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STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
ORLANDO DISTRICT OFFICE

Mohammed Bouayad,
Employee/Claimant,

vs.

Value Car Rental LLC/Normandy Insurance Company,
Employer/Carrier/
Servicing Agent.
_________________________________/

OJCC Case No. 19-020798NPP

Accident date: 6/28/2019

Judge: Neal P. Pitts

AMENDED BIFURCATED COMPENSATION ORDER

This cause came on for a merits hearing before the undersigned Judge of Compensation Claims on September 14, 2020, September 15, 2020, and September 16, 2020, the subject matter of which was limited to whether the claimant's injuries arose out of his employment. On the morning of the 16th, there remained several lay witnesses yet to testify; all of whom were available by zoom. However, before the hearing began, the attorney for the E/C announced on the record that an ethical conflict between his clients had developed and that after consulting with the Florida Bar he had no choice but to request permission to withdraw and allow the E/C to retain separate counsel for the employer and carrier respectively. The request was granted at a later hearing after a proper motion had been filed and signed by the party representatives respectively. After a period of time, successor counsels were retained and entered appearances. After several hearings and status conferences, the filing of an amended Pretrial Stipulation, and further discovery

conducted by the parties, the matter came back on for a final hearing on March 30, 2021. The parties were allowed until April 5, 2021 during which to file their written closing arguments. Those written closing arguments were filed on April 5, 2021 by the carrier and the claimant.

A Bifurcated Compensation Order was entered on May 5, 2021, the 30th day following the filing of the written closing arguments. This order was vacated in its entirety by order entered on May 12, 2021 after consideration of the Carrier's Motion For Rehearing filed on May 10, 2021. This is an Amended Final Order filed in its stead.

The claimant, Mohammed Bouayad, was present at all of the hearings and represented by Charles W. Smith, Esq. The Employer and the Carrier initially were represented jointly by Richard M. Soudemire, Esq. However, he petitioned to withdraw during the September 15, 2020 hearing; which motion was granted due to a conflict. At the March 30, 2021 continuation of the merits hearing, the Employer was represented by Michael A. Edwards, Esq. and the Carrier by William H. Rogner, Esq.

<u>SUMMARY EVIDENCE:</u>

1. Mohammed Bouayad (hereinafter "claimant") immigrated to the United States from Morocco and holds dual citizenship in the United States and Morocco. He is married to Lamyae Haouari and three children have been born to this union, including Adam Bouayad, a witness in this claim.

2. Value Car Rental, LLC[1], (hereinafter "business") is in the business of leasing motor vehicles to the public operating out of leased space in the Orlando Airport Holiday Inn (hereinafter "hotel") on State Road 436 to the north of the Orlando International Airport (MCO). The business operates from 8:00 a.m. until midnight, seven days a week from a retail kiosk desk inside of the atrium of the hotel and from a private office in a separate building located next to the swimming pool and the hotel's parking lot. It employed 10 to 12 people.

3. The claimant worked as the general manager and was tasked with day-to-day operations including supervising and hiring/firing employees. The claimant worked the late shift if training new employees. At the end of a late shift, the claimant, or another designated employee, walked from the lobby kiosk to the outside private office carrying the final rental agreements and any cash acquired during the day. This required such employee to exit a locked door and traverse a covered walkway to its terminus with another perpendicular walkway located near bushes, trees, and an unlit smoking area. This walk further required a right "L" turn at the terminus junction towards the private office, during which the employee's back would be exposed to anyone coming from the pool and/or parking areas. On this night of this shooting, the claimant was completing this task.

[1] The claimant was a part owner of this business along with his nephew, Sean Belghazi, as well as Hassan Bouti.

4. Although the hotel parking lot is gated in several places, three gates always remain opened including the evening/early morning hours. These open gates allowed open access to the anyone to the hotel grounds.
5. On the day prior to the shooting, the claimant's son, Adam, and the claimant's wife went to an Amscot to cash the son's paycheck. While there, an incident occurred between the claimant's son and wife with their neighbor, Anastasia Matos, and her boyfriend, Robert Aponte, Jr. The story is that Adam Bouayad had borrowed money from Anastasia which Anastasia and Robert were at the Amscot demanding to be repaid immediately from the son's paycheck, but Adam refused contending that the agreement was to repay Ms. Matos over two paychecks. An altercation ensured resulting in Anastasia pushing Ms. Haouari, who then called the police. Mr. Aponte was quoted as having said during the altercation that he wanted to kill Adam. The claimant was aware of this incident and statement before the shooter incident at the hotel.
6. In addition to the above incident, the business had fired one employee for testing positive for heroin and two other employees for theft. Because of these recent firings, the claimant was working late to train the new hires. But for these recent terminations, he would have been at home at the time when the shooting incident occurred.
7. Shortly after midnight, as he was finishing up his work for the day, the claimant left the kiosk carrying the final rental agreement of the day and

after exiting the locked door from the lobby and walked down the lighted walkway, he turned to his right at the "L" turn located at the terminus with the other walkway towards the private office. After he had made the turn, and while his back was exposed to the smoking area, an assailant emerged from this area and shot him seven times, some at point blank range, injuring his left hand and fingers, left leg, right arm and stomach, causing severe injuries including a cerebral vascular stroke due to hypovolemic shock from blood loss. The shooting occurred in an area roughly 200' from the parking lot. The shooter, after he finished firing, ran wearing flip flops north around the gym/office building towards the north parking.

8. The claimant then dragged himself back inside the hotel where he collapsed from loss of blood and was assisted by several patrons of the hotel including Ms. Tracie Gillman, a guest staying in the hotel. She testified that while in her hotel room she heard gunshots and, after opening her door and looking down the hallway to the lobby, observed the claimant lying on the ground yelling for help so she hurried down to render aid. While tending to the claimant she heard him say on several occasions that he did not want to die. The claimant further stated several times to Ms. Gillman that "Robert" was responsible and that the police should be searching for a blue Ford Mustang.

9. The only "Robert" in this record is Robert Aponte who owns a 2016 blue Mustang GT. Moreover, according to Trooper Rivera's testimony, a data

base check revealed that the hotel is listed as a residence for Mr. Aponte.

10. While the claimant did not see his assailant before being shot, an interior camera, from a location near the elevators inside the hotel lobby, captured some of the incident that occurred prior to the shooting. The Orlando Police Department ("OPD") took possession of the video after the shooting and it remains in possession of the OPD. Therefore, the video was not shown at the hearing.

