMENT

24 MR. KUDLER: Okay. See if that's in order. In this case,
25 basically, the Plaintiffs have to prove two things; that the Defendant did

1 something wrong, and then they were injured because of that, so let's
2 look at what happens on the liability, the fault issue. Basically, there's
3 two things that we're talking about here. One is the screw that fell. Now
4 the Plaintiffs say we didn't know at that moment what happened, there
5 was an explosion, we checked it out later. Andrew James went back, he
6 checked it out, he talked to the fire department, and as the evidence has
7 showed here, the fire department says a screw fell. In fact, Mr.
8 Comstock, when he was up here, said a screw fell. Nothing else caused
9 this.

10 There are the tools that they checked afterwards; none of the
11 tools were burnt, none of the tools were missing, and nothing was there
12 other than the screw. Now Mr. James also prepared that screw, the one
13 that was left up there on the -- on a sheet, and you'll just have pictures of
14 those and see that the screw is still there. Compare it to the space
15 between the fingers, the hot fingers, and it fit right there. He also said
16 those fingertips which were fine before were blown off.

17 So that's the source of this fireball. Screw's up here, they're
18 working on it, it falls, it shouldn't be left up there, and as the Court has
19 instructed, if you believe that screw is up there and that screw fell, then
20 unless you see something else, there's an adverse inference that the
21 Defendants or a Defendant was responsible for that screw being up
22 where it shouldn't have been.

23 And they're going to come up and say nothing, it's not there,
24 so they're not going to offer any other explanation as to what could have
25 caused this. Again, there was no shock where the bodies shorted out

1 these two fingers, there's no tools that were in disarray as a result of
2 this, nothing else happened, the only thing that happened is that screw
3 fell.

4 The other issue on this is the breaker. The Defendants are
5 responsible for maintaining that breaker, and Mr. Comstock said in nine
6 years or however long he's been there, they still don't look at this
7 breaker, they still don't maintain it, they still don't inspect it. What he
8 said was if something goes wrong, they fix it. That's the -- and all they
9 do at this place. That does not satisfy the needs of, as Mr. Gifford
10 testified, the duty under OSHA to inspect and maintain.

11 And in the jury instructions, near the end there, there's
12 instructions about the premises, the owner or occupier of that property
13 has a duty to inspect and maintain that property in a safe condition.
14 They did not do that, both in leaving screws up there, and in allowing
15 that breaker to fail. They didn't maintain it; they did nothing to make
16 sure that that electrical panel is safe. It was their duty.

17 Now one of the things we're going to get into here is they're
18 going to say well, the Plaintiffs are at fault, Mr. James and Mr. Myers are
19 at fault because they didn't comply with OSHA in 1910.333, and what
20 that requires is basically three things.

21 The first is you don't work on a hot panel unless you have a
22 really good reason to do so. Here, there was a really good reason to do
23 so. If you shut off the power to that room, the lifesaving equipment goes
24 off, the vital care goes off. In fact, you're going to see the document that
25 Mr. James referenced that said it was signed by the administrator of the

1 facility, leave the power on. And they were there at night because they
2 had to have the kitchen power, they were working on the kitchen
3 breaker, they had to have that power off at night, so it didn't interfere
4 with the kitchen.

5 Now I think Roy said up here well, you know, they chose to
6 do it at night, they chose to come at night and do this work. They didn't
7 make that choice. That was the request of the facility, the Defendants,
8 they come at night because we need to have our kitchen function during
9 the day. They said fine, we'll come here at night. So they went at night
10 for their purpose and not, as Roy said, because that was the convenience
11 of the Plaintiff. So Roy's got some issue with his credibility, he's, you
12 know, he's like, well, it's our ladder, it's not our ladder, we never --
13 nobody was ever in the box, nobody took care of that thing.

14 So in any case, let's go back to 1910. So they were there for
15 -- they had the power energized for a reason that had to be on in order to
16 make sure that people didn't die, and they were wearing the proper PPE.
17 Well, PPE was required. The Defendant will offer nothing in the way of
18 what was required. They're going to say well, maybe there was
19 something else required. They're not going to give you a code; they're
20 not going to give you anything.

21 Mr. James got up there and cited the code, the UNFPA.
22 UNFPA for this particular type of power on this box, 110, 208 volt box is
23 safety goggles, I mean, safety glasses, not goggles, safety glasses; no
24 face shield is required in this -- to work on this box; gloves, we say we're
25 wearing; goggles, we say we're wearing; shirt, fire resistant shirt, fire

1 resistant pants, and steel-toed shoes. That's what they were required to
2 be wearing, that's what they were wearing. They complied entirely with
3 the OSHA requirements.

4 Long-time electricians. Two master electricians. Who else is
5 more qualified to work on the box? That's the third requirement.
6 Someone has to be qualified to work on that box. They were qualified.
7 They did not in any way violate OSHA, 1910.333. They completely
8 complied with it.

9 Now they may want to come in and saw well, they should
10 have gone beyond what was required. They should have guessed that
11 they -- that he should have worn a long sleeve. It's not required to. And
12 as the jury instructions say, that it's a person, ordinary prudent. You're
13 working on a box. You're working in a box in a medical facility that is, as
14 had been testified to, controlled by several government organizations
15 that they have to comply with, the maintenance and that stuff.

16 So do they have a right to assume, as the jury instructions
17 say, that that maintenance, that inspections, that building was kept up to
18 the proper standard? Yes. The jury instructions and the law tell us that.
19 Do we -- do any of us go to the most absolute possible situations?

20 And when I just demonstrate that is let's say you're driving
21 along, and you're driving in the middle lane, and there's a bus in the
22 right-hand lane, the bus stops. What do we do? We look, we keep an
23 eye, and we make sure that nobody is coming out. But if you're going to
24 be that extraordinarily cautious person, what do you do? If you're going
25 to go beyond all reasonable, reasonably prudent actions? You come to a

1 stop. Why? Because maybe that guy in the right-hand lane might jet out
2 from behind the bus. What happens?

3 And then what happens to the guy in the left-hand lane? The
4 guy in the left-hand lane says well, geez, the guy in the -- the guy from
5 the -- behind the bus might jet out which might cause somebody in the
6 middle lane to change in my lane, which might mean that I get in an
7 accident, so I better stop too. Try coming the other way. Well, I see a
8 bus stopped over on the other side of the street. Somebody from behind
9 that bus might jet out in front of the guy in the middle lane. The guy in
10 the middle lane might say to the right -- the left-hand lane, the guy in the
11 left-hand lane might cross into our lane, so I better stop.

12 That's not the way society works. Society is allowed and
13 people are allowed to assume that everybody is doing their job and
14 doing it appropriately and being safe, because if we don't do that society
15 does not work. They assume that these people were taking care of the
16 building under the codes applicable to a medical facility, and they had
17 the right to assume that that was the case. So they didn't have to wear
18 more than the code required under the situation. There's nothing that
19 indicates that they knew that this was an inherently dangerous site.
20 You're not seeing any evidence that they knew ahead of time that hey,
21 we ought to be really, really, really extra careful because this place is
22 extra dangerous.

23 So they go in and they work on this box. They get the
24 screws out, nothing happens. They go to put the screws back in, and
25 suddenly there's this fireball, and this fireball goes and burns up. Now

1 they're going to say, well, look, Mr. Myers' whole face was burnt,
2 therefore, he wasn't wearing his safety glasses. So let's see. And there
3 are some things that you heard that talk about his entire face being
4 burned and information like that.

5 If I could have the ELMO, please?

6 And what I want to do is direct you to -- and you're going to
7 get the evidence later, and one of the pieces of evidence is the records
8 for Mr. Myers, which they may quote parts of, but I'm looking at page
9 520, and this is what's really important here on 520, and I borrowed my
10 daughter's marker to do this. So it says -- let's see.

11 Has a burn over the right side of the forehead. Of course,
12 this is the right side of the forehead. Let's see. Right side of the
13 forehead is weeping clear fluid, has a burn over the following areas: right
14 side of forehead, middle of forehead, nose, left maxillary, the jaw area.
15 Excuse me. Left maxillary, the jaw area. Let's see. Corner of left mouth
16 and cheek, upper lip, anterior chin, that's the front of the chin, upper lip,
17 anterior chin. Left side of forehead, left side of face, lateral, and as the
18 doctor explained yesterday, lateral is outside. Left side, lateral to the
19 eye, lower aspect of chin, right TMJ, temporomandibular joint, and
20 cheek, angle of the right mandible, again, the jaw area. Burn over the
21 left -- oh, that, and then it goes to the arm.

22 And what's not burned? Where does he -- doesn't have any
23 burns? No burns on the eyelids, no effect to the eyes because he was, in
24 fact, wearing his glasses. The entire face, other than the eyes. So any
25 argument that there were no glasses on disappears in light of the fact

1 that he didn't get burned on the eyes.

2 Now this is, as Mr. Gifford said, this is 35,000 degrees. This
3 is hot. And they're going to say well, he should have been wearing a
4 facemask. There's no evidence that you're going to see that wearing a
5 facemask and it's required if you're saying that they're contributorily
6 negligent if they were doing some -- if they did wear a facemask and you
7 believe that one was required and it isn't, then they have to prove that
8 the damages would have been less because of a facemask, a plastic
9 facemask vs. a 35,000 degree flash. There's no evidence presented here.

10 They didn't bring an expert to say hey, had they been
11 wearing a facemask they would have been less burned, have you
12 burned, you know, been wearing long sleeves. And, you know, you
13 assume yeah, if he was wearing long sleeves he wouldn't have burned at
14 the elbow, but they weren't required, and they were wearing what they
15 were supposed to be wearing, so that a liability argument. One, there
16 was a screw that fell; two, the breaker didn't break, ever, as they noted.

17 And then the other issue is, too, I want to bring up, you
18 know, Roy came up here and talked about Helix, and they're going to say
19 look, Helix was there and there's what happened, and there was a screw,
20 and screwing it in or screwing it out, and then there was another flash.
21 What's really important about that is what was Helix doing? Helix was
22 working with the power on, also, for the same reason; lifesaving
23 equipment in that box so you don't turn the power off.

24 Now Roy said Helix was here, you know, wearing a facemask
25 but there's nobody else that's going to say that. There's nobody that

1 says it's going to be required. Also the fact that that thing went, as Roy
2 said, poof, and then stopped. There was a couple of sparks. But again,
3 the breaker didn't go off. Roy said all the lights were working. Even
4 after this incident they're not maintaining this property because they
5 don't maintain it, despite it being their duty to do so.

6 Now the thing about the gloves is there is no -- this is not a
7 case where somebody reached in, touched something, and shorted out,
8 and got electrocuted. Again, this is a short where a breaker should have
9 gone off near immediately, didn't do so, and allowed that short to
10 continue until this fireball developed as the Plaintiffs testified from their
11 level of down here, came all the way up into their face as they tried to
12 get away, and this lasted some time. It did not ever -- as Mr. Gifford
13 said, extinguish itself when it took all the ionized air away from itself.
14 Also, the screws disappeared. We don't know what happened to the
15 screw was just vaporized as a result of this.

16 There was questioning yesterday that -- trying to point to --
17 not yesterday, a couple of days ago, trying to point -- or last week, trying
18 to point to the fact that they didn't do what they were supposed to do
19 under the energize work permit, and that was check the energize buses,
20 but as they explained, as Mr. James explained, the energize buses are
21 here, the screw was up here in the neutral busser, and they didn't have
22 any duty to look at the neutral busser, no tower running through there.
23 So they didn't have a duty to look up under there under any means,
24 either under the contract or to look for something that they were not
25 aware of.

1 In fact, the jury instruction says if there's a latent defect and
2 inspection would have found it, then they, the Defendant is responsible
3 for notifying people and advising them, hey, there's a problem there,
4 maybe you want to, you know, make sure that's clear. They didn't do
5 anything because they never inspected, they never looked, they never
6 did anything.

7 So the -- again, any argument that they didn't do what they
8 were supposed to do under the energize work permit and that they didn't
9 look at the energized bus bars is not true. They did look at the energized
10 bus bars. They did not look at a neutral non-hot bus bar which was
11 above their heads, and not in the area they were working.

12 They watched what they were doing, and as Mr. Meyers
13 testified, when he took this breaker out, it had fried itself because of a
14 bad connection, so whoever did this prior installation of this kitchen
15 breaker didn't install it properly, didn't tighten down and torque down on
16 the lug nut in order to make sure that these wires were secured, so that
17 they wouldn't burn out the breaker itself, which is what happened, which
18 is why they were there, and he said basically, it dried out, it was just
19 there because it wasn't connected properly by whoever did it prior. And
20 there is, you know, there's -- the Defendants offer nothing as to who did
21 it prior, what happened prior; they just say nothing about that.

22 You know, as a result of this, the Plaintiffs were hurt. You
23 know, obviously, this is a hot fireball that caused scarring and tissue
24 damage and emotional damage along with it. You're going to get Mr.
25 Meyers' UMC records. Like I said, there's not a lot, you don't need to

1 look at each and every page, but like I said, look at 520. 520 shows you
2 that he was wearing his goggles and where the burns were on his face
3 and on his arm that he showed you. So yes, he was injured, and he was
4 in the hospital the night of the 6th, early the 7th, whatever it is, until the
5 15th of June. By the way, today is June 6, 2022, eight years to the day
6 that this accident occurred.

7 So there he was in the hospital, so imagine he's in the
8 hospital from tonight until the middle of the month because he has these
9 burns. They're treating these burns. They're dressing them daily or
10 multiple times daily. He has to take morphine to deal with the pain from
11 these burns. He's on that morphine for multiple months, and you can
12 see it in the records that he's basically on medication until October, I
13 believe the last date of treatment is October 3rd, and at that time he
14 returns, he's allowed to return to work.

15 And at that time Mr. Meyers was making \$40 an hour,
16 working 40 hours a week, that's \$1,600, and I believe if I calculated it
17 right it's 17 weeks that he was not able to work. So you have 17 weeks
18 by 1,600, and I'm not this smart, it's on my page, it's \$27,200 in wage
19 loss that he suffered, and then he went back to work.

20 Now you saw Mr. Meyers on the stand. He's stoic. He's not
21 going to be overly emotional. He's telling you what happened, he's
22 telling you, you know, this was the most painful thing in my life that I
23 had to go through for those 17 weeks until I was released. I had to kick
24 drugs after that. Never had a drug problem prior to this. Had to kick
25 drugs. Things that he had to go through as a result of somebody leaving

1 screws or somebody not maintaining or inspecting a breaker for years,
2 and expecting, well, it goes bad, then we'll take a look at it. That's what
3 Mr. Comstock told you.

4 So those are his general damages. Those are his things that
5 you can calculate. Then you have to say well, what did Mr. Meyers go
6 through? What did he go through as a human being, being in this pain,
7 having to change these bandages, not knowing what he's going to face
8 in the future, being in the hospital for nine days, not being able to work,
9 having to face a financial issue of 17 weeks of, you know, basically, that's
10 a third of a year that I'm not getting paid, had to deal with the income
11 issues. We all have been there.

12 How is he feeling about that? How is that affecting him as a
13 person? These are the things that you have to consider when you're
14 talking about the special damages, the pain and suffering if you want to
15 call it that. And you're going to figure out what that is. There's no
16 formula. There's nothing there. You've heard him on the stand, you saw
17 him testify, you heard what he went through, you can see it in the
18 records what he went through, changing bandages to an extent that, you
19 know, you require morphine in order to do that. This is not like, hey, I'm
20 going to change a Band-Aid and it's fine.

21 Then you have Andrew James. Andrew James' medical are
22 ongoing. He is -- and you're going to hear, well, you know, he wasn't
23 diagnosed with PTSD for six years or whatever they're saying it was, five
24 years that he wasn't diagnosed, but he was diagnosed in around 2016,
25 they started talking about it, and mood disorders, changes in his life.

1 These things came on, and as the witness has testified, we don't always
2 diagnose somebody right away. Sometimes it's years before they get to
3 somebody.

4 And as Mr. -- as was testified there's, you know, shame. We
5 don't want to go in and admit I'm being affected, Mr. James no, it just
6 isn't for me, that isn't what -- that isn't, you know, my understanding of
7 PTSD means you were in a war, but the doctors, Dr. Zand and the
8 psychotherapist, Ms. Coombs, both testified and they, Ms. Coombs went
9 through the eight criteria. He meets all eight criteria. He has PTSD as a
10 result of this event. There's nothing before.

11 He was happy, he was enjoying life, talked about the
12 relationship with his wife, Mr. Smith, his father-in-law talked about how
13 they were together, how he and his wife were together and how that
14 changed and how he became irritable, and how he became hard, you
15 know, harder to deal with. You know, and Mr. Smith said yeah, sure,
16 you know, couples fight, that happens. But that's what was happening
17 afterwards. Afterwards was irrational, anger, things that you shouldn't
18 have, things that would set you off that shouldn't set you off. That's
19 what he's been experiencing now for years. And as Dr. Zand said, he
20 will continue to experience that for years.

