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1 deliberations to communicate with me, you may send
2 a note through the bailiff signed by your presiding
3 juror or by one or more members of the jury. No
4 member of the jury should ever attempt to
5 communicate with me except by a signed writing. I
6 will communicate with any member of the jury on
7 anything concerning the case only in writing or
8 here in open court.

9 "If you send out a question, I will consult
10 with the parties before answering it, which may
11 take some time. You may consider your
12 deliberations while waiting for the answer to any
13 question. Remember that you're not to tell anyone,
14 including me, how the jury stands numerically or
15 otherwise until after you have reached a unanimous
16 verdict or have been discharged. Do not disclose
17 any vote count in any note to the Court.

18 "A verdict form has been prepared for you.
19 After you have reached a unanimous agreement on a
20 verdict, your presiding juror will fill in the form
21 that has been given to you, sign and date it, and
22 advise the Court that you are ready to return to
23 the courtroom."

24 As I indicated, ladies and gentlemen, we have prepared a
25 verdict form. It's a several-page document, and how many of

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1 the questions in it will depend on how you answer the questions
2 in numerical order. My understanding is one or more of the
3 lawyers will be addressing the verdict in their closing
4 arguments. I do think it is clear. It's just -- you just have
5 to read every question or every statement in it, and you'll be
6 able to follow it.

7 All right. Are plaintiffs ready to give their initial
8 closing argument?

9 MR. HOMAMPOUR: Yes, Your Honor. Thank you.

10 THE COURT: Please do so.

11 MR. HOMAMPOUR: So, first, on behalf of the
12 Shinedling family and Corey Arzoumanian and myself, I want to
13 thank you all so much. I want to thank the Court. You've been
14 paying close attention, taking notes. I know it's technical,
15 and some of it may be boring, but we really appreciate from the
16 bottom of our hearts your role in this process.

17 And it's interesting because I feel like I've been the
18 voice for Amy, you know, talking on her behalf about what's
19 happened in this case, and now you get to be her voice. At the
20 end of this case when we submit this to you, you get to be her
21 voice, and you get to tell Sunbeam don't sell a space heater
22 that people use in a home with their children that you know is
23 defective, that you know and no one else -- no consumer knows
24 has a safety feature that the consumer relies on to prevent
25 what happened here and you know that doesn't work. Don't sell

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1 a space heater that you know shouldn't be used while people are
2 sleeping and you don't tell the user. Don't sell a space
3 heater, a radiant heater, that you don't tell the user, "By the
4 way, you don't even need to use this type of heater when you're
5 sleeping and trying to heat up your room. This is not the
6 right heater. We have heaters that won't start fires and won't
7 kill your mom and won't kill your wife."

8 And so at the end of this case, you get to be the voice
9 for Amy and this family and for all consumers and telling the
10 defendant to stop putting stuff on your boxes that you don't
11 even know what it means and misleading consumers into buying
12 things that will kill them. Don't put on your box "Turns off
13 heater in an overheat situation" when that's not true. Don't
14 put on your box "Heat safe protection, tested beyond UL
15 standards," when you know that's not true.

16 Because it's very simple. Manufacturers shouldn't sell
17 products and give them to us if they're not safe, especially
18 when they know those products are going to be used in an
19 environment where we're at risk of death. Manufacturers
20 shouldn't sell products if they're not safe, period. And at a
21 minimum, absolute minimum, they need to give us information
22 about that product and its limitations.

23 If you get a car and the defendant knows that the seat
24 belt may fail and may unbuckle, they know that's a potential,
25 they need to tell us. Know why? Who's going to buy that car

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1 and use it? If Mr. Shinedling had known that this heater is
2 the wrong heater to use in a room when you're sleeping, if he
3 had known that the automatic safety shutoff that they market on
4 the box and on the manual may not work, he would never have
5 bought it.

6 So this is the worst type of tragedy, the worst, a
7 preventable one. And the entity that had the power to do that
8 before they made a penny off of these products is Sunbeam.

9 Now, I'm going to go through the evidence in this case,
10 and I tend to be very thorough. And the reason I'm thorough is
11 not because I want to bore you or because I think that you're
12 not smart. I think everyone here is very smart, but I can't
13 ask you, "Do you get it?" I'm not allowed to ask you that
14 question, "Is it okay for me to move on?" And sometimes I'll
15 get four jurors, like, "I understood it the first time you said
16 it," and then I'll get three jurors that said, "You know, it
17 wasn't until you said it that way that I understood your
18 point."

19 So this is my last chance for justice. I have an
20 obligation to them to be thorough and explain things. So I'm
21 very factual. I'm going to show you the evidence and the
22 testimony. I'm not going to make stuff up. I'm not going to
23 characterize things. I'm going to show you what you heard.

24 And, you know, the first interesting thing is, you know, I
25 did call the defendant deceptive, and I think the defendant was

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1 deceptive. They were deceptive on a lot of topics, and I'm
2 going to point that out to you. And you have to think to
3 yourself, a manufacturer that sells a product that they know is
4 defective, that they know has inadequate warnings, that they
5 know has a safety feature that doesn't work, you'd think that
6 manufacturer by this point in time -- right, mom's dead. We're
7 right in front of the jury. They heard from Dr. Palmer; he
8 told them what they already knew, "Your product's not safe.
9 You shouldn't be selling it for use when people are sleeping.
10 Your safety device doesn't work. Your warnings are totally
11 inadequate. You have inconsistencies." You'd think they'd
12 come in and accept responsibility. They talked about accepting
13 responsibility in voir dire, but they didn't.

14 Instead of accepting responsibility saying, "You know
15 what, we screwed up big time. We acquired a company. We
16 didn't check out the products properly. We had one guy,
17 Mr. Prins going over 100 products. We should have done a
18 better job," instead of saying, "We're sorry, let's make up for
19 the harm we caused," they employ this deception.

20 In opening, defense attorney says, "Our hearts go out to
21 the Shinedling family for the loss of the mother and wife."
22 Well, the expression "It's a little too late" applies. Who
23 cares now about your hearts now that she's gone? Where were
24 your hearts and minds before you put that product on your
25 shelves and Mr. Shinedling mistakenly bought it not knowing it

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1 could kill his wife, not knowing it could have hurt his three
2 daughters? Who cares about your heart? We're not here --
3 Sunbeam doesn't have a heart. Sunbeam is made up of thousands
4 of employees making all sorts of whacky products from coffee
5 makers -- they were talking about all the different products
6 they make.