11. However, the video had been viewed on the night of the shooting by Adam Bouayad, the claimant's son, by Sean Belghazi, the claimant's nephew and part owner of the business, and by Hye Lee, the IT manager for the hotel. Both Adam Bouayad and Sean Belghazi testified that they observed the shooter, wearing flip flops, emerge from the shrubbery adjacent to the smoking area and behind the claimant and shot the claimant and then leave the area. The shooter was described as tall and skinny. Neither characteristic matches the description of Robert Aponte. They described as dark the area from which the shooter had emerged. Adam Bouayad further testified that he saw his father walking out of the hotel towards his office holding paperwork and his key and as he was passing the gym the shooter came out from behind the gym/smoking area and shot his father, turned and then shot him again and then just left and ran to the north.

12. Multiple experts testified during this trial. The claimant's security expert was Kelly Klatt, a former 15 year veteran of the Los Angeles Police Department who has worked for the last 21 years as the area director of safety & security for the nine Lowes Hotels properties. He is a board certified in Security Management, operates the Center for Security Solutions, and offers his expert testimony as an expert in hotel and commercial security issues.

13. Mr. Klatt testified that the walkway area was well lit, but the smoking area from which the shooter had emerged was not. He further testified that it was difficult to see someone at night in that area if walking in the brightly lit walkway. His opinion was that the combination of the dimly lit smoking area, the time of day, the hotel's location, and the surrounding vegetation substantially contributed to the claimant becoming a crime victim at the hotel rather than his home.

14. The claimant's criminologist, Dr. Meghan Mitchell, who is a professor at the University of Central Florida, testified regarding her use of Census grids to conduct a statistical analysis of crimes and violent crimes in the areas around the hotel and claimant's home; which analysis reflected that the crime rate is 15 times higher in the hotel area and that someone is 11 (almost 12) times more likely to be the victim of violent crime in the area around the hotel as opposed to the area around claimant's home. She further testified that in Orlando murders occur at much higher rates during the hours between midnight and 3:59 a.m.

15. In her rebuttal testimony on March 30, 2021, Dr. Mitchell testified that she ran additional calculations using a one-mile radius around claimant's home and the hotel in question and such calculations revealed that crimes remained substantially higher around the hotel than the home. She confirmed that it is not possible to accurately calculate population bases for an area without using the Census grids as any other calculation would include an estimate and would not be accurate. Dr. Mitchell testified that she attempted to obtain data from the website being used by the carrier's expert and noted that the website contained a disclaimer that it should not be used as official data. She and Mr. Klatt also testified as to the unreliability of the data collected by Brummel Group.

16. Dr. Kennedy, one of the carrier's experts, opined that the shooting was not a robbery, but that the circumstances suggested more likely than not the shooting was a targeted attack against the claimant using inside information because the claimant ordinarily would not have been working on the night of the shooting. He further testified that he visited the location and believed the lighting was adequate. He did not believe that the lighting or the past crime history surrounding the hotel had any causal relationship to the claimant's shooting. He concluded that the hotel's "circumstances and conditions" were not a cause of the claimant's shooting. He opined that the claimant was not at a greater

risk of injury at the hotel compared to other places frequented in his non-employment life.

17. In his deposition testimony taken following the initial trial in 2020, Dr. Kennedy reviewed crime reports for a one-mile area surrounding the claimant's home and for a one-mile area surrounding the hotel. Based on that data, he opined that there was a higher risk of violent crime surrounding the claimant's residence than there was surrounding the hotel. He concluded that the hotel did not pose an increased risk of violent crime.

18. The carrier also presented its security expert, Elizabeth Dumbaugh, who testified that the lighting in both the exterior walkway and the smoking area was sufficient. She found no conditions present at the hotel that caused or contributed to the claimant's shooting. She did not believe that the past crime data suggested a dangerous condition or a high risk of violent crime at the hotel. She concluded that the claimant was not at an increased risk of crime at the hotel.

ANALYSIS OF THE LAW:

1. "[A] claimant has the burden of proving that his initial work-related accident and resulting injury is compensable..." *Mangold v. Rainforest Golf Sports Ctr.*, 675 So. 2d 639, 642 (Fla. 1st DCA 1996) and to prove entitlement to workers' compensation benefits. *Fitzgerald v. Osceola Cnty. Sch. Bd.*, 974 So. 2d 1161, 1164 (Fla. 1st DCA 2008); *Meehan v. Orange Cnty. Data & Appraisals*, 272 So. 3d 458, 461 (Fla. 1st DCA

2019); *Orange Cnty. MIS Dep't v. Hak*, 710 So. 2d 998, 998 (Fla. 1st DCA 1998). Once the claimant has met this burden of proof, the burden then shifts to the employer to establish the applicability of any affirmative defenses it might assert. *Eaton v. City of Winter Haven*, 101 So. 2d 405 (Fla. 1st DCA 2012); *Fitzgerald v. Osceola Cnty Sch. Bd.*, 974 So. 2d 1161, 1164 (Fla. 1st DCA 2008), *Engler v. Am. Friends of Hebrew Univ.* 18 So. 3d 613, 614 (Fla. 1st DCA 2009); *Jackson v. Merit Elec.*, 37 So. 3d 381, 383 (Fla. 1st DCA 2010); *Cespedes v. Yellow Transp., Inc.,* 130 So. 3d 243, 248-250 (Fla. 1st DCA 2013).

2. To be compensable, the injury must arise out of and in the course and scope of employment. Pursuant to the provisions of §440.02(19), Fla. Stat., an "injury" means a personal injury or death by accident arising out of and in the course of employment, and such diseases or infection as naturally or unavoidably result from such injury. This damage must specifically occur as the result of an accident in the normal course of employment.

3. To understand the application of the law in this matter, I have broken up the legal discussion into three separate areas. The law prior to 1994; the law after 1994 but before *Valcourt-Williams*[2]; and post *Valcourt-Williams.*

[2] Sedgwick CMS v. Valcourt-Williams, 271 So.3d 1133 (Fla. 1st DCA 2019), (hereinafter "*Valcourt.*")

I. The law prior to Valcourt-Williams but pre-1994:

4. The Florida Supreme Court has construed the phrase "in the course of employment" to mean the time, place, and circumstances under which the accident occurs, and that to be compensable the injury must occur within the period of employment, at a place where the employee may reasonably be, and while he is reasonably fulfilling the duties of his employment or engaged in doing something incident to it. *See Bituminous Cas. Corp.*, 4 So.2d 378, 379 (Fla. 1941); *Sweat v. Allen*, 200 So. 348, 145 Fla. 733 (Fla. 1941), The Florida Supreme Court has further construed the phrase "arising out of" to mean that there must be some causal connection between the injury and the employment or it must have had its origin in some risk incident to or connected with the employment or it must have flowed from its natural consequence. to mean the origin or cause of the accident. *See Sweat* at 737.