21 Now as to the arm, he saw two doctors in regards to the
22 epicondyle, the lateral epicondyle injury that is a result of this flash,
23 whether it be from injured in a way, whether it be from the scar tissue.
24 We have two doctors that say this is related to that, to then, and nothing.
25 They're going to argue well, you know, it was only a second degree

1 burn, therefore, it couldn't be. The doctors understand that. The doctors
2 say yeah, it's a second degree burn, yeah, it can be caused by that, yeah,
3 it can be caused by [indiscernible]. Whatever it was that happened on
4 that night, happened on that night and caused a partial tear in his elbow.

5 Now, they may want to say you guys are liars, cheaters, and
6 thieves. Don't believe anything they say. He's faking the arm injury, but
7 the arm injury is confirmed by a film. The film shows exactly where that
8 tear is, exactly what's going on there. You can't fake the film. That's
9 there. And Dr. Patti, and -- well, Dr. Patti said okay, we're going to give
10 you therapy. That didn't work. We tried the injections. That didn't work.
11 You really need surgery. And Andrew said wait, hang on a minute, a
12 friend of mine died as a result of being in surgery, I don't -- I'm not going
13 to risk it, especially in the case that it's not guaranteed to get better or
14 not get better, so I'm not going to take that risk of with my life. Is that
15 reasonable?

16 Now let's talk about the box for a second. You saw the
17 video. Now that video is actually -- the whole thing is actually five
18 minutes long. The portion he's on is the only portion in those three
19 days, eight hours a day, that that man sat there looking at his house, so
20 he came out of the house on the weekend, and you can look, and you'll
21 see this is Saturday, Sunday, and Monday that this video was taken.

22 Over the weekend, during the day, he came out of the house
23 exactly once, over eight or ten hours a day, and that was only to get the
24 mail on Monday. And what he said is this is a small box, and you can
25 see it's a small box. They're going to say well, that proves that he's not

1 hurt, that he's faking it. Again, films show he needs surgery. Films show
2 and the doctors testified that he needs surgery as a result of this accident
3 and nothing else.

4 But what Dr. Patti says is when it's pain, and you can see this
5 in the record, when he grips he has loss of grip strength. Is he gripping
6 the box? Is it holding it like this? No, he's holding it like this. That's how
7 he's carrying it. And the doctors say, and even Dr. Taylor said that the
8 pain on extension, the finger toward the muscle out here, so you're
9 saying pain on the extension, and when you pull. During the time he's
10 carrying that box, is he pulling the good one there? No, he's not. Is he
11 pushing with his left arm? No, he's not. Is he gripping? No, he's not.

12 Do we expect that he can carry a one-pound box or a half-
13 pound box and some papers that he's carrying? There's nothing that
14 says he can't do that. What it says is he can't pull wires. He can't pull a
15 ladder off a truck. He can't, as is testified, and Mr. Comstock said all that
16 in the room, all that conduit, they met, they shaved all that; they can't do
17 that work anymore.

18 And so he said I can't do that work anymore, I don't, I'm
19 scared, I don't want something blowing up in my face anymore, burning
20 his face and blowing up in front of him, and that scares me, and I've
21 been doing this for a year, but I can't do that anymore, and physically, I
22 don't trust myself to do this work because I can't grip, I can't do all the
23 things an electrician does, as we just talked about, stripping the wire and
24 cutting the wires and all that grip strength that you need. He doesn't
25 have it in his left hand.

1 Sure, he is right-handed, but you need both hands to do
2 these jobs. You need to hold on to something to cut it. You need to hold
3 on to something to bend it. You need to use your hand to pick things up.
4 He can't do that, so he doesn't trust himself to do that on a job site
5 where he and his father, well, his father's company, and he's in charge of
6 people's safety, so he's not going and doing that anymore.

7 So what did that cost him? At the time, as he testified, he
8 was making \$73 an hour as a master electrician, and that combined both
9 his electrical work and the running the company work, so he was making
10 \$73 an hour, 40 hours a week. That's -- and again, it's written down, I'm
11 not that smart, 29-20 a week that he was making. He's now making, and
12 you can see from the -- that what he's been getting, he's making a salary
13 of 52,000 a year, 52 -- excuse me, a thousand dollars a week.

14 So you say now he's making 52,000 a year, before he was
15 making, if you count just 50 weeks, he was making -- well, if you count
16 that he was -- he's making \$1,920 a week less, comes out to \$96,000 a
17 year that he's losing out of his pocket not being able to work as an
18 electrician while running this company. That's what he lost to-date.
19 That's the wage loss that's going to continue for this 53, excuse me,
20 almost 54 year old man. And again, his birthday, his age is in the
21 records. He's 54 currently. And that's going to continue.

22 Now Mr. Smith said, you know, well, at some point, you
23 know, we're really, you know, we're thinking about maybe closing this
24 company down, and that leaves Andrew where if this company closes
25 down, and he continue to make 52,000 a year instead of being able to

1 run an electrical company and get paid in the field and be making 73 an
2 hour? There's no evidence that that's going to happen.

3 So where is he at? He's lost all that money and all that
4 income. He has medical bills. There's not many medical bills in front of
5 you dollar-wise. As you can see and from the testimony that he's gone
6 through a lot, that it's interfering with their life, that he's had to, with his
7 PTSD, deal with everything else that life throws at you. And the same
8 with Jeff, of course, but he doesn't have it to the same level.

9 But you have to deal with, you know, there's only so much
10 energy you can have to deal with stressors, as Ms. Coombs testified, that
11 you have a certain amount, and PTSD takes up all of it. So then how do
12 you deal with other stressors when your emotional energy is all eaten up
13 already, **1:20:52 he has to deal with his wife's cancer, he has to deal
14 with financial concern, losing \$96,000 a month in income, he has to deal
15 with all that on top of the PTSD itself, and that's not easy for him, and
16 the doctors will, you know, the doctor that -- the psychotherapist testified
17 to that.

18 Instruction number four, a couple of things I want to run
19 through before I sit down and be quiet for a minute. Instruction number
20 four talks about using your common sense, and we're not coming into
21 this case as something caused a short and an explosion. We know there
22 was screw -- two screws up there. We know that the police department
23 said -- actually, the fire department said it looks like this was caused by a
24 screw shorting out. We know that Roy sent his crew up there. We know
25 that Mr. James found -- when he investigated that there was one screw

1 up there that was just wide enough to make that, and there is no other
2 viable cause. That's the important part. No other viable cause.

3 The only other option is magic, that this thing magically
4 exploded. There's no tools that are burnt, there were no tools in the area
5 being held, nothing is destroyed. The screw is missing because it
6 vaporized during the event, but there is no other cause. The common
7 sense says one cause, that one thing could have caused this and one
8 thing only, and if you find that the screw is what caused it, unless they
9 give you something else in their argument, which isn't in evidence, that
10 how that screw got up there, because the professional electrician told
11 you that I removed the screws, they went to Andrew, and I took the
12 screws, I put them on the shelf.

13 Nothing was put up above their head, and logically, why
14 would you do that? First, because of a safety issue, but why would you
15 put something up above your head where you can't see it when there's a
16 perfectly good shelf right behind you that's handy? Doesn't make any
17 sense that they would have put anything up there.

18 So we have to prove our case, preponderance of the
19 evidence, simply put, more likely than not, and that's what the jury
20 instruction talks about. Take a scale, more likely not whether that that
21 screw that we saw there on the shelf, or was it magic because there is no
22 other explanation. More likely than not, were they responsible for the
23 screw, the jury instruction tells you they're responsible for the screw
24 unless they prove something else. They have nothing else.

25 Were they injured because of this accident? Clearly. Burns,

1 bad burns, deep burns, burns that cause scarring, burns that still have
2 scarring on their arms, and just as, you know, he still gets questioned
3 about it, and when he's in Alaska part of the year and he's not in the sun
4 so much, his scar is more visible and people comment on it, and it is,
5 you know, annoying. People have been asking for eight years, you
6 know, or looking at him, or saying what's going on with the scar, dude,
7 and, you know, part of what he has to live with.

8 So that should deliver preponderance of the evidence, and
9 again, it's not the criminal, you know, beyond a reasonable doubt which
10 is like a hundred percent sure, it's 50-50. More than 50 percent you find
11 that they -- that their -- the other side is at fault and they're not, then you
12 can say that the other side's at fault. If you think that they're damaged
13 more than 50 percent, these medical bills, obviously, you know, you go
14 to the hospital with a burn, yeah, it's related to the burn. The burn, the
15 wound care afterwards, the doctors testified that in Mr. James' case, all
16 this treatment is related. It's not related to anything else. So more likely
17 than not, they're injured as a result of the incident.

18 Looking at instruction number 22, at, you know, the first
19 sentence there, generally, everyone has a duty to exercise reasonable
20 care when their conduct creates a risk of physical harm, that is absolutely
21 maintaining electrical equipment, inspecting electrical equipment, not
22 having screws inside electrical equipment where they don't belong, you
23 have the duty to exercise reasonable care. They did nothing.

24 Number 25 is the one that I really wanted to point out at this
25 point. Every person has a right to expect that every other person will

1 use reasonable care unless he or she knows or should have known that
2 the other person will not use reasonable care.

3 Again, they had the right to assume, both because of the law
4 as set forth in the jury instruction, and the fact that there's a duty under
5 OSHA to maintain your facility, there's a duty under the Medicare CMS
6 rules to maintain, everything has a duty to maintain, you have a duty,
7 you have a right to assume that they're doing that, unless there is
8 something that indicated, and you heard nothing here that indicates that.
9 These gentlemen should have been extra cautious, that they should have
10 gone beyond what was required by the law, that they should have gone
11 beyond the PPE that was required of them to wear.

12 And in regards to the last -- let's see, 27, 28, and -- all right.
13 27 and 28 are the premises liability instruction. You know, this is their
14 property, they control it, they were negligent in the inspection, use, or
15 maintenance. They did no inspection, no maintenance. Were they
16 harmed? Absolutely. And was the Defendants negligence in both
17 allowing that screw to remain there, well, being responsible for it being
18 there, and for not maintaining a breaker and allowing a breaker to be in
19 the condition that it never broke in such a violent event? Yes, there is a
20 substantial factor in causing that harm.

21 And 28, you know, they have a duty to inspect. Again, they
22 didn't do it. The latent or concealed dangerous conditions; that would be
23 the screw. They didn't do any inspections for that, and they never
24 looked for it. They were never -- had or hired anybody to inspect it.
25 They didn't think it was in their purview to open that box and they

1 should have hired somebody to do regular inspections.

2 What the judge is going to give you in the end is a special
3 verdict form, and it's a kind of a fill-out form, and the first question is
4 were the Defendants negligent? We're the Defendants. Were negligent.
5 THI of Nevada at Cheyenne dba College Park. Yes, they were negligent.
6 We discussed that.

7 Was the negligence that caused the legal cause of the injury?
8 Yes. Were the Plaintiffs negligent? No. They did nothing wrong. They
9 followed the law, and they don't have a duty to go beyond that.

10 Number four, if you answer no to number three, you have to
11 answer to number four because there was no negligence that was a legal
12 cause to their own injury. And then you get to percentages. What
13 percentage, if you think that the Defendants were negligent and the
14 Plaintiffs were not, then you divvy up the percentages, and then you do
15 compensation, and the compensation is the past medical damages, and
16 suggest that there is no future medical damages but for Andrew, talking
17 about future medical damages, ketamine treatments, counseling
18 treatments, those things are going to continue.

19 But a loss, their past loss of earnings, again, Jeff is past only
20 \$27,000 and change, and he is, you notice he billed 59,000 or something
21 like that. And then Mr. James' future loss of earnings continuing to
22 suffer \$48 an hour in lost wages. And then the pain and suffering to-
23 date, and the experience and the pain and suffering in the future that you
24 think they experience, and then whoever the foreperson is signs it and
25 come back with it.

1 I will be up again in a few minutes after -- going to be a few
2 minutes, but then after the Defendant gets a chance to do their argument
3 because I have the burden of proof and my clients have the burden of
4 proof in proving our case and thank you for your time.

5 THE COURT: Mr. Giovanniello, you have the full closing
6 argument.

7 MR. A. GIOVANNIELLO: Can I borrow your thing? The
8 speaker? Whatever you used.

9 MR. KUDLER: Okay. Nobody wants to hear me talk now.

10 MR. A. GIOVANNIELLO: There's only one of them?

11 MR. KUDLER: I believe so. Oh, it was off again.

12 MR. A. GIOVANNIELLO: Could you turn it on for me?

13 MR. KUDLER: Yeah, it goes off. I don't know why.

14 MR. A. GIOVANNIELLO: I take it it's on.

15 UNIDENTIFIED SPEAKER: It's on.

16 MR. A. GIOVANNIELLO: Okay.

17 DEFENDANT CLOSING ARGUMENT

18 MR. A. GIOVANNIELLO: Well, ladies and gentlemen, I guess
19 you heard a lot about what I'm going to say because Mr. Kudler told you
20 everything that I was going to say. Okay? But I'll probably say it from a
21 different perspective. Okay. And I only get -- and he's right, I get to talk
22 to you once. This is my time to talk to you. After I'm done, he's going to
23 get up, he's going to tell you everything I said is wrong. Okay. So
24 please listen to what I have to say on this.

25 Obviously, what I'm saying is not evidence, it's just my view

1 of the evidence, my view of the evidences that were made, you know,
2 and what I think the evidence is going to show. Okay? Obviously, it's
3 your responsibility to go back, look at the evidence, and decide what it is.
4 Okay. Argument of counsel is not evidence, and everything Mr. Kudler
5 told you is not evidence. Everything I'm telling you right now, it's not
6 evidence. Okay. It's just our view. It's just what we think. Okay. It's
7 actually me trying to convince you to, you know, look at it my way, and
8 that's kind of what it is. Right?

9 Now something you have to know in this case is there were
10 three Defendants but now there's only one.

11 MR. KUDLER: Objection, Your Honor.

12 THE COURT: Overruled to that extent.

13 MR. A. GIOVANNIELLO: Okay.

14 THE COURT: Overruled.

15 MR. A. GIOVANNIELLO: Fundamental Administrative
16 Services and Healthcare Realty have been discussed through the case.
17 Okay. So right now we have one Defendant which is THI, and the THI
18 dba College Park, so you need to know that that's why when he read the
19 special verdict forms here, he only read THI because that's now the only
20 Defendant in the case. Okay.

21 Now this case is about really two things, was College Park
22 negligent in the maintenance of the property, and whether the Plaintiffs
23 were negligent in performing their duties, thereby causing their own
24 injury. Okay? And if so, did their negligence outweigh any negligence of
25 College Park if you find that College Park was negligent. Okay.

1 Now this entire story about a screw is all based on the
2 credibility of Mr. James. Okay. Because he's the only one who really
3 testified as to the story here. Okay? Mr. Meyers did not. Okay? Mr.
4 Meyers didn't know what happened at the time. So in order for you to
5 actually claim further on liability, you have to believe what Mr. James
6 says, and let's look at what he said.

7 He gets on the stand, and he says the next day I went back
8 there, and lo and behold I find a screw. Okay. And I find a little mark in
9 the dust where another screw was, and man, that screw must have fell,
10 and that's what caused the arc, because there's no other explanation, but
11 yet there is another explanation and we'll get to that, as well. Okay.
12 That's his story.

13 But then, and he said this in 2022, and he said it the other
14 day, I forgot which day it was, I think it might have been Thursday, but
15 he said it in 2022, that in 2017, okay, he answered interrogatories. You
16 saw that he answered them under oath. Okay. And in 2017, well, there
17 was a different story. In 2017 it was firemen that went in and found two
18 screws up there. Okay. And they're the ones that said well, gee, it must
19 have fell and it caused an arc. That's different.

20 That is different. Okay? And why is it different? Because he
21 lied, and he lied on the stand. Okay. Because what's the story? Is it the
22 firemen or is it he went back and did the investigation. I would believe
23 the interrogatories, they were done in 2017, they were done four years
24 ago, not this other story. Maybe lie number two is that he went back and
25 talked with the firemen, and the firemen told him, oh yeah, this is it. But

1 think about that. He went back the next day. Were the firemen there the
2 next day? No. So this whole story has to -- you have to believe him in
3 order for you to find any really [indiscernible]. Okay.

4 But there is also a jury instruction, that's number eight, that
5 says if you believe that a witness is lying about any material fact in your
6 case, you may disregard the entire testimony of that witness or any
7 portion of his testimony which is not proved by other evidence.

8 Now let's take this a little bit further. Okay. First of all,
9 College Park is a skilled nursing facility. Okay? Has a maintenance
10 director, Roy Comstock, we saw. Roy is a simple guy. Okay? He knows
11 what he knows, but he also knows he's not an electrician. Okay? And he
12 also knows that if you have to do something like -- that involves
13 electricity other than, you know, change out a little switch or maybe
14 change a lightbulb, you got to call electricians. You got to call qualified
15 people, and you certainly are not going to go in the back and screw with
16 a 240 volt panel because that will kill you, so you're not going to do that.
17 You're going to want people to do that. Okay?