7 Look, before you sell a product that can cause someone to
8 die, make sure that product is safe. Make sure you get clear
9 instructions to the user so they don't put themselves at risk.
10 Don't wait until someone dies and then come into court and say,
11 "Our hearts go out to the Shinedling family."

12 Don't try and trick the jury and say in opening,
13 "Mr. Shinedling stayed in the home of his neighbor for an hour
14 and didn't go out to tell the first responders that his wife is
15 still in the house." What was that for? You know what, that's
16 a cheap shot. They're attacking Mr. Shinedling saying he
17 didn't come out to tell the first responders that his wife was
18 still in the house, but what they omitted to tell you is they
19 knew she was in the house.

20 Captain Nelson told you, it was in the log. Before they
21 even got there, they knew his wife was in the house. You heard
22 he told 911 she was in the house. So why would Defendant
23 Sunbeam make that statement to you in opening? Why? Because
24 they wanted to poison you. They thought from the beginning of
25 this case they could poison you against Mr. Shinedling, make

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1 him the villain, they'd get away with it. And you're not going
2 to let them get away with it.

3 Can you imagine you buy a product that you don't know is
4 unsafe and that can cause your wife to die and they know it can
5 cause your wife to die and they know it can cause a fire, and
6 then they have the nerve to blame you?

7 Their whole case has been that he should have taken his
8 three-year-old daughter and put her outside the door on the
9 ice-cold ground and then gone back to his wife, and that he was
10 negligent for not saving his wife when his wife told him, "Take
11 our baby. Get out and go get our daughters."

12 And then we had to have Captain Nelson explain to you the
13 obvious. He would have been the worst father of all time if he
14 put his daughter on the ground and she came back in like most
15 kids do running for her mom. Then we'd have two deaths.

16 And you think the defense would be thinking these crazy
17 obnoxious, offensive arguments through, like with humanity,
18 with some respect, with some dignity thinking "I shouldn't go
19 there. That's offensive." No, they went there.

20 Do you know why? They have very little respect for you.
21 Those arguments reflect a lack of respect for your intelligence
22 and your common sense. Those arguments reflect a belief that
23 if they just attack him, all of a sudden you'll look away.
24 It's a common tactic to shift your focus away from their
25 product which they know is defective and focus on

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1 Mr. Shinedling. Talk about pouring salt on wounds, wounds that
2 are the worst wounds you could imagine.

3 And then they told you another lie, absolute lie. The
4 fact of the matter is the CPSC does not believe through its
5 investigation that radiant space heaters are too hot. That's
6 baloney. You didn't hear anyone from CPSC tell you that.

7 And what I had to get out is they actually hid information
8 from the CPSC. Mr. Prins knew that automatic safety shutoff
9 wouldn't work if the material was at the bottom of the heater.
10 And when CPSC asked him, "Tell us about all the defects," he
11 said, "There are none," and he didn't tell CPSC what he knew.
12 And not only did he not tell CPSC what he knew, he didn't tell
13 the other people at Sunbeam. He didn't tell Mr. Vernaglia.

14 So, again, that's pretty outrageous to come in here and
15 try and trick you into believing that the government somehow
16 sanctioned their product when that wasn't true. And they knew
17 it wasn't true.

18 So what -- you have to think, what are they doing at the
19 get-go of this case, the first words to you about facts, and
20 they're lying and misrepresenting? That's as outrageous as it
21 gets. Because I had to spend a lot of time unraveling their
22 lies, wasting time, lies that they should never have put in
23 front of you.

24 But I had to spend time, you know, extracting the truth
25 out of their witnesses, witnesses that were ready to argue with

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1 me, witnesses that were advocates for Sunbeam, instead of
2 witnesses that were just here to tell us the truth.
3 I agree, this is the greatest legal system in the world.
4 Do you know why? Because this courtroom is a great equalizer.
5 The eight of you can take down or hold accountable any
6 corporation. Sunbeam, any corporation, they can get away with
7 it with UL. They can get away with not giving information to
8 the Consumer Product Safety Commission. They can get away with
9 it with not keeping track of statistics. They don't even keep
10 track of fires and claims involving their products. He
11 admitted to you.
12 So they can keep sloppy recordkeeping, sloppy
13 communication, not telling the truth to CPSC, going with this
14 Underwriters Laboratories and just doing minimum stuff, lying
15 on their boxes about the features of the product, making
16 statements about the features of their product they don't even
17 know what they mean, they can't even explain, not knowing their
18 own mission statement.
19 But in this courtroom, they can't get away with that,
20 because each and every one of you can hold them accountable,
21 and I'm confident that you will.
22 So let me briefly walk through what we know. Consumer
23 Product Safety Commission pointed out in 2004 air heaters don't
24 start fires. Radiant heaters have the ability to start fires
25 because radiant heaters produce heat higher than combustion

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1 level of materials; air heaters don't. Documented. They knew
2 about it.
3 Now, by the way, before Sunbeam should be selling radiant
4 heaters, before 2005, they need to understand their products.
5 So it's not that they should wait until CPSC sends this
6 bulletin out or this report out, everything that CPSC figured
7 out they should have figured out before they put the product on
8 the market for use in a home while people are sleeping.
9 Do we have any records of their analysis whatsoever? No.
10 They don't even have a library. What kind of a company is
11 this? Every business has a library of some sort of something
12 relevant to their work.
13 There is an amusement park ride. You're going to have
14 lots of documents explaining how that thing worked and how it
15 came about so everyone's on the same page. Nothing. No
16 statistics. No CPSC documents. No scientific literature. No
17 design documents. No analysis, nothing.
18 CPSC in 2005 documents what they should have known. Air
19 heaters prevent fires in two ways. First, the temperature
20 exhausted by air heaters isn't high enough to start a fire.
21 And, second, they don't transfer energy like radiant heaters.
22 And that's just very simple. The air coming out of an air
23 heater doesn't accumulate any object in front of it. Radiant
24 heaters, the heat accumulates.
25 So a towel in front of a radiant heater will get hotter