5. In *Fort Piece Growers Ass'n v. Storey,* 158 Fla. 192, 193, 29 So. 2d 205 (Fla. 1947), the claimant was killed by a lightning strike during a thunderstorm while sitting on a metal tool box under an employer provided tarpaulin shelter. In finding the claim compensable, the Florida Supreme Court held that once under the shelter the claimant "[c]hanced to sit on a metal box thereby subjecting himself to greater danger to lightning than others in general." *Id.* at 193.

6. In *Strother v. Morrison Cafeteria*, 383 So. 2d 623, 624 (Fla. 1980) (finding compensable an assault by two men upon a woman who had been

followed home from her employment and robbed), the Florida Supreme Court confirmed that as a general rule that the accident must occur while the employee is acting within the duties of his employment or in some act incidental thereto and that "arising out of" meant originating in some risk connected with employment or flowing as a natural consequence from the employment. However, the court did make a very significant ruling that the "arising out of" and "in the course and scope" concepts must not be viewed independently, but rather to view them as parts of a single test of work connectedness where deficiencies in the strength of one factor may, in some cases, be made up by the strength in the other. *Id.* at 626. *Strother* further held that for an injury to arise out of work performed, the injury must (1) be causally connected to the claimant's employment; (2) have had its origin in some risk incident to or connected with the employment; or (3) flow from the employment as a natural consequence. *See Fid. & Cas. Co. of N.Y. v. Moore,* 143 Fla. 103, 196 So. 495, 496 (Fla. 1940). *Sentry Ins. Co. v. Hamlin*, 69 So. 3d 1065, 1069 (Fla. 1st DCA 2011). *See also Hill v. Gregg, Gibson & Gregg, Inc.,* 260 So. 2d 193, 195 (Fla. 1972) (citing *Fid. & Cas. Co. of N.Y. v. Moore).*

7. In *Jenkins v. Wilson*, 397 So. 2d 773 (Fla. 1st DCA 1981), a legal secretary working late and alone was abducted from an adjoining parking lot and raped. The assailant was arrested and convicted, but never disclosed his motives so there was no evidence of anything being related to work other than the dangers posed by the environment. The

sole issue for the JCC's determination was whether the rape arose out of employment, and the only facts supporting that finding were that the claimant worked late on the date in question and as a result was alone in the parking lot at a late hour. Based upon these facts, the First District Court of Appeal found the claim compensable.

8. In *Tampa Maid Seafood Prod. v. Porter,* 415 So. 2d 883 (Fla. 1st DCA 1982), the female claimant and second female co-worker were romantically involved with a male co-worker causing a fight to begin between those two women while at the work place. In reversing the JCC's denial of coverage for not "arising out of" employment, the First District Court of Appeal held that the assault was facilitated by the employment both by placing the two women in close proximity, as workplace gossip fueled the dispute, and because the knife used belonged to the employer.

9. In *Carnegie v. Pan Am. Linen,* 476 So. 2d 311 (Fla. 1st DCA 1985), involving a claim by a claimant who was stabbed at work by a female co-worker with whom he was romantically involved, the injury was determined to arise out of employment because the relationship began at work and the knife used was an implement of employment. In so ruling, the court stated that "compensation may be appropriate for injuries which result from a personal altercation if the employment is in some way a contributing factor" and the "work environment directly impacted the altercation." *Id.* at 312.

II. Post 1994:

10. As noted by the Carrier, the definition of "arising out of" was codified by the Legislature in a statutory change effective 1994. Prior to that date, there was no statutory definition. Pursuant to the provisions of §440.02(36), Fla. Stat. (1994), the statutory definition of this phrase means that it pertains to "[o]ccupational causation." "An accident injury or death arises out of employment if work performed in the course and scope of employment is the **major contributing cause** of the injury or death." (emphasis added).

11. The first issue in this case is whether this statutory definition, with the additional language involving major contributing cause, invalidates the above cited case law. I conclude that it does not for purposes of this case and record.

12. The earliest case construing this provision is *Perez v. Publix Supermarkets, Inc.,* 673 So.2d 938 (Fla. 3d DCA 1996) which arose in the context of a tort liability/third party action in which the employer raised the affirmative defense of workers' compensation immunity. In *Perez*, the plaintiff suffered an injury when she slipped and fell on her way out of the store after she had clocked out and had ended her shift. The plaintiff argued that the statutory provision adding the phrase major contributing cause prevented this case from being covered under workers' compensation, and therefore, there was no immunity. *Perez,* while noting that the statutory definition required a claimant to show

that the employment constituted a major contributing cause of the accident or injury, concluded that the plaintiff's employment was the major contributing cause of the injury because her actions in leaving the store at the end of the day constituted a major contributing cause of the accident or injury because "But for her movement, this injury would not have occurred." *Id.* at 940. Accordingly, *Perez* ruled that the plaintiff's exclusive remedy was through workers' compensation. This decision established a "but for" test in determining whether the employment was the major contributing cause of the accident or death.

13. *Perez* was cited with approval by the First District Court Of Appeal in *Wilson v. United Mfrs. Supplies, Inc.*, 906 So.2d 355 (Fla. 1st DCA 2005) in which *Wilson* held as a matter of law that the claimant was in the course and scope of his employment when he was still on the employer's premises after he had clocked out. While *Wilson* did not discuss the major contributing cause definition articulated in *Perez,* that definition was integral to the conclusion in *Perez* that the employment was the MCC of the accident because **but for** the movement of the claimant, the injury would not have occurred.

14. The Florida Supreme Court in *Taylor v. Sch. Bd. of Brevard Cnty*, 888 So.2d 1, 5 (Fla. 2006), in a case involving the unrelated works exception to immunity, stated that:

> Workers' compensation law and its unique relationship with the concept of liability has been summarized by one commentator in the following manner:

> The right to compensation benefits depends on one simple test: Was there a work-connected injury? Negligence, and, for the most part, fault, are not in issue and cannot affect the result. Let the employer's conduct be flawless in its perfection, and let the employee's be abysmal in its clumsiness, rashness and ineptitude; if the accident arises out of and in the course of the employment, the employee receives an award. Reverse the positions, with a careless and stupid employer and a wholly innocent employee and the same award issues.
>
> Thus, the test is not the relation of an individual's personal quality (fault) to an event, but the relationship of an event to an employment. The essence of applying the test is not a matter of assessing blame, but of **marking out boundaries**. (Emphasis added).