18 And, you know, you got qualified electricians now, and I will
19 agree, these two are master electricians. Okay? And they've been doing
20 it a long time. They've worked on that, adjust panels. Now one of the
21 things they said was the breakers was supplied to them. You heard Mr.
22 Comstock. He wouldn't have any clue on how to find the breaker or have
23 it, and develop a breaker, how to get a breaker. Doesn't know where the
24 breakers come from.

25 Well, Mr. James testified that, you know, the breakers were a

1 thousand dollars. How did he know that? Okay? You know, so anyway,
2 you know, it just makes more sense that the electricians are the ones that
3 supplied this. Okay?

4 Now you also heard about other things, you know, such as
5 OSHA, okay, which is -- and I keep forgetting, but it's safety and health.
6 Okay. It has to do with that. OSHA issues regulations. Okay. And now
7 those regulations basically are about how an employer should make the
8 employment safe, the premises safe, and also how employees need to
9 be safety for the -- needs to consider safety for themselves on this.

10 And one of the things is when you're working on an
11 energized panel, you have to be qualified, they're qualified to work on an
12 energized panel, but you also got to be careful, you also have to take
13 precautions. And I'm taking this a step further because I'm just saying,
14 look, if you believe them, if you believe that there was a screw there.

15 Now let's go further into that. There's a work permit, an
16 energized work permit that you saw in the evidence, and one of the
17 things it says is check all clearances. Right? Now if you're going to work
18 on an energized panel, 240 volts, aren't you going to check everywhere?
19 I mean, isn't it a bunch of bull that you're not going to look up and look
20 because they're going to say well, no, I don't have to look at that bus, it's
21 a clearance. Why wouldn't you look at it? It makes zero sense. Okay?
22 So they didn't do that. They didn't check all clearances. That makes
23 them responsible.

24 And the other thing is, that you heard here, is that, you know,
25 everybody's responsible for their own actions. Well, they certainly are,

1 as well. I mean, they just don't get to skirt responsibility because they're
2 the ones working on an energized panel.

3 You also heard Roy Comstock testify that yeah, he, one,
4 didn't keep a log on it because he didn't believe there was a
5 responsibility to do so, but he also said no one was in that panel for the
6 seven years that he had been there. Okay? If no one's in that panel,
7 well, let's just say there's a screw there, how would he know? Because
8 you don't -- he doesn't open that panel. Is there a requirement for
9 someone to come and open that panel? Did you hear any testimony to
10 that effect? Okay.

11 And they talk about a breaker. How do you know a breaker's
12 going to fail unless it fails? Okay. There was no evidence about testing
13 the breaker. There was no evidence that the breaker could be tested.
14 There was no evidence that there's a little button on it. No one knew,
15 you know, so how would you know that? And also, isn't that a little
16 speculation, as well, on their part?

17 Let's talk about PPE, too, as well. You know, I mean, you
18 heard a lot that they're wearing -- they were wearing what was
19 necessary, but if you're going to work on an energized panel, why would
20 you wear short sleeves? I mean, I don't think that makes sense. That
21 doesn't make any sense at all either.

22 MR. KUDLER: Your Honor, opinions of Defense counsel are
23 irrelevant.

24 MR. A. GIOVANNIELLO: Inferences, Your Honor.

25 THE COURT: Sustained.

1 MR. KUDLER: Thank you, Your Honor.

2 THE COURT: Argue the evidence, counsel.

3 MR. A. GIOVANNIELLO: Let's get back to -- let's talk about
4 Mr. Gifford, and Mr. Gifford is basically, you know, he's bought and paid
5 for. Okay? He's an expert witness. He charges \$12,000, and basically,
6 all he does is testify for whatever side is paying him to testify. Okay.
7 Now you got to look at some of the things he said. Okay. One of the
8 things that they're talking about is a 35,000 degree fireball. Okay. He
9 testified that the surface of the sun was 7,000 to 10,000 degrees.

10 So basically what we're saying is you've got a fireball that's
11 three to five times the surface of the sun. Okay. Now if you have a
12 fireball that big, I think the inference would be that the entire place would
13 be vaporized, and certainly, you wouldn't have these two gentlemen
14 standing here because they'd be a pile of dust. Okay. That makes zero
15 sense. Now if they're working on something that is that dangerous,
16 right, what PPEs should they be wearing? Okay. I don't think any
17 amount of PPE would have saved them. You know?

18 Now, you know, and then you have to look at what Roy
19 Comstock said about Helix, when you think about that. Okay. What did
20 he say when Helix went in there and they touched the screw that
21 apparently he believed was a screw that was put in by one of these
22 gentlemen into a wire? Okay? What did he say? He said poof. Okay?
23 But he was a little more emphatic. He said poof, there was a little
24 fireball, and it didn't hurt Helix because they were wearing a facemask,
25 and he said they were wearing proper PP and he was there witnessing

1 that, so that just makes no sense of a 35,000 degree fireball.

2 Mr. Gifford also testified, first of all, he went there five years
3 after the fact, okay? He was there in 2019. He testified that he was
4 relying on what Mr. James told him, that there was a screw there. Now
5 if you don't believe that there was a screw there, then his testimony
6 really has no effect whatsoever.

7 He also admitted that there are other ways this could have
8 happened, and I did pose a hypothetical question to him, and I did say to
9 him, well, don't discount -- don't take into account what Mr. James told
10 you. What could have happened? Well, the only person working on that
11 panel was Mr. Myers at the time. Isn't that an explanation of how it
12 happened? Did Mr. Meyers cause the arc? Okay. So there isn't just one
13 explanation that was told to you by Mr. Kudler. There's another
14 explanation on how that occurred. Now why didn't Mr. Gifford ask Mr.
15 Meyers? Why didn't he ask him what happened? And he only asked --
16 he only asked Mr. James.

17 Your -- Mr. Myers was [indiscernible]. Okay. Counsel drew a
18 picture of a face up there, but you're going to look at that exhibit that
19 he's talking about. When you look at that exhibit the whole face is
20 marked, okay, and the arm was marked.

21 Injury. They keep bringing up Mr. James' life. It's
22 unfortunate. I sympathize for her, I really do, okay, but this case isn't
23 about her, and it's not about her injury. It's not about the fact that she
24 has ovarian cancer, and she was diagnosed in 2021. Like I said, I
25 sympathize with that, but that should not come into your thinking on this

1 case. It has nothing to do with this case. Okay. It might have something
2 to do with her but not this case.

3 Mr. James. He's claiming continuing pain to his elbow,
4 okay? One of the reasons he has continuing pain to his elbow is because
5 he has a tear, and that tear was diagnosed with an MRI three years after
6 the incident on -- and you'll see this in the evidence, as well, on March 3,
7 2017. Okay.

8 Now one of the things Mr. Kudler said was that three, two,
9 two physicians came up here and told oh, yeah, that's definitely can be
10 part of the injury, but that's not really true. Okay. Dr. Taylor came up
11 here and when I cross examined him and I was talking to Dr. Taylor, we
12 talked about a second degree injury. Excuse me, a second degree burn.
13 Second degree burn goes to the second layer of the skin, in ten minutes,
14 deep down inside the skin. Okay. The burn did not cause the tear in the
15 tendon. Okay? So what would have caused the tear in the tendon? It
16 was diagnosed three years later. There's no evidence, there's no
17 evidence, what's presented to you about what happened in that three-
18 year period. Right?

19 Now as you know, Mr. James is right-handed. Okay? You
20 know he -- in his job he testified it requires pulling and twisting and
21 doing everything else. Okay? Was he doing that in that three-year
22 period with his left hand? There's no testimony as to that either. His
23 only testimony is that, well, he's got a tear, but a tear diagnosed three
24 years later, and a tear that certainly, as you heard from Dr. Taylor, now is
25 not going to happen from a second degree burn.

1 PTSD. Mr. James' PTSD was testified to by Nurse Cipollini,
2 and she said that in her -- only her testimony that the PTSD occurred in
3 2016. You didn't see any records on that, did we? No records were
4 provided, it was just her testimony, and when I went over some of the
5 records with her, and you'll see them in evidence, it talks about his -- it
6 talks about his psychiatric condition. He says no hallucinations, no
7 delusions, no paranoia. Right? You'll see that in there. So you know,
8 that's a little questionable, too.

9 Now he was diagnosed by Lindsey Coombs the PTSD, who,
10 frankly, hasn't found a patient that hasn't had PTSD. Okay. You heard
11 when she testified that 95 percent of her patients that come in do,
12 diagnose PTSD. You know, PTSD, the conditions are real easy to find,
13 and all you have to do is go online and look at the DSM 5, and it gives
14 you what the -- what, you know, the parameters are for -- what the
15 factors of PTSD are. Okay. And really, a psychiatrist is going to listen to
16 the patient, and whatever the patient tells them, okay, and then boom,
17 you got the diagnosis. He goes to Dr. Zand, right, Dr. Zand disagrees
18 with the diagnosis and prescribes all kinds of medication for him.

19 You'll also have jury instruction number 32 which states, and
20 I'll -- at the end, if an injury or disability is subjective and not
21 demonstrative to others, expert testimony is necessary before a jury may
22 award future damages. If you notice, there's no expert here to testify as
23 to Mr. James' future damages. Nobody came in and testified to that.

24 You already heard Mr. Kudler about that Mr. Meyers has no
25 future damages. The only person he says has future damages is Mr.

1 James, yet there's no expert to testify to that whatsoever.

2 One of the other things is, and I believe Mr. Kudler just
3 misspoke, he was saying he's losing \$96,000 a month. Obviously, that's
4 not what he's losing. The math, his math is a little off. Can't blame him.
5 That's why we're lawyers, okay? If we knew math we'd be scientists.
6 That's why we go to law school.

7 I already talked about Mr. Meyers mainly because he already
8 said what his damages were, so we already know that that's finite. We
9 talked about a special verdict, as well. You know, Mr. Kudler went over
10 the special verdict, of course, I'm going to go over it just a little different
11 than Mr. Kudler did. Okay? Because if you look at the first question, if I
12 can get through it without -- and the first question here asks you whether
13 or not College Park was negligent. And frankly, the answer is no
14 because one, you heard Mr. Comstock, no one was in that panel. Okay?

15 There's no screw there. There's no screw that magically fell.
16 There's no magic here. You know, he told you well, either the screw fell
17 or it's magic. Well, either the screw fell, and Mr. Meyers caused the arc.
18 Okay? Now if no one's in that panel for seven years, number one, how
19 did you even know there was a screw there? We don't believe there's a
20 screw there at all. Okay? So I would say no on that. They have no
21 liability.

22 If you look at question number two, were the Plaintiffs
23 negligent? And the answer here is obviously yes. Okay. You have two
24 guys, master electricians, going into an energized area, know, because
25 they both quoted, I don't remember what Mr. Meyers said it, but I know

1 Mr. James quoted OSHA, you know, that that controls, and also a couple
2 of other acronyms for a whole bunch of other different agencies that
3 control, but those agencies also talk about safety. They have to look out
4 for their own safety. Okay. They know they're working on an energized
5 panel. You're going to check all clearances. You're not going to give
6 you this, you know, argument that I don't have to check this clearance up
7 here. Why would you not? That makes zero sense. Okay?

8 Now whether they were wearing the proper PPE or not, you
9 know, they're working on an energized panel. They know that there's a
10 possibility of an arc because if you look at -- when you look at that
11 exhibit, the work order, on the second page it talks about arc clearance.
12 So they know that there's a possibility of that when they go into that. So
13 it's not like they didn't notice. It's not like, you know, well, oh, gee, you
14 know, we don't know what we're dealing with because we're master
15 electricians. Not at all.

16 Were the Plaintiffs negligence the legal cause of their own
17 injury? The answer is obviously yes. Okay. And then when you look at
18 the percentage, they certainly have far more negligence on their part
19 than this, than College Park, if you find College Park to be negligent at
20 all. Okay? Their negligence is way over 51 percent on this. And if you
21 put that down there, then that's it. That's the end. There's no reason to
22 award damages at that point in time.

23 That's the way I look at the evidence in this case. That's the
24 way I look at the evidence, how it was presented. Okay. I'm certain that
25 when you go back there and you start looking at all this evidence, and I

1 urge you to look at the evidence, and I urge you to look at the film. You
2 know, I know they made light of that film. Yeah, it was over a three-day
3 period, but he came out, you know.

4 And you heard Dr. Taylor, carrying anything in your arm is
5 going to cause excruciating pain, and it didn't look -- you could look
6 yourself to see whether or not he was in excruciating pain holding that,
7 no matter how heavy it was. Okay? So that's up to you. You make what
8 you want with that. Same thing with the photos I showed you of him
9 after the fact. Like I said in the beginning, you know, look at this stuff,
10 you can make of it what you will, and I urge you to look at it.

11 And then I am certain that once you look at all that, you're
12 going to find in favor of College Park. You're going to find either that
13 they were not negligent, or if you believe they were, that the Plaintiffs
14 [indiscernible].

15 And I know you've heard all of us for the whole week, and
16 you're hearing me now, and you heard Mr. Kudler now, but you know
17 what? In my opinion, people are going to do the right thing because
18 that's what you do, and I know that when you go back there and you
19 deliberate, you're going to do the right thing because that's what's in
20 your heart, to do the right thing. Okay. And I urge you that I believe the
21 right thing is College Park is not negligent. I thank you very much for
22 listening to me. You don't get to hear me again, but thank you so much.

23 THE COURT: Rebuttal?

24 MR. KUDLER: Yes, Your Honor. I need -- if we could get a
25 couple of things.

1 MR. A. GIOVANNIELLO: So you want me to move this thing?
2 Move this thing?

3 MR. KUDLER: Yeah, please. Thank you.

4 PLAINTIFFS' REBUTTAL CLOSING ARGUMENT

5 MR. KUDLER: Very first note when I sat down, the 96k per
6 year, not a month, just a misstatement, not a miscalculation, but yes,
7 that is correct, it is 96,000 a year, not 96,000 a month.

8 I want to look at my notes here. Basically, their whole case is
9 that man's a liar. Don't believe a word he says, and they didn't do
10 anything wrong, and part of that is, well, he was inconsistent in saying
11 that my answers, interrogatories, and you didn't -- you know you didn't
12 get read the whole thing. There were two parts read. One said that hey,
13 the night of that I didn't know, and then another was these firemen came
14 in, and I heard the firemen say that this is what happened, and that they
15 found a screw and all of that. They say that's inconsistent with Andrew
16 saying I investigated it.

17 Andrew says on the stand, he said I investigated it because I
18 had information. That was in -- during his direct examination. Then on
19 cross examination he says, well, you're a liar because you said these
20 police, or the fire department people found it. He said no, that's the
21 information I had that caused the investigation. Those two things are
22 not inconsistent. In fact, they're entirely consistent. I had information,
23 and so I took a look. I want to know what happened to me.

24 Who wouldn't want to know? Especially based on the fact
25 that he was told, and he understood that there were firemen that found

1 that there were screws, and that one of those screws, and that's what
2 caused his injury.

3 Jeff caused it. He was working on it. Jeff caused it. Again, it
4 was down here that it exploded. They were working on a piece up here.
5 How did he cause a short down here? He wasn't working down in there.
6 That had nothing to do with what he was doing. He was working here.
7 He was screwing something in here, and that's what happened in the
8 moment. That's why he wasn't looking down and got a full face full of
9 flash, and he came up. Elbow. Face. Didn't get in -- you know, got him
10 on the neck and it was behind him.

11 Andrew's testimony didn't say, he answered -- didn't say that
12 he spoke to the firemen the next day. That is not -- that's not what he
13 said. He said he found out the next day that there -- or found out that
14 night or that day, or whatever, that the firemen talked about a screw, and
15 he investigated the next day. He didn't say he spoke to the firemen the
16 next day.

17 This is not a 240 volt panel. This is, as has been repeatedly
18 and only testified to during this trial, this is a 110 or 120, 208 panel,
19 which requires a minimal amount of PPE which they were wearing, so
20 calling it a 240 volt panel is incorrect.

21 A couple of things on this work order, and remember, this is
22 signed by the administrator of College Park. We're going to go way up
23 the top there. The fact that the administrator advised that we need to
24 work, do work at night because of kitchen schedule, and we cannot shut
25 down power. So when Roy got up here and testified that it was them

1 who chose to do it at night is not correct, and this is also, you'll see, it
2 says signed by the College Park administrator. They came to replace an
3 existing three-phase kitchen breaker with customer-supplied breaker.
4 That was also signed by the administrator, so who supplied it? The
5 administrator said you're here to reply with a customer-supplied breaker.
6 So when they say they didn't supply, they supplied the breaker, their
7 own administrator said no, that's not true, we're supplying the breaker.

8 And it was really interesting, is the description, trim back,
9 burn crisp insulation and terminals; how did they know that before they
10 opened the box up? How did they know that? Somebody had to be in
11 there and find that out. It wasn't them. That was the first time they were
12 in there, this box for this. Roy told them that this is what's going on in
13 there. This is a document signed by them, as well as Mr. James.