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1 and hotter and hotter and hotter. And what that means is, you
2 just think about it, the automatic shutoff that is temperature
3 sensitive in a radiant heater won't work and can start a fire.
4 Whereas with an air heater, it will work, and it will never
5 start a fire.
6 Here are the slides Dr. Palmer had to create. Again, all
7 of these slides, all this information I explained to you, the
8 defendant should have explained to you. It should have been in
9 their documents. Because if they had done a proper analysis of
10 their heaters, they'd have all these documents explaining
11 internally why radiant heaters are unsafe for marketing to
12 people to use when they're sleeping in a room.
13 Non-radiant or air heaters never get hot enough to catch
14 clothes on fire. Very simple. Non-radiant heaters don't start
15 fires. So whatever warning they have, keep combustibles three
16 feet away, that came a long time ago before this auto safety
17 shutoff, it doesn't matter. This heater would have been just
18 as effective in heating his room, and he didn't know it.
19 And this heater will never start a fire ever, even if you
20 get combustibles within three feet or on it. This non-radiant
21 heater will never start a fire even if you violate the warning.
22 And the defendant knows that. And here's the testimony:
23 "QUESTION" -- this is Mr. Vernaglia -- "Are
24 you aware of a fire ever occurring with non-radiant
25 heaters where you had combustible material within

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1 three feet of the heater touching the heater or on
2 the heater?
3 "ANSWER: Personally no, I'm not aware of
4 any."
5 So they know, it doesn't matter if you violate
6 intentionally or by accident, the dog, the baby, the warning,
7 and you get combustibles in front of a non-radiant heater,
8 there's no fire, because it doesn't get hot enough to start a
9 fire.
10 Remember, they talked about, "Well, I know about claims";
11 right? "Claims" means someone in the world claimed a
12 non-radiant heater started a fire. But "claim" word for them
13 means it was never proven. That's why they use the word
14 "claim," because they'll never admit it started a fire because
15 then they think they'll get sued for defects with the
16 non-radiant heater.
17 So the fact is non-radiant heaters don't start fires.
18 They know that, but they don't tell us that. We have a right
19 to know, by the way, when you're picking a heater, this small
20 heater heats your room just as well, if not better, than the
21 radiant heater, because the radiant heater heats objects, not
22 the room.
23 By the way, this non-radiant heater, same wattage as the
24 radiant heater, won't kill you because it will never start a
25 fire. Oh, but you should also know, hey, if you buy this

1 radiant heater that we say is safe and has home-safe protection
2 and we lie, says it had extra testing beyond UL testing, and we
3 lie and say "Turns off heater in an overheat situation," that
4 may kill you.

5 Again, simple. With the radiant heater, the heating
6 element heats higher than the combustion level of materials and
7 it will start a fire. Radiant heaters start fires.

8 Again, with forced air heaters and the temperature-sensing
9 automatic shutoff, they shut the machine off before it starts a
10 fire. With the radiant heater, they don't shut the machine off
11 before it starts a fire. And that's what happened in this
12 case. And they knew that.

13 You know, the defendant knew at some point in time there
14 would be a deadly fire. They didn't know where. They didn't
15 know which house. They didn't know the circumstances. They
16 didn't know it would be Amy that would die. They didn't know
17 it would be the Shinedling family affected for the rest of
18 their life. But they knew.

19 Mr. Prins knew. He kept it to himself. He knew that that
20 automatic safety shutoff may not work. And don't you think as
21 the head of product and safety at Sunbeam, when you know
22 something critical like that, you would go out of your way to
23 let everyone know? If your job is safety, that's your No. 1
24 priority, selling safe products. You would tell people, "By
25 the way, you should know that that automatic safety shutoff may

1 not work if the material is at the bottom of the heater."

2 Why? Because it's not about like a, you know, cut of your
3 finger. It's not some small little burn. It's death. The
4 consequences are death and destruction, the worst kind.
5 And then here's some of their deception. This is long.
6 I'm going to read it to you, summarize it, but more of the
7 deception.

8 So the defense attorney asks, "well, are you aware of
9 circumstances where fan heaters are ineffective?"

10 And he says, "Yes." This is from their expert, Loud. And
11 what they're trying to say is fan heaters aren't good heaters,
12 and he used the example of a warehouse and switched to the
13 example of a courtroom. That's deceptive.

14 Why? We're not talking about putting a heater in a
15 courtroom or a warehouse. There's sprinklers here. We're not
16 asleep. There's no pets. We're not waking up groggy in the
17 middle of the night going to the restroom. There are a ton of
18 people in this room. If a space heater starts a fire or starts
19 smoldering, we're going to know about it and we're going to be
20 away from it and we're not going to die. And they knew that,
21 but they wanted to confuse you, to come up with some sort of
22 phrase of "it's ineffective."

23 And, again, why -- I mean, even at the end, last witness,
24 they're still trying to trick you and confuse you and give you
25 a bunch of nonsense. Why? Because they know they're wrong,

1 and they're trying to get away with it. And we're not going to
2 let them get away with it.

3 Some more of the documents. In 2005, CPSC says, "To
4 prevent the risk of fire, never leave a space heater on when
5 you go to sleep."

6 Now, everyone agreed, all their experts agree the duty to
7 make a safe product is with Sunbeam, not CPSC, not UL, not me,
8 not you. They also agree the duty to warn belongs to Sunbeam,
9 not to CPSC.

10 But my client didn't have the benefit of knowing he should
11 go to CPSC and would -- on their Website you may see this. But
12 the manufacturer of Sunbeam knew. And their obligation is to
13 warn people adequately so they can make intelligent, safe
14 decisions. And they didn't.

15 And what was their explanation? None. They had no
16 explanation whatsoever for not putting on the warning of this
17 radiant heater, "Do not use while sleeping." What they did is
18 they hired an expert to come in after the fact to argue with
19 me, "Well, it says that in other words." That's just wrong.

20 Look at the box. Look at the manual. You read it. Read
21 the warnings. Would you think to yourself, you should never
22 use this heater while sleeping? No, you wouldn't. It doesn't
23 say that. It actually says the opposite. It says it will shut
24 off in an overheat situation. It tells you there won't be a
25 fire because there's a safety feature on that heater that will

1 shut it off. And that statement is true with all their other
2 heaters. They will shut off before they start a fire. But
3 that statement is not true with the radiant heater.

4 Again, this is their own product person:

5 "The design of a home heater should not start
6 a fire within the home?"

7 "Yes, home heaters should not start a fire."