15. In a post-1994 decision after the First District Court Of Appeal held that to establish occupational causation involving a work place assault, the injury must be causally connected to some risk incident to or connected with the employment. *Santizo-Perez v. Genaro's Corp.*, 138 So. 3d 1148 (Fla. 1st DCA 2014) (finding compensable a parking lot vehicle assault at night by a co-worker's jealous boyfriend resulting in the employee's death). *Santizo-Perez*, articulated several factors to be analyzed in determining whether a work placed assault had some risk incident to or connected with the employment as opposed to risks which were personal in nature. In doing so, it noted that some jobs are more prone to work place violence than others. It specifically noted that this is usually because of the following factors: "1) the nature of the job, e.g., dangerous duties; and 2) the nature of the environment of the job, e.g.

dangerous locations." *Id.* at 1150. There was no discussion in this opinion about major contributing cause.

16. In footnote 4 of the opinion, *Santizo-Perez* noted that, "This case presents a classic example of how courts can hyper focus on motive of a third-party who caused the injury to an employee but ignoring a dangerous environment that also facilitated the injury. As Larson's points out, "[t]he error here is a simple one: The court assumes that the claimant must prove both that the environment increased the risk of the attack and that it was motivated by something related to the employment. The correct rule is that either one or the other is sufficient to establish the causal link." *Id.* at 1150.

17. In *Sentry Ins. Co. v. Hamlin*, 69 So.3d 1065 (Fla. 1st DCA 2011), involving an arising out of issue, *Hamlin* stated that arising out of' pertains to occupational causation and that an accidental injury or death *arises out of employment* if work performed within the course and scope of employment is the major contributing cause of the injury or death. A condition is considered to "arise out of employment" when the employment necessarily exposes a claimant to conditions which substantially contribute to the risk of injury and to which the claimant would not normally be exposed during his life outside employment citing to *Acker v. Charles R. Burklew Constr.,* 654 So.2d 1211 (Fla. 1st DCA 1995). *Hamlin* did not address directly the major contributing cause language in the statute.

III. ***Sedgwick CMS v. Valcourt-Williams***, 271 So.3d 1133 (Fla. 1st DCA 2019).

18. *Valcourt* was an ***en banc*** decision reversing a finding of compensability by the JCC. In *Valcourt* the claimant, a work at home adjuster, tripped over her dog while getting coffee in her kitchen while on break from her adjusting duties. *Valcourt* was expressly an arising out of issue. The express holding in Valcourt was that "[t]he risk at issue- that Valcourt-Williams would trip over her own dog in her own kitchen while reaching for a coffee cup- was not a risk her employment introduced." *Id.* at 1138. In addition to this court, *Valcourt* expressly stated that it was not finding that compensability might still arise where "the employment necessarily expose[d] claimant to conditions that would substantially contribute to the risk of injury." *Id.*

19. *Valcourt* expressly abrogated *Holly Hill Fruit Prod., Inc. v. Krider*, 473 So. 2d 829 (Fla. 1st DCA 1985); *Bayfront Med. Ctr. v. Harding*, 653 So .2d 1130 (Fla. 1st DCA 1995); *Gray v. E. Airlines, Inc.*, 475 So. 2d 1288 (Fla. 1st DCA 1985); and *Pan Am. World Airways v. Wilmot*, 492 So. 2d 1371 (Fla. 1st DCA 1986). It cited as support to *Strother v. Morrison Cafeteria*, 383 So. 2d 623 (Fla. 1980) for the proposition that to be compensable, an injury must arise out of employment in the sense of causation and be in the course of employment in the sense of continuity of time, space, and circumstances.

20. The importance of the citation to *Strother v. Morrison Cafeteria* in *Valcourt* as it relates to the carrier's argument that the 1993 addition of the phrase "major contributing cause" to the term "arising out of" cannot be overemphasized. Quite simply, its citation to this Florida Supreme Court decision must mean that the holding in *Strother* was consistent with the current statutory definition of arising out of, and therefore, good law.

<u>FINDINGS OF FACT AND CONCLUSIONS OF LAW:</u>

In making my findings of fact, I have carefully considered and weighed all of the evidence presented to me. Although I may not reference each piece of evidence presented by the parties, I have carefully considered all the evidence and the exhibits in making my findings of fact.

Based upon the evidence, I make the following findings of fact and conclusions of law:

1. I have jurisdiction of the parties and the subject matter.
2. The stipulations of the parties are accepted and adopted by me as findings of fact.
3. The evidence closed in this matter on March 30, 2021. The parties requested and were granted leave to file written closing arguments on or before April 5, 2021. Both the carrier and the claimant filed their respective written closing arguments on April 5, 2021. The original order was entered within 30 days of the filing of the written closing

arguments. This amended order is being entered after the original order was vacated on May 12, 2021.

4. Pursuant to the provisions of §440.015, Fla. Stat., I have not interpreted the facts in this case liberally in favor of either the rights of the injured worker or the rights of the employer. I have construed the law in accordance with the basic principles of statutory construction.

5. It is undisputed that the claimant was shot during the course and scope of his employment on June 28, 2019 while on the business premises. It is further undisputed that the claimant was shot while walking between two business operations located on the same hotel premises.

6. I find that the shooting took place after midnight when the claimant was walking alone in an unsecured area located in proximity to the hotel parking lot. I find, based upon the testimony of the depictions seen on the video, the unknown shooter emerged from the smoking area after the claimant had turned to his right towards the private office; which would put the claimant's back towards the direction from which the shooter emerged, thereby making the claimant more vulnerable to an unexpected attack from his back.

7. I accept the testimony of Mr. Belghazi that on the night of the shooting, the smoking area was very dark and hard to observe someone coming from this area unless you heard them. I further

accept his testimony that the shooter emerged from such dark area behind the gym building.

8. I find that the business chose to establish its work location at a hotel located near the OIA and operated such business from 8:00 a.m. until midnight, seven days a week; which meant that it would be late and dark at the end of each work day. I find that the hotel at this location had a high overnight guest turnover rate; meaning that a lot of people would be checking in and out on a daily basis. I find that the hotel is located in a commercial area that contains other businesses catering to the public, including a Hooters restaurant and other "open all night" businesses. I find that the presence of people around the hotel and its environs at any given time is significantly greater than would be expected in a residential area located away from commercial areas.

9. I find that the day to day operation of this business included the presence of leased vehicles in the hotel parking lot with gates open to the public at all hours of the day and night. I find that the operation of this business in a busy area near the airport is different than its operation would be at the airport itself where everything was contained within the airport property, thereby limiting access to the general public.