14 I was looking for the part -- and he said you got to watch all
15 clearances. Yeah, well, that's true if you just say watch all clearances,
16 and forget about the rest of the sentence, watch all clearance around
17 energized bus. Use insulated tools where possible and if required safety
18 glasses and insulated gloves. They did what was required. The did what
19 they were asked. They were asked to replace a breaker that they knew,
20 the Defendants knew, had burned inside. They knew because Roy told
21 them.

22 So Roy was in that box no matter what he says, because how
23 else would they know, that number one, the breaker needs to be
24 replaced and it's not something at the other end in the kitchen, and
25 number two, how would they know that there was that burning inside

1 there without looking at it? And they supplied the right breaker.

2 And as Mr. James and Mr. Meyers testified to, yeah, well,
3 maybe you could look it up, but you don't know exactly which type of
4 breaker is in there. There's different types of breakers that could be in
5 there. How do you know exactly which one the kitchen one was?
6 Because you looked at it, and you have to open up the front panel to look
7 at it, and that's how they supplied it to them, because they looked at it,
8 they knew, and they had to open that box, and they knew what was
9 going inside there, and they knew it wasn't at the other end.

10 They say well, the Plaintiffs skirted their responsibility. No,
11 they didn't. They were, according to that and according to OSHA, and
12 according to everything else, the proper PPE, why weren't they wearing
13 long sleeves in June, in a small, enclosed, concrete room, that you -- that
14 this is there? It's hot, it's summer, Vegas.

15 MR. A. GIOVANNIELLO: Objection. There was no evidence
16 as to the temperature.

17 THE COURT: It's not opinion. Overruled. It's argument.

18 MR. KUDLER: Thank you. So they were wearing short
19 sleeves, and they were allowed to. One thing that they didn't talk about,
20 the Defendant didn't talk about, they talked about well, we're not
21 responsible for the screw, there was no screw, all that stuff, but again,
22 they brought in the evidence about the firemen and that. I didn't bring it
23 in. They had that read out of the interrogatories. Roy said there was a
24 screw in his testimony.

25 Your Honor, can I get --

1 THE COURT: Sorry, is there --

2 MR. KUDLER: Can I not get commentary from over here
3 while I'm closing.

4 THE COURT: I'll take an objection. No speaking objections
5 though.

6 MR. KUDLER: Your Honor, I object to comments out loud.

7 THE COURT: It's argument. Let's get through this. You've
8 got the floor.

9 MR. KUDLER: Thank you.

10 THE COURT: Rebuttal.

11 MR. KUDLER: Just testified that his kitchen breaker wouldn't
12 last seven years. He had -- it was installed without the proper tightness
13 on those lug nuts, and he testified that it would be burned inside, which
14 is completely consistent with what they were asked to do, which was
15 trim back, burn crisp insulation and terminals of existing kitchen breaker.
16 So when they were asked to work, somebody already knew that this
17 kitchen breaker needed to be trimmed back because of the insulation
18 issues, or the failure to tighten the lug nuts. That person worked for the
19 Defendant, and that's Roy.

20 And again, they were not asked -- we'll skip that. This is a
21 flash that occurred over a couple of seconds, built up and went up before
22 it reached them. This is not a long, sustained exposure to this heat. Yes,
23 had they not been wearing the heat gloves, had they not been wearing
24 the heat shirt, even a short-sleeved one, they could have been much
25 more injured. We're not asking for we'll pay them for what could have

1 happened, or pay that they could have died, we're saying paid for the
2 injuries that were caused because the screw was there.

3 One thing is they say well, there's no screw there. Okay.
4 Let's say there's no screw there. Let's say this thing happened for
5 whatever reason, and there's no evidence whatsoever that Jeff touched
6 fingers down below his knee when he was working at a waist or chest
7 level. He was -- since he was working in this area on that breaker. But
8 let's say something else caused it. One thing you didn't hear addressed
9 is the failure of the breaker to function, and the failure to inspect and
10 maintain that breaker which is they're responsible for. Not these two
11 gentlemen, but the Defendant, they're responsible for maintaining that
12 breaker.

13 They didn't do that. That's the other item of negligence in
14 this case; leaving screws up top or having them up there and not finding
15 them. And again, they say well, what are we supposed to do, inspect?
16 Yes, you're supposed to inspect. That's what the jury instructions and
17 the law told us. That's what OSHA told, talked about when Mr. Gifford
18 was up here, you have a duty to maintain and inspect that building.
19 Okay, if it's not, you know, and again, you know, the evidence here is all
20 that Roy was in there, regardless of him saying no.

21 But even if he wasn't where are the inspections? Why aren't
22 you getting somebody in there to inspect and finding out what's going
23 on in this box, ever?

24 They blame Mr. Gifford for not asking Jeff what happened.
25 Well, what does, you know, what did Jeff say? I don't know, I didn't see

1 a screw, I don't know, you know, I just heard there was a screw, so that,
2 you know, he didn't do any investigation afterwards, he has nothing to
3 add, that's why, you know, why didn't you ask?

4 And Mr. James' wife relevant? Is his ability to handle and
5 care for the woman he's loved for decades? They have a 25 year old
6 daughter, 20, a ten year old daughter together, I believe. They're still
7 together. She's here. I guess his ability to be with her, to support her
8 through what she's going through, important? Yes. It's important in that
9 he is limited to what he can do. It's important in that his financial -- his
10 ability to deal with financial stresses are curtailed or limited because of
11 the PTSD that was caused by this.

12 Now I know I went on about, well, it wasn't diagnosed for
13 years later. Both of them explained to you, yes, we don't always
14 diagnose it the minute it has been -- it occurred. Doesn't happen
15 automatically. It doesn't happen immediately. It builds up over time. It
16 comes up, we get mood disorders, and then later on people get
17 diagnosed. It's not unusual. It happens all the time.

18 But they want to say well, he wasn't diagnosed for years
19 later, so it's not true. Same thing with the arm, but the arm pain was
20 there. He just wasn't diagnosed yet. Because it's not diagnosed doesn't
21 mean it doesn't exist. It just means those doctors addressed it and said
22 this is what you have. So the timing of the diagnosis does not change
23 the timing of the injury.

24 Defense argued that, well, Mr. James continued to work,
25 pulling and doing all these things. There's no evidence of that. He says

1 after this I stopped working in the field. I can go to job sites, but I wasn't
2 working in the field. I wasn't doing this work anymore. So the argument
3 that, well, maybe there was some other thing that happened on the job
4 that caused this tear failed because they had no evidence to support that.
5 In fact, all the evidence is contrary.

6 He has no hallucinations, delusions, or paranoia. That's true.
7 Does it change the fact that he has PTSD? No. In fact, the only
8 hallucination he talked about were while he was taking ketamine, a
9 psychotropic drug, they gave him the hallucinations. That's the cure to
10 PTSD, not to combat the PTSD, that's to reset the brain. He never
11 claimed that he has hallucinations because of this incident. No doctor
12 says that PTSD caused hallucinations, delusions, or paranoia. It's not a
13 symptom. It's a red herring.

14 By the way, speaking of that, just to be clear, there was some
15 questions regarding lungs, and the lungs being clear.

16 MR. A. GIOVANNIELLO: Objection.

17 MR. KUDLER: Three is no claim for lung injury here.

18 THE COURT: What's the basis of the objection?

19 MR. A. GIOVANNIELLO: This goes far beyond what I said.

20 THE COURT: Sustained.

21 MR. KUDLER: Thank you, Your Honor.

22 Dr. Zand, Dr. Taylor, Ms. Coombs, and Dr. Patti all said well,
23 in regards to the orthopedics, surgery, or he continues to have pain.
24 Those are his options. Dr. Zand and Ms. Coombs, he will continue to
25 have PTSD. That is not going away. Something that's going to remain

1 with him, and that's there as a result of this injury.

2 Making sure before I'm quiet. They argued that Mr.
3 Comstock said that the Plaintiffs weren't wearing PPE. They -- I don't
4 believe he said that. You'll recall whether -- in any case, he's not an
5 electrician, he doesn't know the code, he has no basis to say that, he's
6 not qualified to say that. Proper PPE is what they were wearing.

7 Again, they're talking about the whole face, yeah, they
8 crossed lines over the whole face, but look at page 520, and look at that
9 description, and it is very, very detailed. In fact, it's like an entire
10 paragraph, and what it doesn't mention are the eyes, the eyelids, under
11 the eyes, any of that area, the eyebrows, all there. But he had the lower
12 face, the upper face, all burnt. Common sense. Glasses stopped the
13 burning.

14 While there's no record, there is no -- there is a -- there are
15 mentions that mood disorders go back all the way to 2016 in Dr. Craig's
16 notes, that the nurse testifying to.

17 MR. A. GIOVANNIELLO: Objection, goes beyond.

18 MR. KUDLER: No, he mentioned there's no 2016 notes in his
19 closing.

20 THE COURT: Overruled.

21 MR. KUDLER: In order for this theory to work, that they're
22 liars, cheaters, and thieves, Ms. Coombs must be a liar, Dr. Zand must be
23 a liar, Dr. Patti must be a liar, Dr. Taylor must be a liar, Nurse Cipollini
24 must be a liar; everybody is lying. Dr. Zand is out there prescribing
25 powerful drugs including ketamine with the intent of giving him

1 hallucinations.

2 MR. A. GIOVANNIELLO: Objection. Redundant.

3 THE COURT: Excuse me?

4 MR. A. GIOVANNIELLO: I'm -- it's redundant.

5 THE COURT: Overruled. Closing argument. Rebuttal.

6 MR. KUDLER: Thank you. Thank you, Your Honor.

7 Why would he do that? He's prescribing medications
8 because they're necessary, he's prescribing medications because they're
9 the appropriate thing to care, to give care and try and heal this man or
10 trying to at least make it better for him in handling his PTSD.

11 Defense counsel noted, stated that Dr. Taylor testified that if
12 he carries there will be excruciating pain. That is not what Dr. Taylor
13 testified to. He testified that it might be -- it would be more difficult to
14 carry if there was excruciating pain, and when does that excruciating
15 pain or when does that pain come up? Grip, pull, push, not carrying in
16 the crook of the arm.

17 So no, we don't expect him to see him walking with
18 excruciating pain because he's carrying a light package. If he was
19 pulling something he'd be in excruciating pain. That's what was testified
20 to. If he was pulling something, if he was trying to grip something
21 heavy, then he would have the pain, but he wasn't doing that while he
22 was carrying the package.

23 That's all I have. Thank you.

24 THE COURT: Let's swear the officer to take charge of this
25 jury.

1 [The Clerk swore in the officers to take charge of the jury]

2 THE COURT: Ladies and gentlemen, the marshal is now in
3 charge of your deliberation. Collect up all your personal items, notes,
4 everything you've brought to the court today, and you will move them to
5 the jury room for your future efforts.

6 As in all cases there are announced alternates. We always
7 have alternates. Those alternates in this case are Mr. Mondscheine and
8 Mr. Feustel, excuse me for mispronunciation. The Marshal's going to
9 have some unique and specific instructions for you when you get into
10 the jury room. Listen to those instructions.

11 Ladies and gentlemen, follow the marshal, please.

12 THE MARSHAL: Please rise for the jury.

13 [Jury retires to deliberate at 2:18 p.m.]

14 [Outside the presence of the jury]

15 THE COURT: The record should reflect we're outside the
16 presence of the jury. Any additional record need be made as a function
17 of argument and examination, witness examination this afternoon,
18 Plaintiff?

19 MR. KUDLER: No. Thank you, Your Honor.

20 THE COURT: Any record outside the presence, Defense?

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

22 THE COURT: And I just wanted to make one quick note. You
23 -- I had contemporaneous objections by Defense -- oh, excuse me, by
24 Plaintiff in Defense closing, and I was thinking, always as I do when I sit
25 here and listen to the lawyers do their good work, *DeJesus vs. Flick*, it's 7

1 P3d 459, it's a 2000 case. Basically, it mirrors the criminal side whether
2 you're not allowed to use the -- you're not allowed to use the pronouns I,
3 or in my opinion this. You've got to argue the evidence. I know it
4 happens as a function of the narrative.

5 MR. A. GIOVANNIELLO: Right.

6 THE COURT: But the Supreme Court has shot many lawyers,
7 you know, not really, but -- and when I heard the I's and in my opinion,
8 that's why I sustained the objection. Plaintiffs' counsel, he didn't do the
9 I, but he did offer, he was arguing more directly the evidence, and so
10 when you objected in a similar fashion, yours came in at 1:50, 1:45 p.m.,
11 and the duly one came in at 2:05, and I go ah, that was more factual, so
12 that's why I sustained one and overruled the other. It didn't even
13 remotely rise to the level of *DeJesus* which if you ever read that opinion
14 it's just gloriously my opinions, gloriously.

15 MR. KUDLER: Or wasn't he crying and everything, too?

16 THE COURT: Yeah, yeah, it was -- yeah.

17 MR. A. GIOVANNIELLO: He was?

18 MR. KUDLER: Carrying on, yeah, Plaintiff's counsel carrying
19 on.

20 THE COURT: So you gentlemen never got close to that, but
21 that's how I found my weight of the decisions I made. All right.

22 Make sure staff has your numbers. I call it a 20-minute rule.
23 If you need to go back to your office and you're close enough, and we'll
24 be in touch if circumstances require.

25 [Recess taken from 2:21 p.m. to 4:35 p.m.]

1 THE MARSHAL: The court is back in session. The Honorable
2 David Barker presiding.

3 THE COURT: All right. Looks like we have a verdict. Let's
4 bring the jury in and let's put us on the record, too. This is A73550,
5 Myers v. THI Nevada. The record should reflect the presence of
6 representatives of Plaintiff and Defense. The minutes should further
7 reflect the marshal indicates jury has indicated they have a verdict.

8 Who's going to do the read?

9 THE CLERK: Me.

10 THE COURT: Okay.

11 THE CLERK: She's never done it so --

12 THE COURT: All right.

13 THE CLERK: I don't want to put that pressure on her.

14 THE COURT: I know. These trainees nowadays.

15 THE CLERK: I might have her poll the jury if they want to
16 poll, but they want to poll, but we'll --

17 THE COURT: There you go. You're in charge.

18 [Pause]

19 THE MARSHAL: Please rise for the jury.

20 [Jury in at 4:36 p.m.]

21 THE MARSHAL: Please be seated.

22 THE COURT: We're on the record in A735550, Myers v. THI
23 of Nevada. The record should reflect the present for representatives for
24 Plaintiff and Defense. All members of the jury panel do appear to be
25 present. Parties stipulate to the presence of the entire panel, Plaintiff?

1 MR. KUDLER: Yes, Your Honor.

2 THE COURT: And Defense?

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

4 THE COURT: Thank you.

5 Mr. Torzon, you walked in with a blue box in your hand.

6 That's a common indication to me that you've been selected to be the
7 foreperson of this jury; is that true?

8 THE FOREPERSON: Yes, sir.

9 THE COURT: Has this jury reached a verdict?

10 THE FOREPERSON: Yes, sir.

11 THE COURT: Could you hand the verdict form to the
12 marshal, please?

13 I'm going to have the Clerk now read the verdict into the
14 minutes.

15 VERDICT

16 THE CLERK: District Court, Clark County, Nevada. Case
17 number A1673550-Z, special verdict form. Jeffrey A. Myers and Andrew
18 James, Plaintiff v. THI of Nevada at Cheyenne LLC, a foreign corporation
19 doing business as College Park Rehabilitation Center, Defendant.
20 Department 17.

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

23 Question one: Were the Defendants negligent, THI of
24 Nevada at Cheyenne LLC, a foreign corporation doing business as
25 College Park Rehabilitation Center?

1 Answer: No.

2 Dated this 6th day of June 2022. Signed by the foreperson

3 Carmen Torzon.

4 Ladies and gentlemen of the jury, is this your verdict, as

5 read?

6 THE JURORS: Yes.

7 THE COURT: Does either side wish to have the jury polled?

8 MR. KUDLER: I would, Your Honor.

9 THE CLERK: Carmen Torzon, is this your verdict, as read?

10 JUROR NO. 1: Yes.

11 THE CLERK: Christopher Ness, is this your verdict, as read?

12 JUROR NO. 2: Yes.

13 THE CLERK: William Acunto, is this your verdict, as read?

14 JUROR NO. 3: Yes.

15 THE CLERK: John Beckmann, is this your verdict, as read?

16 JUROR NO. 4: Yes.

17 THE CLERK: Nan Okuda, is this your verdict, as read?

18 JUROR NO. 5: Yes.

19 THE CLERK: Rebekah Thompson, is this your verdict, as

20 read?

21 JUROR NO. 6: Yes.

22 THE CLERK: Donna Foley, is this your verdict, as read?

23 JUROR NO. 7: Yes.

24 THE CLERK: Shannon McCallum, is this your verdict, as

25 read?