8 It's that simple. Heaters shouldn't start fires.

9 They're going to talk all about this fire started because
10 Mr. Shinedling or someone violated the warnings. Nonsense.
11 Because if you put a non-radiant heater in that home on that
12 night, if he had known that that is the safe heater to use,
13 there's no fire, because it never would have gotten hot enough
14 to start a fire no matter how many clothes were in the room.

15 Let's talk about that. You know, more deception. They
16 get this insurance investigator to come here, they talk to him
17 beforehand, and then he starts just making stuff up, that, "Oh,
18 he said he had scattered clothes all over the room." That's
19 not true. It wasn't -- there was no recording. It wasn't even
20 in his notes. It wasn't even in his reports.

21 But why? Why would the defendant do that? Because
22 they're trying to get away with it. Instead of focusing on
23 what they know, they sold an unsafe, dangerous product, they
24 are trying -- it's a mud tactic. You just throw mud at the
25 person, and some of it is going to stick. And now I've had to

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1 spend the last few days cleaning up the mud, and now I have to
2 spend a lot of time in really cleaning up the mud. It
3 shouldn't work that way.
4 Here's some testimony that you heard.
5 (Videotaped deposition played, not reported.)
6 MR. HOMAMPOUR: Plain and simple, the automatic
7 shutoff is designed to prevent fires with combustible
8 materials. That's his understanding. That's Mr. Shinedling's
9 understanding.
10 But the defense attorney argued with Mr. Shinedling.
11 Where does it say that? It doesn't say the auto safety shutoff
12 is designed to stop a fire. It says it's to design
13 overheating. Where does it say "stop a fire"? And then he
14 kept saying back to him, "That's how I read it. It would shut
15 off before it started a fire."
16 The defense attorney, "Where does it say that?"
17 That questioning and that interrogation by the defense is
18 deceptive. Why? Their own product guy said that's the point
19 of the automatic safety shutoff, to prevent a fire if
20 combustible materials get in front of the heater.
21 Again, at some point Sunbeam has to stop and say, "All
22 right. They caught us. We did wrong. Let's own up to the
23 harm that we caused. We should have prevented this." But they
24 don't. And I guarantee you they won't. They'll keep with
25 deception, taking little pieces here, taking little pieces

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1 there, trying to string together a reality that's not true.
2 Here's more testimony.
3 (Videotaped deposition played, not reported.)
4 MR. HOMAMPOUR: Here's testimony from Mr. Prins,
5 their safety engineer. He understood the temperature from a
6 radiant heater can combust material by design where the
7 temperature of a non-radiant heater does not combust material
8 in front by design. So he got that distinction.
9 And then we talked about:
10 "And both are supposed to shut off according
11 to the manual in an overheat situation; correct?
12 "Both have overheat protection."
13 And then he clarified that it's for certain applications,
14 for certain reasons only that this automatic safety shutoff
15 works, something which the user has no idea.
16 And then I ask him:
17 "Do you tell the user there are only certain
18 applications that this automatic safety shutoff
19 works?
20 "No, sir, we don't say that.
21 "QUESTION: Do you tell the user it's only to
22 protect the integrity of the inside of the heater
23 that you have this automatic safety shutoff?
24 "No, sir.
25 "Then it doesn't tell the user it won't

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1 recognize an overheat temperature if the material
2 is at the bottom of the heater; correct?
3 "It doesn't say that, no, sir.
4 "But you knew that?
5 "Well, I knew that it may or may not sense
6 depending on the reflectivity."
7 So, again, he knew that auto safety shutoff, that Sunbeam
8 understood the consumer believed shuts this machine off before
9 it starts a fire may not work. But he didn't tell anyone,
10 especially a consumer.
11 This is where we show what happened at Sunbeam, how they
12 allowed this to happen:
13 "But even the issue of the sensor automatic
14 shutoff not working or potentially not working if
15 the combustible material is at the bottom of the
16 heater, you didn't share that verbally with
17 Mr. Vernaglia, head of product engineering, for
18 this heater?
19 "ANSWER: No, I didn't share that verbally."
20 What you heard is Mr. Vernaglia didn't know that. He
21 didn't even understand that. Mr. Vernaglia didn't even
22 understand basic engineering. You heard he didn't know the
23 design hierarchy. He didn't understand anything. And here's
24 his testimony.
25 (Videotaped deposition was played, not reported.)

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1 MR. HOMAMPOUR: So this is where documentation is
2 key. Mr. Prins knows something critical, critical for the
3 product, critical for the user, critical for the safety of us.
4 For some strange reason, he doesn't share it with the head of
5 the product, Mr. Vernaglia. And then Mr. Vernaglia has no
6 idea, because there's no library, no reports, no documents, no
7 research, nothing.
8 By the way, I want everyone to understand, the Court
9 explained to you, we have theories called strict liability and
10 then negligence. Everything I'm talking about right now goes
11 to negligence, which you don't need to find Sunbeam acted
12 reasonably or unreasonably or hold them responsible. We're
13 going to get to that.
14 If a product fails to perform as an ordinary consumer
15 would expect it to perform independent of any knowledge,
16 negligence, or anything on the part of Sunbeam, it's defective.
17 So if you expect a space heater is going to perform and shut
18 off before it starts a fire, it's defective, you find against
19 Sunbeam. You don't even need to worry about what they know or
20 didn't know. I'm going over what they knew and didn't know in
21 summarizing the evidence when we get to the negligence claim.
22 But on strict liability, it's very simple, they're liable.
23 A consumer would expect this machine to shut off based on their
24 own testimony and what they put in the manual, and it didn't.
25 And so it's defective. Here's some more testimony.