10. I find that the business also chose to separate its retail operation, located in the secure hotel lobby hotel, from its private office located

outside of the secure lobby. This separation required the claimant and other employees to walk between these separate locations.

11. I find that the business also decided to keep its cash and lease agreements in the private office, necessitating at least one of its employees at the end of every work day to secure in the private office the cash and the agreements generated by the business transactions conducted during the day. This required such employee to walk from the lobby to the private office at a relatively predictable time.

12. This decision necessitated its employee to exit the secure hotel lobby at or after midnight when the business closed, alone, and traverse a lighted walkway to a right 45% angle turn at which point it exposed the employee's back to anyone emerging from the parking or the pool areas. While the walk way appears to be well lighted, I find that the smoking area, which is the area from which the shooter emerged, was dark and an area that would be difficult to observe anyone hiding behind the wall in this area.

13. I have carefully considered the expert opinions presented and I have carefully reviewed to the qualification of the experts and their credentials. I accept the opinions of Mr. Kelly Klatt that the combination of the dimly lit smoking area and surrounding vegetation were enhanced risks of injury, as were the hotel's proximity to the surrounding bars, restaurants, and all-night convenience stores. I accept his opinions that hotels have higher

crime rates than would residential areas and that there was an enhanced risk in conducting a business in a hotel area. I accept his opinion that dark areas create an opportunity for refuge. I further accept his opinion that the claimant's work environment contributed to a higher likelihood that the claimant would be a victim of a crime at the hotel then he would be at a dwelling in a residential neighborhood.

14. I accept these specific opinions of Mr. Klatt over the contrary opinions of the carrier's experts because I find those opinions to be more reasonable, logical, and consistent with the evidence in this record. I further accept these opinions over the contrary opinions on this specific issue because as a security officer for a large hotel chain with multiple properties in the Orlando area I conclude that Mr. Klatt would be in the best position to be aware of and manage the risks associated with conducting hotel operations in the Orlando area and the OIA and the risk of crimes being committed on its property.

15. I accept the expert opinion of Dr. Mitchell that in Orlando murders occur at much higher rates during the hours between midnight and 3:59 a.m. I further accept her opinion that the crime rate was higher in the hotel area where the business was located, and that someone is more likely to be the victim of violent crime in the area around the hotel, as opposed to the area around claimant's home. I find immaterial to my findings her opinions regarding the specific

percentages of likelihood but rather accept her opinion based upon a more likely than not evidentiary standard. For this reason, I conclude that a Daubert objection would not render this opinion inadmissible. I also find that these opinions are reasonable, logical, and based upon appropriate data. They are also consistent with logic and common sense that more murders and serious crimes occur at night and in commercial areas rather than homes or dwellings.

16. I find that the claimant's employment substantially contributed to the risk of an attack and to risks which the claimant would not normally be exposed to during his nonemployment life. I base this finding on the following facts:

    a. The risk of injury peculiar to his employment required the claimant to work on the premises of a commercial hotel located in a busy area near the OIA;

    b. The risk of injury peculiar to his employment required the claimant to exit a secured hotel lobby area while carrying cash and contracts to lock them up in an outside private office situation near the parking lot, smoking area, and gym;

    c. On the evening in question, the claimant was required to be on the premises after midnight, when the business was closing;

d. The smoking area and the area around the private office was accessible and open to anyone coming in from the parking lot or surrounding areas, and therefore, made it an area conducive for a perpetrator to hide unaware and emerge to attack from behind;
e. The lighting and vegetation in the smoking area near the gym facilitated a perpetrator being able to conceal their presence to someone walking away from the area towards the private office;
f. Whether the attack was a targeted attack for personal reasons or a random act of violence, the location of the shooting on the business premises around the smoking area and the private office, coupled with the predictability of the claimant exiting the lobby after midnight when the business closed exposed the claimant to a greater risk than he would encounter in his non-work environment; and
g. His duties requiring him to hire and fire employees, some of which may, and in fact were, fired for drug or criminal related reasons, increased the likelihood that he would be a potential target for retaliation from a fired employee. This risk was non-existent from his personal life.

17. I find that the greater weight of the evidence does not establish the identity of the shooter. I further find that the claimant did not see the shooter.

18. The carrier contends that this is a targeted attack for personal reasons. Based upon the greater weight of the evidence including Dr. Kennedy's deposition testimony, I find that this is a targeted attack but not for personal reasons but rather a targeted attack for work related reasons; which attack was facilitated by the work environment.

19. In his June 5, 2020 deposition,[3] Dr. Kennedy testified that the claimant worked the day shift and ordinarily would not have been present at night on the night of this shooting. Because of this, and because of Dr. Kennedy's opinion that this was a targeted attack, the attack at this time and place when he was not normally expected to work, suggested that someone knew where the claimant would be going and when he would be there. According to Dr. Kennedy, "this is what we would call targeted violence, which essentially means that the perpetrator has a specific target in mind for a specific reason and takes specific measures to get that person." *Id.* at page 49. Explaining further, Dr. Kennedy testified that "perpetrators are opportunistic which means they like to take as little risk as possible with as little effort as possible and yet as much of a reward as

[3] Beginning on page 48.

possible." *Id.* I accept those opinions as being reasonable and logical.

20. Because I find that this shooting was a targeted attack based upon inside information that the claimant would be working late that evening at the close of business and would exit the lobby to walk to the outside private office, I further find, more likely than not, the shooter analyzed when and where to conduct the attack. Because the attack was conducted on the hotel premises, I further find that such analysis would have included consideration of whether to conduct the attack in the various scenarios available, including in the hotel parking lot where the claimant would have walked to his car after closing up, at the claimant's residence, or when walking to the outside office. Because of the location chosen for the actual shooting, I find that the shooter decided on this particular hotel location and time thereby waiting for the claimant to exit the lobby and walk to the outside office in the dark after midnight because he concluded that this involved the least amount of risk.

21. Because I accept Dr. Kennedy's opinion that an opportunist perpetrator in conducting this analysis would do so with the intent to take as little risk as possible and yet achieve as much of an award as possible, the fact that the perpetrator chose this time and location was because it presented to him the least risk. This decision suggests that the claimant's home residence and the parking lot were

eliminated out as being the location with the least risk. Because of Dr. Kennedy's opinions, and because of the actual shooting itself at the location chose, it is not a stacking of inferences to make these findings.

22. Moreover, because I find that shooting was a targeted attack based upon inside information that the claimant would be working at a time when he would not normally be, coupled with information that the business closed at midnight following which an employee locking up for the evening would exit the hotel lobby and walk to the outside office to secure the contracts and cash, I find that more likely than not that this information would have come from either an existing employee, or a former employee still in communication with an existing employee.