1 JUROR NO. 8: Yes.

2 THE COURT: Ladies and gentlemen, on behalf of the Eighth
3 Judicial District Court, I want to thank you for your time and attention in
4 this matter. From the beginning of this effort I've been admonishing you
5 that you can't speak with anyone about the case. You're released from
6 that admonition at this point. You may speak with anyone you wish.

7 Many times lawyers like to have a conversation with jurors
8 after the completion of the effort, kind of to educate them on what you
9 like and didn't like. You can have that conversation if they want to and
10 that you want to. You can talk about anything you want, frankly.
11 Conversely, should somebody persist in attempting to speak with you
12 about the case, and that conversation make you uncomfortable, or you
13 want to end that conversation, the marshal's responsibility to stand by
14 you to make sure your wishes are honored.

15 You walked in this door last week with so many of your
16 fellow citizens. Frankly, this selection process was a little bit more
17 straightforward than many. I've heard in the years I've been doing this a
18 myriad of excuses for why people can't serve, and your efforts and your
19 time and attention, any citizen's time and attention are greatly needed to
20 make these important decisions. So on behalf of the Eighth Judicial
21 District I want to deeply thank you for your effort. Go home. Have a
22 good evening.

23 Ladies and gentlemen, all rise for this jury.

24 THE MARSHAL: Please rise for the jury.

25 [Jury excused at 4:41 p.m.]

1 THE COURT: The record should reflect we're outside the
2 presence of the jury. The verdict will be filed with the minutes of the
3 court. Lawyers, you're more than -- if you wish, you can speak with the
4 jury afterwards. I go in the back. I don't talk to them about why they do
5 what they do, only whether they feel like they've been treated with
6 respect from the beginning of this effort to the end of it, and then it's up
7 to you to speak with them if you'd like. And again, if they don't want to,
8 don't press them.

9 Is there any additional record that we need to make this
10 evening?

11 MR. KUDLER: No, Your Honor.

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

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

14 THE CLERK: Judge, can I return the unused exhibits to
15 counsel?

16 THE COURT: All unused exhibits are returned to counsel.

17 THE CLERK: Thank you.

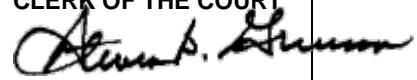
18 [Proceedings concluded at 4:41 p.m.]
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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio-visual recording of the proceeding in the above entitled case to the
best of my ability.

23 

24 Maukele Transcribers, LLC

25 Jessica B. Cahill, Transcriber, CER/CET-708



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

JEFFREY MYERS, ET AL.,

Plaintiffs,

vs.

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

Defendants.

CASE#: A-16-735550-C

DEPT. XVII

BEFORE THE HONORABLE DAVID BARKER
DISTRICT COURT JUDGE
MONDAY, JUNE 6, 2022

RECORDER'S PARTIAL TRANSCRIPT OF JURY TRIAL - DAY 5
TESTIMONY OF ANDREW JAMES

APPEARANCES

For the Plaintiffs: DONALD C. KUDLER, ESQ.

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

RECORDED BY: AIMEE CURAMENG, COURT RECORDER

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INDEX OF EXHIBITS

<u>FOR THE PLAINTIFFS</u>	<u>MARKED</u>	<u>RECEIVED</u>
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None		
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<u>FOR THE DEFENDANT</u>	<u>MARKED</u>	<u>RECEIVED</u>
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None		
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Las Vegas, Nevada, Monday, June 6, 2022

[Designation of the record begins at 10:58 a.m.]

THE COURT: Defense, call your next witness.

MR. A. GIOVANNIELLO: Your Honor, the Defense rests.

THE COURT: Defense rests.

DEFENSE RESTS

THE COURT: Rebuttal, Plaintiff?

MR. KUDLER: Rebuttal would call Mr. James back to the stand for a brief rebuttal.

THE MARSHAL: Watch your step, Mr. James.

MR. JAMES: Yes, sir.

THE MARSHAL: Remain standing and raise your right hand. Please be sworn in by the clerk, please.

ANDREW JAMES, PLAINTIFFS' WITNESS, SWORN

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

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

THE COURT: Counsel, your witness.

DIRECT EXAMINATION

BY MR. KUDLER:

Q Mr. James, you've seen the video before?

A Yes, I have.

Q Looking at that, did you research what you were carrying?

A Actually, I did.

1 Q Okay. Why did you do that?

2 A Because I wanted to know a rough idea of what that was and
3 how much that box weighed.

4 Q And what did you determine?

5 A We placed an order on September 16th from Amazon that
6 was a Prime delivery scheduled to be delivered on September 17th. That
7 video was taken September 20th. I don't look at the mail every day,
8 which is obvious from the fact that the previous witness videotaped me
9 through that entire weekend. And I found out what that item was and
10 what the contents were.

11 Q And what was it?

12 A Two bungee cords.

13 Q How much did that box weigh?

14 A The bungee cords net weight was 0.2 pounds each, so less
15 than -- I mean, right around a half a pound.

16 Q Including the packaging?

17 A Correct. I would assume so, yes.

18 Q Okay. Yesterday, Mr. -- excuse me. Friday, Mr. Comstock
19 testified that he alleged did the work on the vents?

20 A Correct.

21 Q Is that true?

22 A That's not true.

23 Q Who did the work on the vents?

24 A Industrial Light and Power did.

25 Q Okay. He was misremembering that?

1 A He was completely mistaken, yes.

2 Q Okay. Whose aluminum ladder is that in the photographs?

3 A Roy Comstock's.

4 Q Okay.

5 A Or the facilities.

6 Q And how do you know that?

7 A Because he brought it in there. He used it. And we do not
8 use aluminum ladders in any capacity.

9 Q What do you use it for?

10 A He used it to gain access to an open ceiling hatch to go up
11 into the attic.

12 Q Did he tell you why?

13 A No, he did not.

14 Q That's all I have. Thank you.

15 THE COURT: Cross-examination?

16 MR. A. GIOVANNIELLO:

17 MR. KUDLER: Yeah.

18 CROSS-EXAMINATION

19 BY MR. A. GIOVANNIELLO:

20 Q Mr. James, you were carrying that package in your left arm,
21 right?

22 A Correct.

23 Q Okay. Now, did Mr. Comstock say that he came in after
24 Industrial Electrical and Power and worked on certain things, including
25 the vents?

1 A I don't recall. I believe he said after.

2 Q Okay. Thank you. That's all I have, sir.

3 THE COURT: Redirect?

4 MR. KUDLER: Nothing. Thank you, Your Honor.

5 THE COURT: Anything else for this witness from the jury?

6 Seeing no hands, please step down.

7 [Designation of the record ends at 11:08 a.m.]

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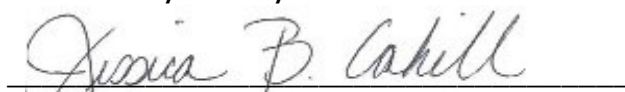
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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio-visual recording of the proceeding in the above entitled case to the
23 best of my ability.

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Jessica B. Cahill, Transcriber, CER/CET-708

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

JUN 06 2022 @4:38 pm

BY, *S. Albrecht*
SAMANTHA ALBRECHT, DEPUTY

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



DISTRICT COURT
CLARK COUNTY, NEVADA

JEFFREY A. MYERS and ANDREW
JAMES, individually,

Plaintiffs,

vs.

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

Defendant.

Case No.: A-16-735550-C

SPECIAL VERDICT FORM

DEPT: 17

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

1. Were the Defendants negligent?

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

ANSWER: YES _____ NO X

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

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

5 ANSWER: YES _____ NO _____

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

9 3. Were the Plaintiffs negligent?

10 ANSWER: YES _____ NO _____

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

12 ANSWER: YES _____ NO _____

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

18 Plaintiffs Percentage: _____ %.

19 Defendants Percentage: _____ %.

20 Total must be 100%.

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

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

24 Plaintiff Jeffrey Myers \$ _____.

25 Plaintiff Andrew James \$ _____.

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

28 Plaintiff Jeffrey Myers \$ _____.

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Plaintiff Andrew James \$_____.

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

Plaintiff Jeffrey Myers \$_____.

Plaintiff Andrew James \$_____.

(d) Plaintiff's future loss of earnings.

Plaintiff Andrew James \$_____.

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

Plaintiff Jeffrey Myers \$_____.

Plaintiff Andrew James \$_____.

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

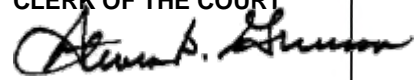
Plaintiff Jeffrey Myers \$_____.

Plaintiff Andrew James \$_____.

Total Damages \$_____.

DATED this 6 day of June, 2022.


FOREPERSON



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8 Fax (702) 878-9350
9 *Attorneys for Plaintiffs*

DISTRICT COURT
CLARK COUNTY, NEVADA

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

11 Plaintiff,

12 vs.

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

20 Defendants.

CASE NO. : A-16-735550-C

DEPT. NO.: XVII

HEARING REQUESTED

MOTION FOR NEW TRIAL

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


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

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Personal Injury Experts

STATEMENT OF THE FACTS

Background

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

Jury Instructions At Issue

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

Instruction 22

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

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

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

Instruction 27

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

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

1 Instruction 28

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

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

8 Instruction 29

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

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

20 **The Defendants Had a Duty to Maintain Their Breakers**

21 The Plaintiffs retained Don Gifford as an expert in this case who testified that Defendants
22 had a duty to maintain the equipment including te breakers at Page 16, line 17 to page 17, line
23 18:

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

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

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

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

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

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

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

8 On the other hand, the OSHA -- the OSHA violations by College Park was the fact that
9 the requirement under 1926 is that the employer, in this particular case, College Park, had
an obligation to provide a safe working environment. They had an old electrical panel that
10 had been -- had been opened and something had been done inside of it and people had left
materials inside of it that they shouldn't have left. And as time went on, because under the
-- under the rules of the

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

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

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

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

17 A Yes.

18 Q Why?

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

24 **The Defendants Failed to Maintain Electrical**

25 **Equipment Including the Main Breaker**

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

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

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

4 Q Okay. What is your job responsibilities?

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

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

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

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

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

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

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

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

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

18 A No, sir.

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

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

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

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

25 A No, sir.

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

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

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

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

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

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

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

11 A No. No, sir.

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

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

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

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

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

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

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

21 Q Let me ask the question again.

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

23 Q Let me ask the question again.

24 A Yes, sir.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 A Evidence in this case, yes.

28 Q But what's that?

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

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

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

THE WITNESS: So the only real way to test a breaker is to do a manual reset. So, Eaton
Manufacturing, who now owns the subsequent companies that bought Westinghouse that

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

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

15 The Main Breaker Failed

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 Q Were the lights on?


36 A The lights never went off.

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

38 A The breaker never tripped.

39

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LEGAL ARGUMENT

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

Rule 59 - New trials; Amendment of Judgments

(a) In General.

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

...

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

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

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

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

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

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


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

19 CONCLUSION

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

22 DATED this 15th day of July, 2022.

23 CAP & KUDLER

24
25 
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Attorney for Plaintiffs

1 CERTIFICATE OF SERVICE

2 I hereby certify that on the 18th day of July, 2022, pursuant to Administrative Order
3 14-2, I electronically served a true and correct copy of the foregoing **MOTION FOR NEW**
4 **TRIAL**, addressed as follows:

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1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 No. 85441

4
5

6 **JEFFREY A. MYERS and ANDREW JAMES,**

7
8 Appellants,

9
10 vs.

11
12 **THI OF NEVADA AT CHEYENNE, LLC; HEALTHCARE REALTY OF**
13 **CHEYENNE, LLC; FUNDAMENTAL ADMINISTRATIVE SERVICES,**
14 **LLC**

15
16 Respondents.

17

18 **APPELLANTS' APPENDIX ON APPEAL**

19 **VOLUME 8**

20 Appeal from the Eighth Judicial District Court for Clark County

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

22 (Honorable Mark Gibbons)

23

24 **DONALD C. KUDLER, ESQ.**

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APPELLANTS' APPENDIX
VOLUME 8
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 -
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23	[Filed: 9/23/2022]		AA000996
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1	Notice of Order Denying Plaintiffs' Motion for	8	AA000997 -
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4	Notice of Appeal	8	AA001011 -
5	[Filed: 9/28/2022		AA001012
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APPELLANTS' APPENDIX
VOLUME 8

ALPHABETICAL ORDER

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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
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Jury Instruction No. 29 8.4 Landowner Liability: Duty [05/31/2022 Jury Trial - Day 1]	1	AA0000041
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1	Notice of Appeal	8	AA001011 -
2	[Filed: 9/28/2022]		AA001012
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5	[Filed: 08/13/2020]		
6	Notice of Order Denying Plaintiffs' Motion for	8	AA000997 -
7	New Trial		AA001010
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10	Defendants		AA000976
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12	Order Denying Plaintiffs' Motion for New Trial	8	AA000985 -
13	[Filed: 9/23/2022]		AA000996
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14	James		
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25	[Filed: 08/08/2022]		

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

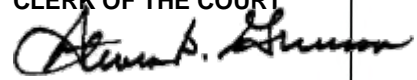
ALPHABETICAL ORDER

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]		
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CAP & KUDLER
Donald C. Kudler, Esq.
Nevada Bar #005041
3202 W. Charleston Blvd
Las Vegas, NV 89102
Tel (702) 878-8778
Fax (702) 878-9350
Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

JEFFREY A. MYERS and ANDREW JAMES,
individually,

Plaintiff,

vs.

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

Defendants.

CASE NO. : A-16-735550-C

DEPT. NO.: XVII

HEARING REQUESTED

ERRATA TO MOTION FOR NEW TRIAL

Plaintiffs, JEFFREY A. MYERS and ANDREW JAMES, by and through their attorney
of record, Donald C. Kudler, Esq. of Cap & Kudler, submits the following ERRATA in respect
to a clerical error in the first paragraph of the Motion for New Trial, filed July 18, 2022:

The paragraph incorrectly states this Motion for Protective Order Regarding Subpoenas
Duces Tecum on Order Shortening Time. The paragraph should actually state this Motion for
New Trial.

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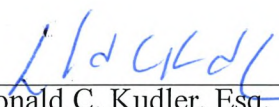
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1 Pursuant to NRCP 60(a), Plaintiff, KEITH TOLIVER, individually, respectfully
2 requests that the record be changed to reflect the paragraph stating this Motion for New
3 Trial.

4 DATED this 18th day of July, 2022.

5 CAP & KUDLER

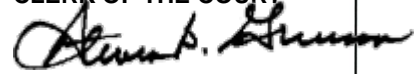
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7 
8 Donald C. Kudler, Esq.
9 Nevada Bar No.005041
3202 W. Charleston Blvd.
Las Vegas, NV 89102
Attorney for Plaintiffs

10
11
12 CERTIFICATE OF SERVICE

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

16
17 Alexander F. Giovanniello, Esq.
18 Christopher J. Giovanniello, Esq.
19 cjg@giolawgroup.com
20 service@giolawgroup.com
21 Giovanniello Law Group
22 3753 Howard Hughes Pkwy., Ste. 200
23 Las Vegas, NV 89169
24 Tel No. (702) 784-7638
25 *Attorney for Defendants*
26 *THI of Nevada at Cheyenne, LLC;*
27 *Healthcare Realty of Cheyenne, LLC; and*
28 *Fundamental Administrative Services, LLC*

24 
25 An Employee of CAP & KUDLER



ERR
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Donald C. Kudler, Esq.
Nevada Bar #005041
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Las Vegas, NV 89102
Tel (702) 878-8778
Fax (702) 878-9350
Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

JEFFREY A. MYERS and ANDREW JAMES,
individually,

Plaintiff,

vs.

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

Defendants.

CASE NO. : A-16-735550-C

DEPT. NO.: XVII

HEARING REQUESTED

AMENDED ERRATA TO MOTION FOR NEW TRIAL

Plaintiffs, JEFFREY A. MYERS and ANDREW JAMES, by and through their attorney
of record, Donald C. Kudler, Esq. of Cap & Kudler, submits the following AMENDED
ERRATA in respect to a clerical error in the first paragraph of the Motion for New Trial, filed
July 18, 2022:

The paragraph incorrectly states this Motion for Protective Order Regarding Subpoenas
Duces Tecum on Order Shortening Time. The paragraph should actually state this Motion for
New Trial.

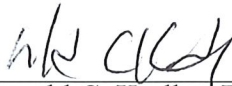
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....

1 Pursuant to NRCP 60(a), Plaintiffs, JEFFREY A. MYERS and ANDREW JAMES,
2 individually, respectfully requests that the record be changed to reflect the paragraph
3 stating this Motion for New Trial.