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1 (Videotaped deposition was played, not reported.)
2 MR. HOMAMPOUR: Sunbeam had the power to fix this.
3 One, don't sell this heater for use in the home setting when
4 people are sleeping; two, at a minimum, warn people don't use
5 this while sleeping. They could have done that. They had the
6 power to do that, but they didn't.
7 Again, the reasoning why is really irrelevant; right? We
8 don't need to know why the moron drove 85 miles an hour in a
9 25-mile-an-hour street; right? You did it, it's unreasonable,
10 or you did it, you're strictly liable.
11 But I kind of want you to have an understanding of what
12 happened here. They acquired all these products, and they did
13 nothing. Is that how a company selling all these products that
14 involve consumer safety issues, how that kind of company should
15 be run?
16 Then here's the testimony for Mr. Prins. You know, they
17 even deceive the Consumer Product Safety Commission:
18 "When they asked you about potential defect
19 or any defect with this heater line and you said
20 there's no defect, did you send them anything back
21 that says, 'Well, we know that the automatic safety
22 shutoff may not work in certain situations?'
23 "No."
24 That's crazy. We talked about how even the Consumer
25 Product Safety Commission tells this defendant, you know, "Our

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1 standards are the floor. You need to make your product safe
2 above our standards. You need to look at how are your unique
3 products used in unique ways and make it safe. Don't just rely
4 on us."
5 It's not the government's job to investigate the safety of
6 their product before it kills someone. Even they agree and we
7 all agree and you're going to decide, it's their job. They
8 shouldn't make a penny off these heaters until they make it
9 safe.
10 And we talked about how Consumer Product Safety Commission
11 tells them you need to have someone play devil's advocate to
12 your design. What we've been doing for the last few days is
13 devil's advocate. All of this should have been done long
14 before the heater was sold for use in a residential setting.
15 Why wasn't it? There's no explanation, none. No one came
16 in here and said "Here's why we didn't do it." Here's more
17 testimony from Mr. Vernaglia.
18 (Videotaped deposition was played, not reported.)
19 MR. HOMAMPOUR: I mean, how does he not understand
20 that radiant heaters operate at a level of heat higher than the
21 combustion of materials in front of them? How does the head of
22 their -- director of project management for this heater not
23 understand that basic science that you all understood probably
24 in five minutes?
25 And then here's the great part, more deception. So they

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1 realized Vernaglia is terrible for them. He doesn't know what
2 he's doing. He's not qualified. He's not doing it right.
3 He's not communicating with Prins.
4 And so what they do is they try and get him to be not the
5 designer so that Mr. -- the defense attorney says:
6 "Mr. Palmer, do you know who Stephen Vernaglia is?
7 "Yes. Yes.
8 "And he didn't design this product?"
9 So they tried to trick you into thinking Vernaglia, you
10 can't hold his statements against him because he's not the
11 designer of the product; right? I knew that was deceptive
12 because I took his deposition. And here's what he said:
13 "QUESTION: Were you involved in the design
14 of the HQH307."
15 Under penalty of perjury he said he was.
16 Again, why are they trying to trick you? Why would they
17 try and make it sound like Vernaglia is not involved in the
18 design or the designer when the truth is he was? Why? They're
19 desperate. They're desperate to get away with it. And we're
20 not going to let them do that.
21 Here, I asked him again. I didn't even ask him about
22 design:
23 "The subject Quartz heater, HQH307, can you
24 tell me when you were working at Sunbeam from '98
25 to 2002" --

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1 This is important, because he worked on this heater
2 through 2002 when it was called Holmes.
3 -- "did you specifically work on that heater?
4 "Yes.
5 "And what work did you specifically do on
6 that heater from '98 to 2002?
7 "I was the project leader that took it
8 from industrial design phase through production."
9 Here's more testimony.
10 (Videotaped deposition was played, not reported.)
11 MR. HOMAMPOUR: (Reading:)
12 "And they agreed that the ultimate
13 responsibility to make a safe product still remains
14 with Sunbeam; correct?
15 "ANSWER: Yes."
16 And this is Mr. Prins acknowledging that non-radiant
17 heaters won't start a fire. This is the testimony you heard:
18 "The reality is that if the non-radiant
19 heater is working as designed, the 1500 watt one,
20 and someone goes to sleep, it's never going to get
21 hot enough if working as designed to start a fire
22 of material in front of it; right?
23 "Right."
24 His answer:
25 "So I knew from that standpoint of where the

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1 thermostat was because of my experience with
2 thermostats that they may not sense an item within
3 the three-foot area.
4 "QUESTION: And a fire could start?
5 "ANSWER: Yes, that temperature.
6 "QUESTION: And people could die?
7 "ANSWER: Well, that's the risk.
8 "QUESTION: You knew that?
9 "ANSWER: The fire is there, yes, sir."
10 I mean, really, you know your safety device doesn't work,
11 you know the risk is fire, and you know the risk is death. And
12 you don't do anything? This is outrageous.
13 And, by the way, this is what happens when companies don't
14 do their obligation to make sure they sell a safe product.
15 These three young girls lost their mother forever in the most
16 horrific way possible. This man lost his best friend, his
17 lover, his wife, his companion forever in the most horrific
18 possible way and then has to endure the defendant blaming him
19 when they knew this was going to happen.
20 And then, you know, they hire this guy Loud. The way I
21 look at experts is this: If you're going to hire an expert,
22 find someone who's not biased. Find someone who is going to
23 call it like they see it. Come in here, tell the jury, "I'm an
24 expert. I reviewed this material. Here's the" -- "you know,
25 here are the issues." Not someone that has an agenda, not

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1 someone who testifies almost exclusively for defendant
2 corporations; right?
3 You know when you get someone that testifies almost
4 exclusively for defendant corporations, when you can't find
5 anyone who's going to be truthful? You find the guy that you
6 know is going to say what you want them to say. And so they
7 obviously couldn't find or wouldn't use someone that wasn't
8 biased, because that person would come in and tell you exactly
9 what Dr. Palmer told you, this product is not safe for use in a
10 home setting when people are sleeping.
11 And, by the way, he didn't indict an entire industry. You
12 never heard those words come out of his mouth. He's not an
13 indicter. He's an engineer doing a job Sunbeam should have
14 done before they ever put this product on the market. He was
15 doing a basic engineering analysis that any college student
16 engineer would understand. And they attacked him. They should
17 embrace him. They should hire him. They should have had him
18 do what he did in this case back in 2002 before they ever sold
19 this product, because then we wouldn't be here.
20 Instead they hired this guy. You know, every chance he
21 had, he wasn't answering questions. He was basically another
22 attorney for the defendant. Paid over \$70,000. He testifies
23 clearly in favor of whoever pays him. In one case more than 15
24 years ago where he testified a product was unsafe, he said,
25 "Yeah, the product is unsafe when used near something