23. As discussed in the evidence summary above, the claimant had fired one driver for testing positive for heroin and had fired two other employees for theft. Any one of these employees may have had motive to attack or direct an attack against the claimant.

24. I further find, by the greater weight of the evidence, the reason for the targeted attack was more likely than not related to the termination of a prior employee(s) or other job related issue rather than the incident with Robert Aponte because the incident with Robert Aponte had occurred only the day before the shooting; which is too soon to have allowed Mr. Aponte to acquire the information

regarding the claimant's late presence at work that evening to train new hires. Additionally, I exclude the Robert Aponte incident as being the more probable of the two motives for the attack because this incident involved the claimant's son and not the claimant himself. Thus, any violence associated with either this loan or incident would more likely be directed towards the son or the wife but not the claimant. By the greater weight of the evidence, I find that Mr. Aponte had no personal motive, other than the incident between his son and wife, to attack the claimant.

25. In the alternative, I find that while possible but not probable, Mr. Aponte may have been able to acquire such knowledge within such short period of time from an existing employee with whom he had a connection. However, in such event, there is the requite work connectedness because the information would have come from an employee of the business.

26. I further find that the employment is the major contributing cause of the shooting attack because, as in *Perez,* but for the movement of the claimant walking between the lobby and the outside office the incident would not have occurred at the time and place it did. If the employer in this instance were the owner of the hotel property and not a car rental agency who was leasing space on its premises, I conclude that *Perez* would prevent a claimant from overcoming workers' compensation immunity to sue his hotel employer for

negligence. For the same reason, I conclude that this is covered under workers' compensation.

27. In the alternative, if this were not a targeted attack for business reasons but either because it was a robbery gone bad or a random act of violence that had been conducted on the hotel premises, or even related to the Robert Aponte incident, based upon this record, I find that the location of and the time of the attack establish the work connectedness. This finding is consistent with the experts' opinions that 85% of workplace shootings/murders occurred during robberies and Dr. Mitchell's opinion that in Orlando murders occur at much higher rates during the hours between midnight and 3:59 a.m. and the above findings regarding the hotel premises.

28. Based upon the foregoing, I find that the claimant has established injuries arose out of his employment due to the nature of the environment of the job thereby subjecting himself to greater danger to a personal assault than others in general consistent with the holding in *Santizo-Perez v. Genaro's Corp.*, 138 So. 3d 1148 (Fla. 1st DCA 2014), and *Fort Piece Growers Ass'n v. Storey,* 158 Fla. 192, 193, 29 So. 2d 205 (Fla. 1947) and originating in some risk connected with his employment or flowing as a natural consequence from such employment and in the course of employment in the sense of continuity of time, space, and circumstances consistent with *Strother v. Morrison Cafeteria*, 383 So. 2d 623, 624 (Fla. 1980). This

is further consistent with footnote 4 in *Santizo-Perez v. Genaro's Corp.*, 138 So. 3d 1148 (Fla. 1st DCA 2014) wherein the court noted that the lack of motive for the attack was not fatal to the compensability of the claim if the environment increased the risk of the attack and that the employment is the major contributing cause of the attack because but for the movement of the claimant walking from the hotel lobby to the outside office during the incident would not have occurred at the time and place it did consistent with *Perez v. Public Supermarkets' Inc.*, 673 So.2d 938 (Fla. 1st DCA 1996) and *Wilson v. United Mfrs. Supplies, Inc.,* 906 So.2d (Fla. 1st DCA 2005).

29. This ruling also is consistent with *Storey* involving a lightning strike, even with the additional major contributing cause language in the statutory definition of arising out of. Clearly, the lightning strike was a random event and randomly could have struck in another area. What made it compensable is that the claimant was sitting on a metal tool box, a natural conductor of electricity, which provided the employment connection and **but for his work** the employee would not have been sitting under the tarp on metal boxes when during a lightning storm. It must be assumed that as part of that analysis the Court concluded that one does not normally sit on a metal tool box under a tarp during a lightning storm in their non-work life, and thus has a smaller risk of an electrical injury in a non-work environment.

30. The carrier relies in part upon *San Marco Co., Inc. v. Langford*, 391 So.2d 326 (Fla. 1st DCA 1980), holding that an assault on the employer's premises while the claimant was in the course and scope of employment was non-compensable when the animosity or dispute that culminates in an assault is imported into the employment from the claimant's domestic or private life and is not exacerbated by the employment. In so holding, *Langford* noted that "When it is clear that the origin of the assault was purely private and personal, and that the employment contributed nothing to the episode, whether by engendering or exacerbating the quarrel or facilitating the assault, the assault should be held noncompensable even in states fully accepting the positional-risk test, since that test applies only when the risk is "neutral." *Id.* at 327. However, unlike in *Langford*, in the case *sub judice*, it is not clear that the origin of the assault was the claimant's domestic or private life. Moreover, unlike in *Langford,* the employment did contribute to the assault relating to the condition of the premises, the lighting and vegetation issue, the movement of the claimant between two employment locations, and the concealment of the perpetrator.

31. The carrier further relies in part upon *Littles v. Osceola Farms*, 577 So.2d 657 (Fla. 1st DCA 1991), holding that an employee's stabbing death in a medical complex nursing home by his lover was not a risk "distinctly associated with his stay at the medical treatment for work

related injuries" and therefore non-compensable under the personal comfort doctrine on bunkhouse rule. In *Littles* the appellate affirmed the JCC's finding that the death resulted from an event purely personal to the employee and a consequence of his domestic or personal life. In the case *sub judice*, it is not clear that the origin of the assault was the claimant's domestic or private life.

32. The carrier further relies in part upon *Ivy H. Smith Co. v. Wingo*, 404 So.2d 1118 (Fla. 1st DCA 1981), denying compensability of an assault of the claimant on the work place that had its origins in a dispute over a carpool arrangement to and from work that was not a part of the employment. In so holding, the court cited to *San Marco Co, Inc.* cited above that an assault on the employer's premises while the claimant was in the course and scope of employment was non-compensable when the animosity or dispute that culminates in an assault is imported into the employment from the claimant's domestic or private life and is not exacerbated by the employment. As noted above, in the case *sub judice*, it is not clear that the origin of the assault was the claimant's domestic or private life and the work environment substantially contributed to the assault.