4 DATED this 17th day of July, 2022.

5 CAP & KUDLER

6
7 
8 Donald C. Kudler, Esq.
9 Nevada Bar No.005041
10 3202 W. Charleston Blvd.
11 Las Vegas, NV 89102
12 Attorney for Plaintiffs

13 CERTIFICATE OF SERVICE

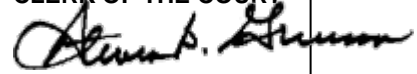
14 I hereby certify that on the 20th day of July, 2022, pursuant to Administrative Order
15 14-2, I electronically served a true and correct copy of the foregoing **AMENDED ERRATA TO**
16 **MOTION FOR NEW TRIAL**, addressed as follows:

17
18 Alexander F. Giovanniello, Esq.
19 Christopher J. Giovanniello, Esq.
20 cjg@giolawgroup.com
21 service@giolawgroup.com
22 Giovanniello Law Group
23 3753 Howard Hughes Pkwy., Ste. 200
24 Las Vegas, NV 89169
25 Tel No. (702) 784-7638
26 *Attorney for Defendants*
27 *THI of Nevada at Cheyenne, LLC;*
28 *Healthcare Realty of Cheyenne, LLC; and*
Fundamental Administrative Services, LLC

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OPPM

Alexander F. Giovanniello

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Attorneys for Defendants:

THI OF NEVADA AT CHEYENNE, LLC dba

COLLEGE PARK REHABILITATION CENTER;

HEALTHCARE REALTY OF CHEYENNE, LLC;

FUNDAMENTAL ADMINISTRATIVE

SERVICES, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

JEFFREY A. MYERS and ANDREW
JAMES, individually,

Plaintiffs,

vs.

THI OF NEVADA AT CHEYENNE, LLC
a foreign Corporation d/b/a COLLEGE
PARK REHABILITATION CENTER;
HEALTHCARE REALTY OF
CHEYENNE, LLC, a Delaware
Corporation; FUNDAMENTAL
ADMINISTRATIVE SERVICES, LLC, a
Delaware Corporation; DOES 1-XXX; and
ROE CORPORATIONS 1-XXX, inclusive,

Defendants.

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

)
) OPPOSITION TO PLAINTIFFS MOTION
) FOR NEW TRIAL BY DEFENDANT THI
) OF NEVADA AT CHEYENNE, LLC dba
) COLLEGE PARK REHABILITATION
) CENTER

) DEPT: XVII

) Complaint filed April 16, 2016

) Trial scheduled May 31, 2022

OPPOSITION TO PLAINTIFFS MOTION FOR NEW TRIAL BY DEFENDANT THI
OF NEVADA AT CHEYENNE, LLC dba COLLEGE PARK REHABILITATION
CENTER

COMES NOW Defendant THI OF NEVADA AT CHEYENNE, LLC dba COLLEGE

1 PARK REHABILITATION CENTER (hereinafter referred to as “College Park”), by and through
2 its counsel of record, Alexander F. Giovanniello and Christopher J. Giovanniello of
3 GIOVANNIELLO LAW GROUP, hereby file this Opposition to Plaintiffs’ Motion for New Trial.

4 This Opposition is based upon this Notice, the accompanying Memorandum of Points and
5 Authorities, the documents and evidence on file herein, and upon such oral and documentary
6 evidence as may be presented at the hearing on this matter.

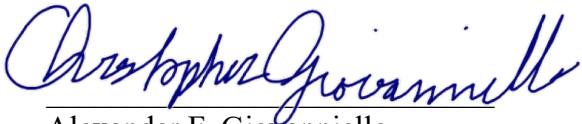
7 Plaintiffs are missing a major point here—the jury simply did not believe Plaintiffs or
8 Plaintiffs’ expert Mr. Gifford.

9 Defendants were handicapped from the outset of its current counsel’s assumption of the
10 defense of this case—no experts permitted, no depositions, limited to no discovery. Plaintiffs
11 simply did not prove their case to the eight people in the jury box.

12 One of the jurors was a professional electrical engineer—he had intimate knowledge of
13 electrical systems, arc flashes, and circuit breakers. He found in favor of Defendants. The jury
14 verdict was unanimous.

15
16 Dated: August 1, 2022

GIOVANNIELLO LAW GROUP

17
18 By: 

Alexander F. Giovanniello

Nevada Bar No.: 11141

Christopher J. Giovanniello

Nevada Bar No.: 15048

3753 Howard Hughes Parkway, Suite 200

Las Vegas, Nevada 89169

Attorneys for Defendant

THI OF NEVADA AT CHEYENNE, LLC dba

COLLEGE PARK REHABILITATION CENTER

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF FACTS**

3 This is an action filed by Plaintiffs Jeffery Myers and Andrew James (hereinafter referred
4 to as “Plaintiffs”) for negligence against Defendants THI of Nevada at Cheyenne, LLC dba
5 College Park Rehabilitation Center (hereinafter referred to as “College Park”); Healthcare Realty
6 of Cheyenne, LLC (hereinafter referred to as “Healthcare Realty”); and Fundamental
7 Administrative Services, LLC (hereinafter referred to as “FAS”) (hereinafter collectively referred
8 to as “Defendants”). Plaintiffs allege that employees of College Park negligently left a screw in
9 an electrical box, causing an arc flash while Plaintiffs were performing repair work on the
10 electrical box, with the arc flash causing Plaintiffs’ alleged injuries.

11 We first note that College Park’s current counsel replaced its previous counsel at a very
12 late stage in the litigation. Upon College Park’s current counsel taking over its litigation strategy,
13 College Park’s previous counsel had done considerable damage to College Park’s ability to
14 defend itself. The court denied College Park’s motion to reopen discovery so that it could retain
15 experts, depose the Plaintiffs and Plaintiffs’ expert witness, and later denied its ability to proffer
16 its own previously approved damages expert witness.

17 On May 31, 2022, the matter came on for trial. After the close of Plaintiffs’ case-in-chief,
18 Defendants’ case-in-chief, and Plaintiffs’ rebuttal, Defendants moved for a Judgment as a Matter
19 of Law regarding Defendants Healthcare Realty and FAS, arguing that Plaintiffs failed to prove
20 a prima facie case against those two defendants. The Court granted the Motion for a Judgment
21 as a Matter of Law and adjudicated in favor of Healthcare Realty and FAS from the suit.

22 After five days of testimony, the case went to the jury. Included in this jury panel was a
23 professional electrical engineer, who noted during voir dire that he was aware and accustomed to
24 the electrical systems at issue, including breakers. The jury returned a unanimous verdict in favor
25 of College Park, finding no negligence. While College Park notes Plaintiffs have failed to proffer
26 any affidavits from any of the jurors noting any malfeasance or misapplication of the jury
27 instructions. College Park notes that the jury had multiple avenues in which it could determine
28 that College Park was not negligent, such as: the jury did not believe the testimony of Plaintiffs;

1 the jury did not believe the testimony of Plaintiffs' expert's testimony; the jury determined the
2 Plaintiffs were negligent and caused their own injuries; or the jury determined the Plaintiffs were
3 not wearing proper protective gear ("PPE") in completing their work; and that College Park
4 properly maintained its premises. Despite these likely determinations, Plaintiffs nevertheless
5 filed their Motion for New Trial, arguing that the jury manifestly disregarded three jury
6 instructions of the court, promptly requiring College Park to file the instant opposition.

7 **II. ARGUMENT**

8 **1. NRCP Rule 59(a)(1)(E) Is Inapplicable Because There Was No Manifest** 9 **Disregard by the Jury of the Instructions of the Court**

10 NRCP 59(a) states, in pertinent part:

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

13 (E) Manifest disregard by the jury of the instructions of the court.

14 Here, Plaintiffs rely upon a variety of cases to support their position that the jury in the
15 instant matter disregarded jury instructions (the majority of which held that a new trial was *not*
16 warranted), even though the jury was unanimous in its decision finding no liability on behalf of
17 Defendant College Park.

18 First, Plaintiffs rely upon *Weaver Bros. v. Misskelley*, 98 Nev. 232, 645 P.2d 438 (1982).
19 In *Weaver Bros.*, an action was brought to recover damages for alleged breach of construction
20 contract. *Id.* The jury returned a verdict for the plaintiff, and the judge granted a new trial, which
21 plaintiff appealed. *Id.* On appeal, the Supreme Court of Nevada determined the main issue was
22 whether the district court erred by granting a new trial on the ground that the jury disregarded the
23 instructions regarding prevention of performance. *Id.* at 234, 439.

24 In *Weaver Bros.*, the defendant hired a subcontractor to clear the property and prepare the
25 dirt pad upon which the building was to be constructed. *Id.* at 234-5, 439. The plaintiff presented
26 evidence that the defendant did not properly supervise the subcontractor. *Id.* According to the
27 plaintiff, there was a delay in the excavation and the specifications were not being followed,
28 causing the plaintiff to fire the defendant. *Id.* at 235, 440. In concluding that the jury instructions

1 regarding prevention of performance had been misapplied, the district judge apparently reasoned
2 that, by failing to file a financial statement and by terminating the defendant's employment, the
3 plaintiff had prevented the defendant's performance. *Id.*

4 The Supreme Court of Nevada did not agree with the district court judge's reasoning,
5 holding that the jury may well have found that the plaintiff's failure to file a financial statement
6 was a minor breach which did not prevent or affect the defendant's ability to perform because it
7 was ignored by the parties. *Id.* The court also held that the jury may have further concluded that
8 the defendant's failure to supervise the subcontractor properly was a breach of sufficient
9 magnitude to warrant his dismissal and termination of the contract. *Id.* Therefore, the Supreme
10 Court of Nevada was unable to declare that it was impossible for the jury, correctly applying the
11 instructions, to have reached the verdict they reached. *Id.*

12 Similarly, here, Plaintiffs argue that College Park had a duty to maintain its breakers, that
13 College Park failed to do so, and that the main breaker failed. [Plaintiffs' Motion, pgs. 3-9]
14 Plaintiffs base these allegations upon testimony of Plaintiffs Andrew James and Jeffrey Myers,
15 Plaintiffs' expert witness, Don Gifford, and College Park employee Roy Comstock. What
16 Plaintiffs have seemed to conveniently leave out of this testimony, is the various questions the
17 jury asked each of the above-noted witnesses. The jury was permitted to ask follow-up questions
18 of each witness who provided testimony at trial. Each witness received follow-up questions from
19 the jury, which only proves that jury was more than attentive and received and processed the
20 entirety of each witnesses' testimony.

21 Plaintiffs also conveniently leave out the possibility that the jury simply did not believe
22 the testimony of Plaintiffs or Plaintiffs' expert, and that they did in fact believe the testimony of
23 Mr. Comstock. Like in *Weaver Bros.*, there are more likely instances for the jury's unanimous
24 verdict that simply ignoring jury instructions—the probable reason for the jury's unanimous
25 verdict was that they simply did not believe the testimony provided by Plaintiffs and Plaintiffs'
26 expert and put more weight behind the testimony of Roy Comstock. It is also more than possible
27 that the jury could have simply determined that College Parks' evidence that Plaintiffs were the
28 cause of the arc flash at issue in this case was the more likely scenario. The jury simply

1 disregarding or not putting weight into expert testimony does not equate to a “manifest disregard”
2 of the jury instructions as Plaintiffs would like this court to believe. In fact, a fact finder
3 determines the facts, not the experts. *In re Scott*, 61 P.3d 402, 424. Indeed, fact finders may even
4 reject the unanimity of expert opinion. *Id.* Here, the jury rejected Plaintiffs’ expert opinion that
5 College Park was at fault and determined that College Park was not negligent.

6 Like in *Weaver Bros.*, there is clearly no “manifest disregard” of the jury instructions
7 because Plaintiffs simply failed to prove that the breaker was not properly maintained or that that
8 the breaker failed. Even further, Plaintiffs fail to note the testimony from Plaintiff Andrew James,
9 who testified that an inspector arrived at College Park before Plaintiffs began their work, who
10 noted that there was an issue with the main panels (where Plaintiffs would be working) and
11 provided information that the breaker needed to be replaced. In fact, Plaintiff Andrew James
12 testified that Plaintiffs work at College Park included replacing the breaker at issue, and further
13 testified (without any evidentiary support) that College Park was to provide said breaker to
14 Plaintiffs prior to their beginning work. It simply does not follow that College Park failed to
15 maintain its premises if an inspector notified College Park and Plaintiffs of an issue with the
16 breaker, and Plaintiffs work at College Park included replacing that same breaker.

17 Next, Plaintiffs rely upon *Town & Country Elec. Co. v. Hawke*, 100 Nev. 701, 692 P.2d
18 490 (1984). In *Hawke*, a tenant plaintiff brought action against a seller and installer of a light
19 fixture (defendants) after the fixture fell from the ceiling of the plaintiff’s apartment and struck
20 her on the head. *Id.* the district court granted the plaintiff a new trial after the jury returned a
21 verdict in the defendants’ favor, and the defendant appealed. *Id.*

22 In *Hawke*, plaintiff argued that there was no locknut in the fixture apparatus and that about
23 one-half of the threaded pipe which formerly held the glass diffuser had been threaded up into the
24 socket base on the ceiling and that the lowest three or four threads of the pipe had been stripped.
25 *Id.* at 702, 490. The plaintiff’s theory at trial was that the lack of a locknut in the apparatus had
26 been a substantial cause of the light fixture’s fall, contending that the absence of the locknut was
27 the result of negligence by the installer defendant, marketing of a defective product, or both. *Id.*
28 The jury heard testimony during trial on the function of a locknut as a safety device to prevent

1 the threaded pipe from being screwed so far into the socket that there was insufficient pipe on
2 which to attach the ornamental knob holding the diffuser in place. *Id.* The jury also heard
3 testimony, however, on the stripped condition of the threaded pipe. *Id.* The jury returned a
4 general verdict finding neither defendant liable causing the plaintiff to appeal. *Id.*

5 On appeal, the plaintiff argued the jury disregarded the jury instructions under NRCP 59.
6 *Id.* at 702, 491. The court noted that it “strictly construes” NRCP 59, and that the jury was
7 instructed on negligence, proximate cause, and strict products liability. *Id.* Given the testimony
8 at trial, the Supreme Court of Nevada held that the jury may have concluded that the missing
9 locknut was not the proximate cause of the accident; or inferred that the condition was caused by
10 a previous tenant; or that the fixture was not unreasonably dangerous as manufactured; or that the
11 light was not negligently installed. *Id.* The Nevada Supreme Court concluded that **it need not**
12 **determine how the jury reached its conclusion that neither defendant was liable; it need**
13 **only determine whether it was possible for the jury to do so.** *Id.* (emphasis added). The Court
14 determined it was indeed possible for the jury to reach a defense verdict on the evidence, and thus
15 the trial court erred by granting a new trial. *Id.* at 703, 491.

16 Similarly, here, there are multiple avenues for which the jury could have reached its
17 unanimous verdict in favor of College Park. As noted above, the jury could have disregarded
18 Plaintiffs’ testimony; the jury could have disregarded Plaintiffs’ expert testimony; or the jury
19 could have determined that the Plaintiffs were the cause of their own injuries. Based on the ruling
20 in *Hawke*, the Nevada Supreme Court essentially held that if there are any other possibilities for
21 the jury to have reached its conclusion—other than a “manifest disregard” for the jury
22 instructions—than there is no ground for new trial under NRCP 59(a)(1)(E). *Id.* at 703, 491. In
23 fact, the Court specifically noted it “strictly construes” NRCP 59, which again supports the notion
24 that for NRCP 59(a)(1)(E) to apply, there must be no other possible reason for the jury to have
25 reached its verdict without disregarding the jury instructions. *Id.* at 702, 491. Clearly, that is not
26 the case here, and NRCP 59(a)(1)(E) inapplicable to the instant matter.

27 Next, Plaintiff cite *Jaramillo v. Blackstone*, 101 Nev. 316, 704 P.2d 1084 (1985). In
28 *Jaramillo*, a pedestrian plaintiff was struck and injured by an automobile and brought action

1 against the driver and driver's employer. *Id.* After the jury returned a verdict indicating the
2 plaintiff had been 63% negligent and that the driver was 37% negligent, the district court granted
3 the plaintiff's motion for new trial, and the driver and driver's employer appealed. *Id.* The
4 Supreme Court of Nevada held that it was not impossible for the jury to conclude that plaintiff
5 was more at fault than the driver. *Id.*

6 The jury was instructed on contributory negligence, and the right of way of the pedestrian.
7 *Id.* at 319, 1086. From the evidence presented at trial, **the Supreme Court of Nevada noted that**
8 **it was possible** the jury concluded that the plaintiff suddenly left the center turn lane, a place of
9 safety, and walked into the path of the vehicle when it was so close that it was impossible for the
10 driver to stop the vehicle to yield to the plaintiff. *Id.* (emphasis added). The Court additionally
11 noted that the testimony at trial indicated that it was not impossible for the jury to conclude that
12 the plaintiff was more at fault than the driver and reach their verdict. *Id.* at 319, 1087.