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1 energized, even though there was a warning telling the person
2 not to use it where it may be an energized location and they
3 may be electrocuted."
4 So even though there was a direct warning, Mr. Loud said
5 it's still defective in that case when he was paid by the
6 injured party. But in this case, no, the warnings are
7 effective. They're not even direct warnings.
8 Again, where did Sunbeam find this guy? They found him
9 because they knew he's going to say what they wanted him to
10 say. And that's plain wrong.
11 He works for companies. He doesn't work for people. He
12 hasn't -- in 15 years hasn't testified a product was defective
13 in design and caused injury.
14 The defense attorney asked him, "Are you an advocate for
15 safety?" I remember that. And he said something like "yes."
16 They made it sound like he's an advocate for safety on UL.
17 I asked, "Are you an advocate for safety?"
18 He said, "I don't know what you're talking about."
19 We know he's an advocate for the defense, and that's not
20 what experts should be. They should be neutral. They should
21 tell it to like it is, like Dr. Palmer did.
22 And then I had to extract the truth out of him, and I
23 asked him:
24 "But you would want to know if there's a
25 limitation on a safety device, it may not work in

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1 certain situations, you would want to know that
2 information?
3 "ANSWER: Yes, I would want to know.
4 "A user would want to know the automatic
5 safety shutoff may not work?
6 "Yes.
7 "And because the automatic safety shutoff may
8 work in non-radiant heaters but it may not work in
9 a radiant heater in the exact same circumstance;
10 correct?
11 "ANSWER: Yeah, you could have that
12 situation, but the user doesn't know.
13 "On the box, when someone is picking up the
14 heater out of all the other heater choices, it
15 says, 'Turns off heater in an overheat situation';
16 correct?
17 "Yes.
18 "Does it say may not work?
19 "It does not.
20 "What is heat safe protection?
21 "I'm not sure."
22 So here we have heat safe protection marketing that no one
23 from inside the company or even their expert who came in and
24 told you, "I reviewed this product and it's safe," he can't
25 even explain what that means. Why? Because he didn't review

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1 the product. Why? Because it's not safe.
2 So this statement we talked about, his statement to the
3 consumer does testing beyond UL, he has no evidence they do
4 that, he agreed, and it's deceptive.
5 And we talked about the -- what happens when you don't
6 have a devil's advocate looking at the design? And he agreed.
7 If you sell an unsafe product -- if you don't do the devil's
8 advocate process, you can sell an unsafe product with
9 insufficient warnings. And the result of is that is death.
10 Here's testimony from Mr. Vernaglia.
11 (Videotaped deposition was played, not reported.)
12 MR. HOMAMPOUR: That speaks for itself. You have a
13 fire involving your product that you knew was going to happen,
14 someone dies. And the head guy doesn't even know anything
15 about what happened or what caused it. That shows you how much
16 this company cares or doesn't care about the safety of its
17 product.
18 (Videotaped deposition was played, not reported.)
19 MR. HOMAMPOUR: How does a company not have a
20 document or something, a piece of paper, an e-mail where they
21 go through how to make a product safer? Especially a product
22 that we heard started in '98, 2002, multiple changes for 2006,
23 how do they not have some document going "Here's how we're
24 making it safer or analyzing that"?
25 How you had that is a company that doesn't care about

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1 safety and it's just selling a product to make money, acquires
2 a product line, has one guy looking at 100 different things,
3 cursory inspection, and then go, "Yeah, let's fix some
4 crimping, I'll get to tell the jury about that. Otherwise,
5 let's start selling it. I'm not even going to read the box to
6 see if what's on the box is true."
7 So now we're to the verdict form. I'm going to walk
8 through the verdict form and go through the questions and how I
9 think the evidence shows the question should be answered.
10 So the first test -- the first claim we have is the
11 product is defective in design, and this is strict liability.
12 And there are a lot of elements, but the two that are really in
13 dispute that I have to address are you have to decide did the
14 radiant heater perform as safely as an ordinary consumer would
15 have expected when used or misused in a reasonably foreseeable
16 way, and did the heater's failure to perform safely a
17 substantial factor in causing them harm.
18 Reasonably foreseeable way, use and misuse means exactly
19 that. Use is regular use. Misuse means putting a towel on top
20 of it, putting combustible materials in front of it, or
21 accidentally getting materials in front of it.
22 In other words, when you're evaluating is this product
23 defective, you look at use. And the law requires you to look
24 at misuse. So if you evaluate a car and you're driving and you
25 want to see if the safety features are appropriate, you

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1 evaluate it if you're driving it normally, and you evaluate it
2 if you make a mistake and get in an accident, are the seat
3 belts functioning, are the air bags working.
4 And so here when you evaluate this heater, you go, would a
5 consumer expect this to perform as safely as it did? And the
6 answer is "no." A consumer thinks this thing is going to work
7 and shut off before it starts a fire even if combustibles get
8 within three feet. You heard that was the testimony of their
9 own product guy, Mr. Vernaglia.
10 And so on that first question:
11 "Did the heater fail to perform as safely as
12 an ordinary consumer would have expected when used
13 or misused in an intended or reasonably foreseeable
14 way," the answer is obviously "yes."
15 Burden of proof is just as important. It's more likely to
16 be true than not true. So we have the burden on all of our
17 claims to meet by this much. So if you weigh the evidence and
18 you go, it's more likely true that the heater failed to perform
19 as safely as an ordinary consumer would have expected, we win.
20 They have the burden of proof on the claim that
21 Mr. Shinedling was somehow responsible. They have to meet that
22 burden of proof more likely than not.
23 Again, they tell the user the heater in a potential
24 overheat temperature is reached, the system will automatically
25 shut the heater off. This is the testimony from Mr. Vernaglia.

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1 (Videotaped deposition was played, not reported.)
2 MR. HOMAMPOUR: So that is addressing this misuse.
3 Sunbeam understood that you can get materials in front of the
4 heater. That's why they have the warning. And so its
5 foreseeable use or misuse of the product is that materials may
6 get in front of it.
7 So, again, when you evaluate did the heater fail to
8 perform as safely as an ordinary consumer would have expected,
9 the answer is yes, it did fail to work the way you would expect
10 it to work in that it didn't shut off.
11 We went over this. Let me jump ahead to design defect.
12 So the second independent way -- the Court told you,
13 there's two ways you can find the design defect, consumer
14 expectation, which is a "yes," and then design defect
15 risk-benefit.
16 Here if we show the product's design was a substantial
17 factor in causing the fire, then we prevail on this claim
18 unless Sunbeam proves to you benefits outweigh the risks.
19 So let me go back to substantial factor. This is a
20 misleading phrase. It's a factor that a reasonable person
21 would consider had contributed to the harm and it must be more
22 than a remote or trivial factor. It does not have to be the
23 only cause of the harm.
24 Obviously, the heater's design started the fire and it's a
25 substantial factor. There's no doubt it's a substantial

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1 factor. It was more than a remote or trivial factor. Jurors
2 get confused on this one, so I'm going to explain it more
3 thoroughly.