33. The next issue is whether *Valcourt* changes this result. The carrier in its written closing argument contends that the claimant did not meet his burden of proof required under *Valcourt* because he did not establish the identity of the shooter, the motive for the shooting, and

that the claimant was subjected to a risk non-existent in the claimant's non-employment life; which the carrier has interpreted this to mean that any employment risk is non-compensable if it can be shown that such risk might be encountered in the claimant's non-employment life.

34. Does the holding in V*alcourt* stand for this proposition or is that position found in *obiter dictum*, and if so, can such o*biter dictum* overrule *sub silentio* the prior Supreme Court decisions or even the other decisions of the First District Court of Appeal not expressly overturned in the *Valcourt* decision itself? Based upon the following analysis, I conclude that the holding in *Valcourt* does not. Rather, I conclude that the ruling in this order is entirely consistent with the Florida Supreme Court's decisions, the cited First District Court of Appeal's decision on occupational causation pre-Valcourt, and the holding in *Valcourt* itself.

35. At the outset, it should be clear that a District Court of Appeal cannot expressly overrule a decision of the Florida Supreme Court on the same issue. Moreover, pursuant to *Puryear v. Florida*, 810 So. 2d 901 (Fla. 2002), it is logical to assume that the First District Court of Appeal would not overrule itself intentionally and *sub silentio* on one of its prior decisions. Rather, it is logical to assume that the First District Court Of Appeal would follow the Supreme Court's statement in *Puryear* where it stated that if the Court encounters an express

holding on a specific issue and a subsequent contrary dicta statement on the same issue, the court is to apply the court's express holding in the former decision until such time as the Court recedes from the express holding. [4]

36. I conclude that express holding in *Valcourt* was that "[t]he risk at issue-that Valcourt-Williams would trip over her own dog in her own kitchen while reaching for a coffee cup-was not a risk her employment introduced." *See* 271 So. 3d at 1138. Thus, the court's holding that occupational causation must exist for compensability in a case where there was none demonstrated, does not require any further analysis to determine whether and to the degree to which employment activities contributed to the injury. Accordingly, the statement that the employment conditions creating the risk must not be ones that the claimant would not normally be exposed during his non-work life is o*biter dictum* because such analysis was not required in order to reach the holding in *Valcourt*.

37. *Valcourt* expressly abrogated several of its prior decisions.[5] It did not expressly abrogate J*enkins v. Wilson*, 397 So. 2d 773 (Fla. 1st DCA 1981); *Tampa Maid Seafood Products v. Porter,* 415 So. 2d 883

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[4] For a thoughtful analysis of o*biter dictum* (which refers to a passage in a judicial decision which is not necessary for the decision before the court) not having precedential effect as applied to *Valcourt*, the reader is directed to the February 9, 2021 Amended Final Order entered by JCC Grindal in OJCC 18-28462EBG.

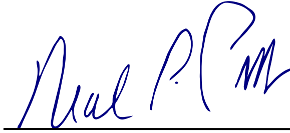
[5] *Holly Hill Fruit Prod., Inc. v. Krider*, 473 So. 2d 829 (Fla. 1st DCA 1985); *Bayfront Med. Ctr. v. Harding*, 653 So .2d 1130 (Fla. 1st DCA 1995); *Gray v. E. Airlines, Inc.*, 475 So. 2d 1288 (Fla. 1st DCA 1985); and *Pan Am. World Airways v. Wilmot*, 492 So. 2d 1371 (Fla. 1st DCA 1986).

(Fla. 1st DCA 1982); *Carnegie v. Pan American Linen,* 476 So. 2d 311 (Fla. 1st DCA 1985); or *Santizo-Perez v. Genaro's Corp.*, 138 So. 3d 1148 (Fla. 1st DCA 2014). Therefore, in order to harmonize *Valcourt* and these decisions, I conclude that these remain good law and their holdings still have the precedential force and effect and control the outcome of this case. These decisions are also consistent with *Strother v. Morrison Cafeteria*, 383 So. 2d 623, 624 (Fla. 1980) cited in the majority opinion.

38. If one were to accept such interpretation of *Valcourt* being asserted by the carrier, it is difficult to conceive of many employment risks, other than those associated with working in a laboratory handling highly toxic and contagious organisms, a steel mill blast furnace, in a nuclear reactor, or washing windows on the side of tall buildings that one would not encounter in a non-work environment. Taken to its logical conclusion, this would render non-compensable nearly every fall, motor vehicle accident, drowning, burn injuries, cuts and amputations because almost of these injuries involve activities, and therefore, risks which one would do in a non-work environment. This position also would be inconsistent with the Florida Supreme Court's decisions and those of the First District Court of Appeal to the contrary, which are cited in this order.

39. I certify that pursuant to Rule 9.180(b)1)(C), the determination of the exact nature and amount of benefits due to the claimant will require substantial expense and time.

DONE AND SERVED this 19th day of May, 2021, in Altamonte Springs, Seminole County, Florida.



Neal P. Pitts,
Judge of Compensation Claims

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APPENDIX “A”

STIPULATION OF THE PARTIES

The following stipulations have been reached between the parties:

1. The date of accident is June 28, 2019;
2. A mediation conference was held on June 24, 2020;
3. There was an employer/employee relationship at the time of the accident;
4. Workers’ compensation insurance coverage was in effect on the date of accident;
5. Timely notice of the accident was given;
6. Timely notice of pretrial and final hearing was given;
7. The case is not governed by a managed care arrangement;
8. The judge has jurisdiction of the parties and the subject matter;
9. Petition for Benefits was filed on February 21, 2020; and
10. Notice of Controvert/Denial/Responses to Petition for Benefits was filed on February 26, 2020.

APPENDIX “B”

EVIDENTIARY EXHIBITS

The following documents were admitted into evidence at the current hearing:

JUDGE’S EXHIBITS:

1. Petition for Benefits filed with OJCC on February 21, 2020 (DN 38-39);
2. Response to Petition for Benefits filed with OJCC on February 26, 2020 (DN 48);
3. Mediation Conference Report filed with OJCC on June 24, 2020 (DN 59);
4. Order on Bifurcation of Issues for Merits Hearing filed with OJCC on July 15, 2020 (DN 62);
5. Uniform Statewide Pretrial Stipulation filed with OJCC on July 21, 2020 (DN 64);
6. Order Approving Uniform Statewide Pretrial Stipulation entered on July 22, 2020 (DN 66);
7. Employer/Carrier’s Amendment to Uniform Statewide Pretrial Stipulation filed with OJCC on July 22, 2020 (DN 65);
8. Employer/Carrier’s Amendment to Uniform Statewide Pretrial Stipulation filed with OJCC on July 27, 2020 (DN 74);
9. Employer/Carrier’s Amendment to Uniform Statewide Pretrial Stipulation filed with OJCC on August 14, 2020 (DN 82);
10. Order on Claimant’s Challenge to Dr. Kennedy’s Testimony filed with OJCC on August 12, 2020 (DN 81);