13 Again, here, like *Jaramillo*, there are multiple avenues wherein the jury could have
14 determined that College Park was not negligent in the instant matter. Plaintiffs simply fail to
15 realize that they failed to prove a prima facie case, and the jury either disregarded Plaintiffs'
16 expert testimony, or believed that Plaintiffs were the cause of their own injury. Instead, Plaintiffs
17 place blame on the jury, instead of themselves, for failing to prove their theory of the case. Here,
18 the jury was properly instructed, Plaintiff Andrew James specifically testified that there was an
19 inspector on scene prior to Plaintiffs beginning their work who noted there was an issue with the
20 breaker, and Plaintiffs work included replacing the breaker that the inspector noted was an issue.
21 Despite Plaintiffs argument, College Park must have properly determined that the breaker needed
22 to be replaced and hired Plaintiffs to replace said breaker—which is assuredly what the jury
23 determined. Plaintiffs' argument that the only way the jury could come to their verdict was by
24 determining College Park had no duty to maintain the breakers is clearly misplaced and can only
25 be viewed as Plaintiffs sour grapes that they failed to prove their theory of the case.

26 Next, Plaintiffs rely upon *Rees v. Roderiques*, 101 Nev. 302, 701 P.2d 1017 (1985). In
27 *Rees*, the plaintiff brought action against the defendant doctor claiming the defendant was
28 negligent in her medical treatment of the plaintiff and, as a result, the lower portion of the

1 plaintiff's leg required amputation. *Id.* The district court granted the plaintiff's motion for new
2 trial on the basis that the jury misapplied and/or misunderstood instructions dealing with standard
3 of care and proximate cause, causing the defendant to appeal. *Id.*

4 In *Rees*, the plaintiff visited the defendant doctor with her right leg in severe pain,
5 exhibited difficulty walking, and her lower right leg was swollen. *Id.* at 303, 1018. The defendant
6 examined the plaintiff, diagnosing her with varicose veins, instructed the plaintiff to wear an
7 elastic stocking to support the veins and reduce the swelling, and scheduled another appointment
8 for the plaintiff two days later. *Id.* When the plaintiff returned to the defendant's office, she
9 exhibited a black right foot with red streaks, causing the defendant's office to send the plaintiff
10 to another doctor, who diagnosed the plaintiff with early gangrene of the right foot. *Id.* at 303-4,
11 1018. The plaintiff received surgery on the right leg, but the leg could not be saved and required
12 amputation below the knee. *Id.* Upon conclusion of the trial, the jury found for the defendant,
13 causing Plaintiff to move for a new trial. *Id.* The district court granted the motion for new trial
14 on the basis the jury had misapplied and/or misunderstood the instructions of law dealing with
15 standard of care and proximate cause. *Id.* at 304, 1019. The defendant's appeal followed. *Id.*

16 The instant case is distinguishable from the facts of *Rees*. Clearly, there was no alternative
17 theory as to why the jury reached its verdict in *Rees*—no fault could be attributed to the plaintiff,
18 and multiple experts testified that the defendant breached the standard of care. *Id.* at 304-5, 1019-
19 20.

20 Here, however, as noted above, there are multiple possibilities as to why the jury reached
21 its verdict, namely that they simply did not believe (and thus disregarded) Plaintiffs' expert's
22 testimony (which is not grounds for a new trial pursuant to *In re Scott, infra*), or that the jury
23 believed the Plaintiffs were the cause of their own injury. Further, Plaintiff Andrew James' own
24 trial testimony reflects that there was an inspector present prior to Plaintiffs beginning their work
25 that noted the breaker at issue required replacement, and Plaintiffs were hired to replace the same
26 breaker. As such, whereas in *Rees* the defendant had no evidence to contradict the testimony
27 provided by Plaintiff, here College Park had evidence to contradict Plaintiffs' testimony with
28 testimony of Roy Comstock, and with Plaintiff Andrew James' own testimony that an inspector

1 had inspected the area prior to his beginning work at College Park. Therefore, *Rees* is inapplicable
2 to the instant matter.

3 Further, Plaintiffs conveniently failed to note that the *Rees* holding was recently
4 distinguished in *Rives v. Center*, 485 P.3d 1248, 2021 WL 1688014 (2021). *Rives* held that it was
5 distinguishable from *Rees* because there, the defendant failed to proffer any evidence to the
6 contrary of the plaintiff's testimony, whereas in *Rives* there was ample testimony to contradict
7 the plaintiff's testimony. *Id.* at *4. *Rives* held that the jury's verdict was not "impossible" because
8 the jury could have reasonably found based on the evidence presented that the plaintiff was solely
9 responsible for the compensable injury even if the settled defendant's conduct fell below the
10 standard of care, or that the jury could have disregarded the expert's testimony that the settled
11 defendants contributed to the injuries in some measurable or compensable way, per *In re Scott*.
12 The *Rives* court further held that the decision to grant or deny a motion for new trial rests within
13 the sound discretion of the trial court, and it would not disturb that decision absent **palpable**
14 **abuse**. *Id.* at *3 (emphasis added).

15 Again, in the instant matter College Park presented contradictory evidence to Plaintiffs'
16 testimony and Plaintiffs' expert's testimony, namely that the area was inspected prior to the
17 Plaintiffs beginning their work, and that Plaintiffs caused their own injuries due to their own
18 negligence. Given this evidence, it is not impossible for the jury to have reached their verdict
19 without disregarding the jury instructions. Therefore, *Rees* is inapplicable to the instant matter
20 whereas *Rives* is applicable, as there was no "manifest disregard" or "palpable abuse" in the
21 instant matter.

22 Next, Plaintiffs rely upon *Groomes v. Fox*, 96 Nev. 457, 611 P.2d 208 (1980), a decision
23 containing roughly three paragraphs of information. In *Groomes*, the taxicab passenger plaintiffs
24 brought action to recover damages from the taxicab driver and his employer for injuries sustained
25 in an automobile collision. *Id.* The jury found for the defendant, and the district court granted a
26 new trial on the ground that there had occurred manifest disregard by jury of instructions of the
27 court, particularly instruction concerning duty of care owed by a common carrier to its passengers.
28 *Id.* The defendant appealed. *Id.*

1 The plaintiffs in *Groomes* were passengers for hire in the cab driven by the defendant. *Id.*
2 at 458, 208. Before picking up the plaintiff, the defendant noticed that his brakes were “mushy,”
3 radioed that information to the dispatcher and was told to bring the cab in after his next fare. *Id.*
4 The plaintiffs were the defendant’s next passengers. *Id.* While proceeding south on Las Vegas
5 Boulevard, the defendant entered the left turn lane to enter the Sands Hotel when the car in front
6 stopped suddenly—the defendant applied his brakes but could not stop. *Id.* The Supreme Court
7 of Nevada held that had the jury paid due regard to the instructions of the court regarding the
8 heightened duty of care owed by a common carrier to its passengers, it was not possible to return
9 a defense verdict. *Id.*

10 *Groomes* is clearly inapplicable to the instant matter, as in *Groomes* there were no other
11 possibilities for the jury to determine that the defendant was not negligent, especially considering
12 the heightened duty of care owed by a common carrier to its passengers. Here, as noted above,
13 there are multiple theories in which the jury determined College Park was not negligent, such as
14 the jury disregarded the testimony of Plaintiffs; the jury disregarded the testimony of Plaintiffs’
15 expert’s testimony; the jury determined the Plaintiffs were negligent and caused their own
16 injuries; or the jury determined the Plaintiffs were not wearing proper protective gear (“PPE”) in
17 completing their work. Plaintiffs allege that the jury disregarded the instructions regarding
18 College Park’s duty of care to maintain its premises but fail to rectify Plaintiff Andrew James’
19 testimony that an inspector had previously inspected the area, and that College Park retained
20 Plaintiffs to replace the breaker at issue. Clearly, there is no evidence that the jury disregarded
21 the jury instructions and simply did not believe Plaintiffs’ theory of their case.

22 Finally, Plaintiffs rely upon *Taylor v. Silva*, 96 Nev. 738, 615 P.2d 970 (1980). In *Taylor*,
23 the plaintiff brought action against the defendant earthmoving company to recover for personal
24 injuries sustained when the defendant’s earthmover turned right, hitting the front left fender of
25 the plaintiff’s car, throwing the plaintiff across the inside of her car. *Id.* After trial, a jury returned
26 a special verdict finding that defendants were negligent but that their negligence was not the
27 proximate cause of the plaintiff’s injuries, causing the plaintiff to move for new trial. *Id.* The
28 district court granted the plaintiff’s motion for new trial, causing the defendant to appeal. *Id.* The

1 Supreme Court of Nevada held that under all the circumstances including the fact that there was
2 no intervening force between the defendant's negligence and the collision, the jury could not have
3 found an absence of proximate cause if it correctly applied the law, and a new trial was required.
4 *Id.*

5 The plaintiff in *Taylor* was driving eastbound on Williams Street following an earthmover
6 driven by the defendant. *Id.* at 740, 971. The earthmover straddled both eastbound lanes, and as
7 the vehicles approached the intersection of Williams and Taylor Streets, the traffic signal turned
8 red. *Id.* Believing the earthmover would continue upon Williams Street, the plaintiff drove her
9 car to the right of the earthmover, in what would have been a parking lane but for the red curb
10 and prepared to turn right onto Taylor Street. *Id.* As the plaintiff was about to turn, the earthmover
11 turned right, hitting the front left fender of the plaintiff's car causing the plaintiff to suffer neck
12 injuries. *Id.* During the trial, the plaintiff argued that the defendant negligently failed to signal
13 the turn, to equip the earthmover with signals, to look before turning, to equip the earthmover
14 with a rearview mirror, and to have an escort car. *Id.*

15 The Supreme Court of Nevada held there was no intervening force between the
16 defendant's negligence and the collision, the type of harm was foreseeable, and that the plaintiff's
17 contributory negligence could reduce her recovery under comparative negligence but does not
18 negate a finding that the plaintiff's negligence was a proximate cause of her injuries. *Id.* at 741,
19 971. The Court concluded that the jury was adequately instructed as to proximate cause, and had
20 the jury correctly applied the law, it could not have found an absence of proximate cause. *Id.* The
21 Court continued that a general verdict in favor of the defendant would only have been correct if
22 the plaintiff's negligence was greater than the defendant's, and since that was not the case, the
23 only remaining possibility for the jury's verdict was that it did not understand the difference
24 between proximate cause and comparative negligence. *Id.* at 741, 972.

25 Again, as with the previously noted cases relied upon by Plaintiffs, the *Taylor* matter is
26 wholly inapplicable to the instant matter. In *Taylor*, there was no other possible reason the jury
27 could have reached the verdict it reached without misunderstanding the difference between
28 comparative negligence and proximate cause, as the jury did not apportion fault to the plaintiff.

1 *Id.* Here, there are multiple possibilities as to why the jury found College Park to not be negligent,
2 including the jury disregarded the testimony of Plaintiffs; the jury disregarded the testimony of
3 Plaintiffs' expert's testimony; the jury determined the Plaintiffs were negligent and caused their
4 own injuries; or the jury determined the Plaintiffs were not wearing proper protective gear
5 ("PPE") in completing their work; or that College Park maintained its duty to maintain the breaker
6 based upon Plaintiff Andrew James' testimony that an inspector had inspected the area prior to
7 Plaintiffs beginning their work along with his testimony that Plaintiffs were hired to replace the
8 breaker at issue. Again, there is simply no contradictory evidence that College Park failed to
9 maintain the area when an inspector was retained to inspect the area at issue, the inspector notified
10 both College Park and Plaintiffs of an issue with the breaker, and Plaintiff Andrew James'
11 testimony that he was retained to replace the breaker at issue.

12 Given the above, none of case law relied upon by Plaintiffs applies to the instant matter.
13 As noted throughout this opposition, there were multiple reasons for the jury to determine College
14 Park was not negligent, including the jury disregarded the testimony of Plaintiffs; the jury
15 disregarded the testimony of Plaintiffs' expert's testimony; the jury determined the Plaintiffs were
16 negligent and caused their own injuries; or the jury determined the Plaintiffs were not wearing
17 proper protective gear ("PPE") in completing their work; or that College Park maintained its duty
18 to maintain the breaker based upon Plaintiff Andrew James' testimony that an inspector had
19 inspected the area prior to Plaintiffs beginning their work along with his testimony that Plaintiffs
20 were hired to replace the breaker at issue. NRCP 59(a)(1)(E) requires a manifest disregard of the
21 jury instructions wherein the court must find that the only reason the jury reached its verdict was
22 because it failed to understand or follow jury instructions. College Park provided contradictory
23 evidence to Plaintiffs' allegations, including evidence that refutes the testimony of Plaintiffs
24 Andrew James and Jeffrey Myers, and Plaintiffs' expert's testimony. There is simply no avenue
25 the court can take to find that there was palpable abuse, as the court need not determine how the
26 jury reached its conclusion; it need only determine whether it was possible for the jury to do so.
27 *Town & Country Elec. Co. v. Hawke*, 100 Nev. 701, 702, 692 P.2d 490, 491 (1984). As noted
28 above, the court will determine that it was more than possible that the jury reached the conclusion

1 that College Park was not negligent.

2 **2. Plaintiffs Did Not Raise the Issue of the Motion for Judgment As A Matter Of**
3 **Law in Their Moving Papers and Thus Admit that Defendants Healthcare**
4 **Realty of Cheyenne, LLC, and Fundamental Administrative Services, LLC,**
5 **Were Properly Adjudicated from this Matter**

6 College Park notes that Plaintiffs failed to raise any issue with the trial court granting its
7 Motion for Directed Verdict in favor of Defendants Healthcare Realty of Cheyenne, LLC, and
8 Fundamental Administrative Services, LLC. As this court is well aware, it is well established in
9 Nevada that an appellant's failure to timely raise an issue in its briefing on appeal, even if it raised
10 the issue before the district court, generally results in a waiver of that issue. *Kahn v. Morse &*
11 *Mowbray*, 121 Nev. 454, 480 n.24, 117 P.3d 227, 238 n.24 (2005). As such, as Plaintiffs failed
12 to raise this issue in its Motion for New Trial, it has waived any ability to argue that the Motion
13 for Directed Verdict was improper.

14 **III. CONCLUSION**

15 Given that College Park presented evidence contradictory to Plaintiffs allegations, and
16 that the jury had multiple avenues for determining that College Park was not negligent, such as
17 the jury disregarded the testimony of Plaintiffs; the jury disregarded the testimony of Plaintiffs'
18 expert's testimony; the jury determined the Plaintiffs were negligent and caused their own
19 injuries; or the jury determined the Plaintiffs were not wearing proper protective gear ("PPE") in
20 completing their work; and that College Park properly maintained its premises, College Park
21 respectfully requests this Court to deny Plaintiffs' Motion for New Trial.

22 Dated: July 19, 2022

23 By:

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THI OF NEVADA AT CHEYENNE, LLC dba

COLLEGE PARK REHABILITATION CENTER

CERTIFICATE OF MAILING

The undersigned, designee of Alexander F. Giovannello, Esq., hereby certifies that on this 1st day of August 2022, a true and correct copy of **OPPOSITION TO PLAINTIFFS MOTION FOR NEW TRIAL BY DEFENDANT THI OF NEVADA AT CHEYENNE, LLC dba COLLEGE PARK REHABILITATION CENTER** was served to the following person(s) as indicated below:

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

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

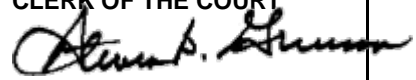
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DISTRICT COURT
CLARK COUNTY, NEVADA

JEFFREY A. MYERS and ANDREW JAMES,
individually,

Plaintiff,

vs.

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

Defendants.

CASE NO. : A-16-735550-C

DEPT. NO.: XVII

HEARING REQUESTED

PLAINTIFFS' REPLY TO DEFENDANTS' OPPOSITION

TO PLAINTIFFS' MOTION FOR A NEW TRIAL

COME NOW, Plaintiffs, JEFFREY A. MYERS and ANDREW JAMES, by and through
their Attorney of Counsel and bring forth this Reply to Defendants' Opposition to Plaintiffs'
Motion for New Trial. This Reply is made and based on the Papers and Pleadings on file in this
case, the attached Points and Authorities and the oral argument of Counsel, if any, at the time this
matter is heard before this Court.

....

....

....

....

LEGAL ARGUMENT

The Defendants either misunderstand the evidence or are misleading this Court in their unsupported recitation of the facts. The Plaintiffs in this case were retained to replace a breaker but not the main breaker. See, e.g. Trial Day 3, Page 146, Lines 2 - 14)¹. During the installation of that breaker, a screw fell and caused a short at another location when it crossed two phases. See, e.g., Gifford Testimony at Page 66 line 22 - page 68, line 5. That short should have caused the main breaker to trip. The main breaker never tripped. *Id.* It is the failure of the main breaker that allowed the plasma ball to form injuring the Plaintiffs. *Id.* Had that breaker worked as it should have, it would have tripped almost instantaneously causing the power in the entire building to turn off. The lights in the building never went off nor did the backup generator engage². *Id.*

While the Defendants argue that the Jury may have chosen to not believe the Plaintiffs or their expert, even the Defendants's own employee testified that they never maintained the electrical equipment prior to, or after the incident that injured the Plaintiffs. According to Mr. Comstock, the maintenance Department's only job is to repair things that are reported to be broken. See, Comstock Testimony at Page 33, line 12 - page 34, line 5.