4 If you have a raging forest fire and there's a leaf on the
5 ground and someone has a match and they burn the leaf, you
6 could say that is a trivial or remote factor because you
7 already have a raging forest fire. Burning a leaf in the
8 context of a raging forest fire is trivial and remote. It's
9 not a cause. That's where substantial factor doesn't apply.

10 But here the heater's design started the fire, their
11 expert agreed, and so it's a substantial factor. So when you
12 get to the design defect risk-benefit, this is clearly --
13 again, you have to find in favor of the plaintiff, because the
14 heater started the fire, and there's no way logically they can
15 explain the benefits of a radiant heater for use in a room
16 outweigh its risks.

17 You look at what's the gravity of the potential harm;
18 right? The gravity is enormous. It's death. So this is not
19 an alternative design that has an innocuous or minor
20 consequence when used. This is an alternative -- this is a
21 design that causes death.

22 The likelihood that this harm would occur, we know these
23 radiant heaters will start fires by design because they can
24 emit temperatures in excess of combustion of the materials in
25 front of them. So we know it's likely.

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1 Now, the defendant tried to trick you and deceive you with
2 Mr. Loud characterizing Dr. Palmer as having a difficult time
3 starting a fire, which was false. Dr. Palmer explained to you,
4 and it's a video, Exhibit 28, you can look at it, all he did
5 was he took a towel, put it right at the bottom of the heater
6 in front of the heater where Mr. Prins knew that automatic
7 safety shutoff is not going to work. He put it at the bottom
8 of the heater, and it started smoldering and caught in flames.
9 There was no fanning, no manipulation, no nothing. It started
10 smoldering and went into flames. And that took less than 30
11 minutes, first try.

12 There were other tests where he put baskets up next to the
13 heater, but they were at the top. And what Mr. Prins explained
14 to you is if it's at the top, the sensor may work. But if it's
15 at the bottom, the sensor won't work. So the likelihood of
16 harm is great if materials get at the bottom and aren't at the
17 top.

18 And we know in an average household, I mean, it's not
19 difficult for a pet or someone to walk by and kick a towel or
20 shirt or something at the bottom of one of these heaters. That
21 happens. You could be obeying the warning, which he did. You
22 could comply with the warning, which he did, keep three feet
23 away. And if these people are using it while sleepy or groggy
24 and they come along and knock something in front, there's a
25 fire.

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1 The feasibility cost of an alternative design is zero.
2 They had an alternative design, and that was the non-radiant
3 heater. Disadvantages of an alternative design? None. So
4 what I'm showing you is they can't meet their burden to show
5 the benefits outweigh the risks. We show the exact opposite;
6 therefore, you should find that the heater's design outweighs
7 the benefits of the -- the risk of the design outweigh the
8 benefits of the design.

9 So the first question is a "yes." Second question is a
10 "yes."

11 The third question, "Was the product's design a
12 substantial factor?" That's a "yes" too.

13 The next topic is warnings, "Did the heater have
14 potential -- potential risks that were known at the time of the
15 manufacture?"

16 You know, let me back up a little. On Mr. Loud, very
17 difficult to read, but he agreed that in terms of the attempt
18 to heat a room, a bedroom, you would want to use non-radiant
19 heaters because they heat the room better than radiant heaters
20 which heat objects. So that goes back to the benefit of a
21 radiant heater do not outweigh its risks because you don't even
22 want to use a radiant heater when you're sleeping.

23 Oh, this is important. Custom and practice. As to those
24 first two questions, design defect, you don't look at UL. You
25 don't look at Consumer Product Safety Commission. You don't

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1 look at were they reasonable, not reasonable. You don't look
2 at what other companies do. All of that is irrelevant. None
3 of it is part of the jury instructions.

4 You're just looking at the product and only the product,
5 and hopefully that's clear, that it's only when we get to
6 negligence that you look at potentially what other people did
7 or what UL did or the Consumer Product Safety Commission.

8 So strict liability, failure to warn, we have to prove.
9 And the evidence shows the heater had potential risks that were
10 known, and the potential risk is it will start a fire because
11 the automatic safety won't shut off. The potential risks
12 presented substantial danger when used or misused. Of course,
13 it would start a fire.

14 Ordinary consumers would not have recognized. We know a
15 consumer not only doesn't recognize this risk that the
16 automatic safety wouldn't shut off -- would not work, they
17 think it would work because it says in the manual and on the
18 box, it says, "Turns off heater in an overheat situation."

19 And so this legal concept is tailor made for what happened
20 here. This is a classic failure to warn claim against a
21 manufacturer that knows of a potential risk that their heater
22 is not going to shut off that the consumer doesn't know about,
23 especially since they actively tell the consumer it will shut
24 off. And so this is -- has to be the strongest part of the
25 claim and hopefully the easiest to understand is that there's a