11. Order on Claimant's Emergency Motion for Protective Order filed with OJCC on September 2, 2020 (DN 98);
12. Motion for Continuance filed with OJCC on September 16, 2020 (DN 157);
13. Order Continuing Final Merits' Hearing filed with OJCC on September 18, 2020 (DN 159);
14. Notice of Appearance on behalf of Carrier Normandy Insurance Only filed with OJCC on September 21, 2020 (DN 161);
15. Motion to Withdraw as Counsel filed with OJCC on September 28, 2020 (DN 164);
16. Order Granting Motion to Withdraw as Counsel entered on October 12, 2020 (DN 171);
17. Notice of Appearance on behalf of Employer Value Car Rental Only filed with OJCC on October 13, 2020 (DN 172);
18. Order Governing Bifurcated Trial and Discovery entered on January 29, 2021 (DN 189);
19. Amended Order Governing Bifurcated Trial and Discovery entered on February 1, 2021 (DN 191);
20. Uniform Statewide Pretrial Stipulation filed with OJCC on March 19, 2021 (DN 205); and
21. Order Approving Uniform Statewide Pretrial Stipulation entered on March 23, 2021 (DN 206).

Joint Exhibits:

1. Deposition Transcript of Maritza Gonzalez, together with all exhibits thereto, taken January 22, 2020, filed with OJCC on February 4, 2020 (DN 35);
2. Deposition Transcript of Lisa Cornelius (Adjuster for Normandy Insurance), together with all exhibits thereto, taken January 14, 2020, filed with OJCC on February 23, 2020 (DN 44-45);
3. Deposition Transcript of Adam Bouayad taken December 11, 2019, filed with OJCC on September 1, 2020 (DN 87);
4. Deposition Transcript of Lamyae Haouari taken November 5, 2019, filed with OJCC on September 1, 2020 (DN 88);
5. Deposition Transcript of Sean Belghazi, together with all exhibits thereto, taken January 22, 2020, filed with OJCC on September 1, 2020 (DN 90-91);
6. Deposition Transcript of Odessa Graciela, together with all exhibits thereto, taken February 14, 2020, filed with OJCC on September 1, 2020 (DN 92-93);
7. Deposition Transcript of Suzanne Weeks, together with all exhibits thereto, taken February 14, 2020, filed with OJCC on September 9, 2020 (DN 104-105);
8. Deposition Transcript of Kelly Klatt taken August 25, 2020, filed with OJCC on September 9, 2020 (DN 107);

9. Deposition Transcript of Meghan Mitchell, Ph.D., together with all exhibits thereto, taken August 18, 2020, filed with OJCC on September 9, 2020 (DN 109);
10. Deposition Transcript of Hye K. Lee, together with all exhibits thereto, taken February 14, 2020, filed with OJCC on September 9, 2020 (DN 111);
11. Deposition Transcript of Majed Charife, together with all exhibits thereto, taken February 14, 2020, filed with OJCC on September 9, 2020 (DN 114); and
12. Stipulation of the Parties filed with OJCC on September 14, 2020 (DN 154).

CLAIMANT'S EXHIBITS:

1. Claimant's Trial Memorandum filed with OJCC on September 10, 2020 (DN 133);
2. Deposition Transcript of Daniel Kennedy, Ph.D., together with all exhibits thereto, taken June 5, 2020, filed with OJCC on August 12, 2020 (DN 80);
3. Deposition Transcript of Mohammed Bouayad taken December 11, 2019, filed with OJCC on September 1, 2020 (DN 89);
4. Deposition Transcript of David A. Libert, M.D., together with all exhibits thereto, taken August 5, 2020, filed with OJCC on September 1, 2020 (DN 94-95);

5. Claimant's Notice of Filing Orlando Police Department Affidavit and 911 CD filed with OJCC on September 4, 2020 (DN 100);
6. Claimant's Notice of Filing Kelly Klatt Documents (including Curriculum Vitae) filed with OJCC on September 9, 2020 (DN 112);
7. Claimant's Notice of Filing CD of Videos Taken by E/C filed with OJCC on September 10, 2020 (DN 131); and
8. Claimant's Notice of Filing Crime Reports by Kelly Klatt filed with OJCC on September 9, 2020 (DN 132).

EMPLOYER'S EXHIBITS:

1. Employer/Carrier's Trial Memorandum filed with OJCC on September 9, 2020 (DN 130);
2. Deposition Transcript of Carlos Alberto Matos Mojica taken September 3, 2020, filed with OJCC on September 9, 2020 (DN 108);
3. Photographs taken by Carlos Matos Mojica filed with OJCC on September 9, 2020 (DN 110);
4. Diagram of Holiday Inn filed with OJCC on September 9, 2020 (DN 111 at pg. 45);
5. Deposition Transcript of Trooper Victor Rivera, together with all exhibits thereto, taken September 1, 2020, filed with OJCC on September 9, 2020 (DN 115);
6. Aerial Photographs (2) of Residential and Commercial Areas filed with OJCC on September 9, 2020 (DN 121);

7. Petition for Injunction for Protection Against Repeat Violence by Carlos Matos Mojica against Robert Aponte, Jr. dated May 22, 2019, filed with OJCC on September 9, 2020 (DN 124);
8. Census Tract Diagrams of Claimant's House and Holiday Inn filed with OJCC on September 9, 2020 (DN 126);
9. Census Tract Larger Diagram of Orlando, FL filed with OJCC on September 9, 2020 (DN 127);
10. Notices of Denial dated July 25, 2019; November 25, 2020; December 12, 2019 and February 21, 2020 filed with OJCC on September 9, 2020 (DN 128);
11. Photographs of Hotel Grounds Taken by Elizabeth Dumbaugh filed with OJCC on September 9, 2020 (DN 129);
12. Deposition Transcript of Hetel Pancholi (Holiday Inn's Records Custodian) taken December 14, 2020, together with all exhibits thereto, filed with OJCC on January 4, 2021 (DN 181-183);
13. Deposition Transcript of Tara Widegren taken March 3, 2021, together with all exhibits thereto, filed with OJCC March 23, 2021 (DN 194-196); and
14. Deposition Transcript of Dr. Daniel Bruce Kennedy taken March 8, 2021, together with all exhibits thereto, filed with OJCC on March 18, 2021 (DN 198-202).