The Defendants point to red herrings in defense of this Motion stating, for instance that the Jury could have found that the Plaintiffs were contributorily negligent. But, as can be seen, the Jury never got that far (Question 3) in the Special Verdict Form attached as EXHIBIT "___". Nor did the Jury address the question as to whether or not the failure to maintain the premises as required by the Jury Instructions and specified by the Plaintiffs caused the Plaintiffs' injuries in question 2. *Id.* The only issue they addressed was whether or not the Defendants were negligent in Question 1 which simply requires that the Defendants owed a duty to the Plaintiffs (they did) and whether or not that duty was breached (it was). There is NO contradictory evidence. The

¹ Please note that all Exhibits referred to herein are attached to the initial Motion and are not reattached here.

² In fact, the main breaker failed again after the incident as testified to by Defendants' employee, Roy Comstock, who testified that in the subsequent incident the lights, again, remained on after another short in the same panel.

Defendants simply never maintained the main breaker which failed. While the Defendants argue that the Jury might have believed their employee, Roy Comstock, and not the Plaintiffs', they do not cite to any contradictory evidence offered by Mr. Comstock. That is because there is none. Mr. Comstock never testified in regards to any duty to maintain the main breaker. He did, however, testify that they never maintain the breakers as noted in the Motion.

The Defendants simply offer no support for the claims in their Opposition. For instance, at Page 11, Lines 22 - 24 of the Opposition, the Defendants state "College Park provided contradictory evidence to Plaintiffs' allegations, including evidence that refutes the testimony of Plaintiffs Andrew James and Jeffrey Myers, and Plaintiffs' expert's testimony." One would expect to have such alleged evidence quoted, or cited to, in the Opposition³. No such evidence is provided to this Court because none exists. The Defendants called no experts and none of the witnesses or evidence provided in this case contradicts or refutes the Plaintiffs' expert in any way, including the issue of duty to maintain and breach of that duty.

The Defendants' cite to *Weaver Bros. v. Misskelley*, 98 Nev. 232, 645 P.2d 438 (1982) in support of their Opposition. In that case, the Court held that, unlike here, the evidence did not mandate a certain conclusion. Here, the Jury instruction and evidence are clear: the Defendants had a duty to maintain the building, including the main breaker and they failed to do so.

The Defendants cite to the unpublished decision of *Rives v. Vickie Ctr.*, 485 P.3d 1248 (Nev. 2021) in support of their Opposition. In holding that the Jury did not manifestly disregard the Jury Instructions, the Court held:

....

³ The Defendants have no excuse for failing to support their allegations with evidence from the Trial. While the Defendants sought additional time to obtain a copy of the entire Transcript in a Motion to Continue this Motion, all of the relevant testimony (From the Plaintiffs, their expert and the Defendants' employee) regarding this issue was attached to the initial Motion. The remainder of the Testimony consisted of medical providers who did not discuss the issues in this Motion, the Defendants' private eye whose testimony was limited to laying foundation for a short video surveillance of one of the Plaintiffs and a few pages of Rebuttal testimony from Plaintiff Andrew James which did not address the issues in this Motion and was attached to the Plaintiffs' Opposition to the Motion to Continue which was filed on July 27, 2022 within 4 hours of the Defendants filing the Motion to Continue some 8 days after the Motion for New Trial was filed.

1 This case is distinguishable from Rees, where the evidence clearly established
2 fault, the defendant failed to proffer any evidence to the contrary, and the jury's verdict
3 was inconsistent with the evidence. See Rees, 101 Nev. at 305, 701 P.2d at 1019. In
4 contrast, this case was a true "battle of the experts." The trial ran 19 days and over a
5 dozen experts testified. Although Dr. Savluk testified that the settled defendants' actions
6 fell below the standard of care and contributed to the injury, other evidence supported that
7 Dr. Rives was wholly to blame for the compensable injury. Thus, the jury's verdict was
8 not "impossible" because the jury could have reasonably found, based on the evidence
9 presented, that Dr. Rives was solely responsible for the compensable injury even if the
10 settled defendants' conduct fell below the standard of care. Moreover, the jury could have
11 disregarded Dr. Savluk's testimony that the settled defendants contributed to Vickie's
12 injuries in some measureable and compensable way. See, e.g., In re Scott, 29 Cal. 4th
13 783, 129 Cal. Rptr. 2d 605, 61 P.3d 402, 424 (Cal. 2003) ("The fact finder determines the
14 facts, not the experts. Indeed, the fact finder may reject even a unanimity of expert
15 opinion." (internal quotation marks and citation omitted)). In fact, the jury did just that
16 here, as is evidenced by their disregard of Dr. Savluk's testimony against Dr. Siddiqui,
17 when they entered a verdict in favor of Dr. Siddiqui. Therefore, we conclude that the
18 district court did not abuse its discretion by denying Dr. Rives's motion for new trial.

19 Although the Defendants claim there was contradictory evidence, they cite to: no expert
20 who testified on their behalf; no point in the Plaintiffs' expert testimony where he contradicted
21 himself in regard the duty to maintain the main breaker and/or breach of that duty, or any
22 testimony by any lay witness that contradicts the duty to maintain the breakers or breach of that
23 duty. This is because no such testimony or evidence exists. The evidence is clear: the Defendants
24 had a duty to maintain the main breaker and failed to do so.

25 The Defendants claim that they did not breach the duty to maintain the premises,
26 including the main breaker because : "an inspector had previously inspected the area, and that
27 College Park retained Plaintiffs to replace the breaker at issue." The Defendants fail to cite to any
28 portion of the Trial to support that statement. They cannot do so because it is not true. What
happened here, was that the Plaintiffs were initially hired to separate systems due to violations
found by a State Inspector then were asked to replace a specific breaker by way of change order
as testified to by Andrew James. During Cross Examination, Mr. James testified on Day 3 of the
Trial (at Page 43, Line 25 - Page 44, Line 22):

Q I wanted to show you some photographs that I believe Mr. Gifford -- Gilford? Gifford?
That Mr. Gifford took on the inside of the panel. But while we're looking for those, let me
move on and ask you a couple of other questions. How long -- you were at that job for
about a week, right, before this arc flash happened?

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

1 Q Right, because that was the initial job.

2 A Right.

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

4 A Correct.

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

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

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

8 A Yes.

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

10 A Well, the original work was, yes.

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

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

13
14 Likewise, Mr. James testified in response to a Juror question Id. at page 146, Lines 2 -
15 14):

16 THE COURT: When was the original electrical inspection
done to identify the breaker at issue? Strike that. Let me try this again. When was the
17 original electrical inspection done to identify the breaker was an issue, open paren, for
change order, close paren?

18 THE WITNESS: I'm not sure exactly. We were approached by College Park to change a
19 breaker on a change order basis. I can't remember the exact date of that change order, but
it was brought to our attention there was a problem with the kitchen panel. We knew what
20 it was from Roy. He had already bought the breaker, and we went there that night to
replace it, so I'm not exactly sure, if I understand the question fully, but it's -- that's to the
21 best of my recollection, that's all I can tell you, is that it was done on a change order basis
for the scope of the job, probably sometime in May of 2014.

22 The Defendants next rely on the California case of In re Scott, 29 Cal. 4th 783, 129 Cal.
23 Rptr. 2d 605, 61 P.3d 402 (2003) to argue that the Jurors have a right to find facts and can
24 disagree with experts in regards to their opinions. However, as noted in that case, there were
25 experts who held opinions supporting the referee's ruling. Specifically, the Court noted
26 "[m]oreover, his findings were generally consistent with, and supported by, the testimony of one
27 expert--Dr. Sharma--the only one who was originally court appointed and who had examined
28 petitioner shortly after the crimes." Here, no evidence supported any conclusion that the

1 Defendants did not have a duty to maintain the premises, including the main breaker or that they
2 did maintain the main breaker and, therefore, did not breach their duty to do so. In fact, as noted
3 above and in the Motion, the Defendants' own employee clearly stated they never performed
4 regular maintenance on the main breaker.

5 The Defendants' argument through the remainder of the Opposition is that the Jury had
6 other avenues to determine that there was no breach of the duty to maintain the premises
7 including the main breaker such as: the Jury could have disregarded the uncontested testimony
8 that the Defendants had a duty to maintain the main breaker and failed to do so, the Jury could
9 have found that the Plaintiffs were contributorily negligent, etc. None of the Defendants claims
10 of contradictory evidence is supported by any evidence in the Defendants' Opposition simply
11 because it does not exist.

12 The Defendants argue that the Plaintiffs cannot demonstrate that the Jury manifestly
13 disregarded the Jury Instructions because "Plaintiffs have failed to proffer any affidavits from any
14 of the jurors noting any malfeasance or misapplication of the jury instructions." see, Opposition
15 at Page 1, Lines 25 - 27. However, doing so would have been a violation of *Weaver, supra* cited
16 to by the Defendants in which the Court held, in excluding such Affidavits from their
17 consideration stated: This court has long held that, as a general rule, jurors will not be permitted
18 to impeach their own verdict (citations omitted). *Weaver* at 233. The Court went on to state
19 "[t]he district court erred by considering the affidavits, and we decline to consider them in
20 deciding whether a new trial was properly granted." *Id.* at 234.

21 The Defendants bring up an issue in their Opposition stating "As this court is well aware,
22 it is well established in Nevada that an appellant's failure to timely raise an issue in its briefing
23 on appeal, even if it raised the issue before the district court, generally results in a waiver of that
24 issue. *Kahn v. Morse & Mowbray*, 121 Nev. 454, 480 n.24, 117 P.3d 227, 238 n.24 (2005).
25 However, this is not an Appeal. This is a request for a new Trial on all issues as the Jury
26 manifestly disregarded the Jury Instructions. Should the Court grant the Motion for New Trial, it
27 should be against all parties as evidence against them will be presented anew.

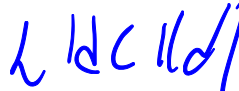
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CONCLUSION

The Defendants offer zero evidence to support their evidence despite making several claims of what the evidence and/or testimony showed in Trial. The Defendants' arguments that the Jury did not manifestly disregard the Jury Instructions in holding that the Defendants either owed no duty to maintain the premises, including the main breaker, and/or did not breach that duty because the Jury could have decided the Plaintiffs were contributorily negligent or that the Plaintiffs failed to wear the proper Personal Protective Equipment are red herrings as the Jury only held that the Defendants did not breach any duty owed to the Plaintiffs and never got to the other issues. The Court should rule in favor of the Plaintiffs and grant a new Trial against all defendants on all issues.

DATED this 3rd day of August, 2022.

CAP & KUDLER



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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of August, 2022, pursuant to Administrative Order 14-2, I electronically served a true and correct copy of the foregoing **PLAINTIFFS' REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR A NEW TRIAL**, addressed as follows:

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/s/ Liz Carrion
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1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 No. 85441

4
5

6 **JEFFREY A. MYERS and ANDREW JAMES,**

7
8 Appellants,

9
10 vs.

11
12 **THI OF NEVADA AT CHEYENNE, LLC; HEALTHCARE REALTY OF**
13 **CHEYENNE, LLC; FUNDAMENTAL ADMINISTRATIVE SERVICES,**
14 **LLC**

15
16 Respondents.

17

18 **APPELLANTS' APPENDIX ON APPEAL**

19 **VOLUME 8**

20 Appeal from the Eighth Judicial District Court for Clark County

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

22 (Honorable Mark Gibbons)

23

24 **DONALD C. KUDLER, ESQ.**

25 Nevada Bar No.: 5041

26 CAP & KUDLER

27 3202 West Charleston Blvd.

28 Las Vegas, NV 89102

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Counsel for Appellants

Jeffrey A. Myers and Andrew James

APPELLANTS' APPENDIX
VOLUME 8
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 8

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
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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 -
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17	Plaintiffs' Third Motion to Compel Discovery	1	AA000008 -
18	Responses		AA000030
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Heather S. Smith
CLERK OF THE COURT

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Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

JEFFREY A. MYERS and ANDREW JAMES,
individually,

Plaintiff,

vs.

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

Defendants.

CASE NO. : A-16-735550-C

DEPT. NO.: XVII

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ORDER DENYING PLAINTIFFS' MOTION FOR NEW TRIAL

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

FINDINGS OF FACT

1. Jury Instructions At Issue

The Court read the following Jury Instructions to the Jury:

Instruction 22

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

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

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

Instruction 27

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

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

Instruction 28

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

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

Instruction 29

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 A Yes.

6 Q Why?

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

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

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

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

20 Q Okay. What is your job responsibilities?

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

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

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

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

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

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

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

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

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

5 A No, sir.

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

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

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

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

12 A No, sir.

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

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

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

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

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

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

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

27 A No. No, sir.

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

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



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

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

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

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

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

A Evidence in this case, yes.

Q But what's that?

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

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

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

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

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

4. The Main Breaker Failed

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

....

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

17 Q Were the lights on?

18 A The lights never went off.

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

20 A The breaker never tripped.

21 **5. Jury Verdict**

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

27

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

DATED this ____ day of September, 2022. **Dated this 23rd day of September, 2022**

Mark Gibbon

DISTRICT COURT JUDGE

Submitted by:

F29 10D 6D3A EC93
Mark Gibbons
District Court Judge

Donald C. Kudler, Esq.
Cap & Kudler
3202 W. Charleston Blvd.
Las Vegas, NV 89102
Attorney for Plaintiffs

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Jeffrey Myers, Plaintiff(s)

CASE NO: A-16-735550-C

7 vs.

DEPT. NO. Department 17

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

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 9/23/2022

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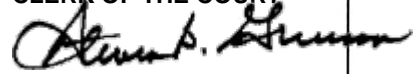
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DISTRICT COURT
CLARK COUNTY, NEVADA

JEFFREY A. MYERS and ANDREW JAMES,
individually,

Plaintiff,

vs.

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

Defendants.

CASE NO. : A-16-735550-C

DEPT. NO.: XVII

NOTICE OF ENTRY OF ORDER


TO: ALL INTERESTED PARTIES TO THIS ACTION; and

TO: THEIR ATTORNEY'S OF RECORD:


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

DATED this 27th day of September, 2022.

CAP & KUDLER


Donald C. Kudler, Esq.
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Personal Injury Experts

CERTIFICATE OF SERVICE

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

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


An Employee of CAP & KUDLER

Heather S. Smith
CLERK OF THE COURT

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Attorneys for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

JEFFREY A. MYERS and ANDREW JAMES,
individually,

Plaintiff,

vs.

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

Defendants.

CASE NO. : A-16-735550-C

DEPT. NO.: XVII

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ORDER DENYING PLAINTIFFS' MOTION FOR NEW TRIAL

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

FINDINGS OF FACT

1. Jury Instructions At Issue

The Court read the following Jury Instructions to the Jury:

Instruction 22

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

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

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

Instruction 27

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

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

Instruction 28

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

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

Instruction 29

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

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

2. The Defendants Had a Duty to Maintain Their Breakers

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

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

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

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

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

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

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

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

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

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

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

5 A Yes.

6 Q Why?

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

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

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

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

20 Q Okay. What is your job responsibilities?

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

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

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

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

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

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

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

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

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

5 A No, sir.

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

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

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

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

12 A No, sir.

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

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

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

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

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

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

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

25 A No. No, sir.

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

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



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

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

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

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

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

A Evidence in this case, yes.

Q But what's that?

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

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

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

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

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

4. The Main Breaker Failed

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

....

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

17 Q Were the lights on?

18 A The lights never went off.

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

20 A The breaker never tripped.

21 **5. Jury Verdict**

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

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1 **CONCLUSIONS OF LAW**

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

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

6 DATED this ____ day of September, 2022.

Dated this 23rd day of September, 2022

7 

8 DISTRICT COURT JUDGE

9 Submitted by:

F29 10D 6D3A EC93
Mark Gibbons
District Court Judge

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

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 Jeffrey Myers, Plaintiff(s)

CASE NO: A-16-735550-C

7 vs.

DEPT. NO. Department 17

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

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 9/23/2022

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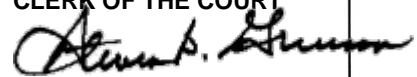
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6 DISTRICT COURT
7
8 CLARK COUNTY, NEVADA

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

11 Plaintiff,

12 vs.

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

20 Defendants.

CASE NO. : A-16-735550-C

DEPT. NO.: XVII

21 **NOTICE OF APPEAL**

22 NOTICE IS HEREBY GIVEN that Plaintiffs, Jeffrey A. Myers and Andrew James,
23 hereby appeal to the Supreme Court of Nevada from the District Court, Clark County, Nevada,
24 Order Denying Plaintiffs' Motion for New Trial entered by the District Court on September 23,
25 2022.

26 Dated this 28th day of September, 2022.

27 CAP & KUDLER

28 By: 

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CERTIFICATE OF SERVICE

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

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


An Employee of CAP & KUDLER