<p style="text-align: right;">Page 81</p> <p>1 failure to warn defect. 2 Did Sunbeam fail to adequately warn? Absolutely. They 3 don't tell the user this. Their argument to keep combustibles 4 three feet away is an adequate warning is ludicrous. It is 5 not. It doesn't address at all the contrary information on the 6 box and in the book manual that says it's going to shut off in 7 an overheat situation. 8 And we know, again, from experience, if people are using 9 non-radiant heaters, they'll never have a fire if combustible 10 materials get in front of them because the machine will shut 11 off. So it's not only from the box, from the manual, but from 12 experience you expect the shutoff to work. 13 And the lack of sufficient warning is a substantial 14 factor. It is. Mr. Shinedling told you he had no idea about 15 this limitation on the auto safety shutoff and he would have 16 never used the heater. 17 There's a second way we establish failure to warn, and 18 that is radiant heaters had potential risks that were known. 19 Yes, they're especially risky when people are sleeping. It 20 presented a substantial danger, of course. And ordinary 21 consumers would not have recognized it. 22 Again, same thing. Mr. Shinedling had no clue, no idea 23 because Sunbeam never told him that the last heater he should 24 be using to heat his room when he and his wife and baby are 25 sleeping is a radiant heater. He had no idea.</p>	<p style="text-align: right;">Page 83</p> <p>1 substantial factor in causing harm?" The answer is "yes." 2 Next we go to the issue of were they negligent. So now 3 it's away from strict responsibility and looking just at the 4 product, and now we go to negligence and we look at the company 5 and its conduct. 6 And the test is if they failed to use the amount of care 7 in designing a product that a reasonably careful manufacturer 8 would use in similar circumstances to avoid exposing others to 9 a foreseeable risk of harm. 10 And on this custom and practice one, this is very 11 important, the judge explained to you, whatever other people 12 do, it doesn't excuse conduct that is unreasonable. So, again, 13 it's like a teenager saying, well, everyone drives fast or 14 everyone goes to the cliff and jumps off. That doesn't mean 15 it's reasonable. 16 And in this case you heard nothing about what other people 17 do other than a graphic showing unrelated gasoline or other 18 types of radiant heaters, but you heard nothing about what 19 other manufacturers do or don't do. And ultimately it doesn't 20 matter because whatever they do, it doesn't excuse the 21 unreasonableness of what Sunbeam did here and what they knew 22 themselves about the limitations of their heater, the hazards 23 of the heater, and how the safety device wouldn't work. 24 Here's testimony from Mr. Vernaglia. 25 (Videotaped deposition was played, not reported.)</p>
<p style="text-align: right;">Page 82</p> <p>1 And so Sunbeam not only failed to adequately warn on that 2 topic, they didn't warn. And was the lack of warning a 3 substantial factor? It was. 4 And we could go through the warnings, but nowhere in the 5 warnings do they address this issue that the auto safety 6 shutoff may not work. 7 And just the importance of warning regarding not to use 8 while sleeping, Mr. Loud admitted: 9 "So the warning to never leave a space heater 10 on when you go to sleep would eliminate fires that 11 occur while people are sleeping; correct? 12 "ANSWER: Yes. 13 "And that is not communicated to the Sunbeam 14 user? 15 "ANSWER: Correct." 16 So even he agrees. 17 So question No. 4, "Was the" -- sorry -- Question No. 4: 18 "Did the heater have potential risks that 19 were known at the time of manufacture?" "Yes." 20 The next question, "yes." 21 "Would ordinary consumers not recognize the potential 22 risks?" The answer is "yes." 23 Question No. 7, "Did Sunbeam fail to adequately warn?" 24 Answer is "yes." 25 And then, "Was the lack of sufficient warning a</p>	<p style="text-align: right;">Page 84</p> <p>1 MR. HOMAMPOUR: I'm going to stop it there because 2 we're running out of time. 3 Basically it's important that you understand that this 4 whole "We're reasonable because we did what UL required of us" 5 is nonsense. UL didn't address this specific defect that they 6 knew about. UL didn't test for this specific defect that they 7 knew about. And there's no evidence they even told UL about 8 what Mr. Prins knew were the limitations of the safety device. 9 So it's very deceptive to say we're reasonable because we 10 complied with UL. That whole UL, you know, sideshow ultimately 11 proved it has nothing to do with the safety of the product and 12 more to do with minimum safety standards that have nothing to 13 do with this case, because we're not here about minimum safety 14 standards, we're here about a known defect in their product, a 15 known limitation of the safety device that they knew about but 16 didn't tell anyone else about. So when you decide were they 17 negligent, the answer is "yes." 18 Was Sunbeam negligent designing the heater? Of course 19 they were. Was Sunbeam's negligence a substantial factor? Of 20 course it was. 21 The next is failure to warn, and that means, again, the 22 evidence establishes they negligently failed to warn the user, 23 "A," not to use this heater while sleeping; "B," that the 24 automatic safety shutoff may not work. They knew or reasonably 25 should have known that the radiant heater was dangerous. They</p>

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1 knew or should have known users wouldn't realize the danger.
2 They failed to adequately warn.
3 The next cause of action is a recall. And all this means
4 is if Sunbeam claims that "We didn't know about this issue of
5 sleeping and hazards and limitations of using the radiant
6 heater while we're sleeping," or "We didn't know about the
7 limitations of the safety device until 2006," because it wasn't
8 until he got around to looking at the products, even if it's
9 after the sale, the law requires them to recall the product
10 because it's so hazardous.
11 And so here, we think the evidence shows they knew long
12 before 2006 of the hazards or should have known about the
13 hazards. But even if they didn't, when they learned in 2006,
14 the product was sold October 2006, they would still have a duty
15 to recall, and they were negligent for not recalling. So on
16 that question, "yes," "yes."
17 Now on damages. Now on damages, I want you all to really
18 think hard about the concept that if there's not full damages,
19 there's not full justice. And so here is what you -- where you
20 all get to make up for the devastating lifelong horrific harm
21 caused to this family.
22 And I want you to think about how we value things in
23 contrasting to how we value -- this is a B-2 bomber or some
24 version of a very expensive billion dollar plane. In our
25 society, we value human life, love, people, more than the most

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1 expensive object we're capable of building. So if a B-2 bomber
2 is in the air and it's about to crash, we don't say, "Save the
3 plane," we say, "Save the pilot." And so human life is
4 infinitely more valuable than a \$10 million or \$50 million or
5 \$100 million plane or jet or whatever.
6 This is a painting, Picasso's painting that sold for over
7 \$100 million. And when you think of who Amy was to her
8 daughters and to her husband, she was a work of art. You know,
9 Picasso's painting, all it is is paint and canvas, done by a
10 brilliant artist. But Amy was literally the Picasso to her
11 family.
12 I want you to think about that. She was the flesh and
13 blood, her hair, her eyes, her touch, her hug, her kids, her
14 words, her nagging, her whatever, good, bad, ugly in the
15 morning, bad breath, beautiful breath, all that made up Amy,
16 all that makes us human, all that makes us worth living and
17 loving. She is infinitely worth more, and the loss of her is
18 worth more than any \$150 million painting.
19 You know, another one is that we pay professional athletes
20 tens of millions of dollars a year because they produce income
21 for their team and because they're superstars. I want you to
22 imagine and appreciate that Amy was the superstar for her
23 family. She was the Kobe Bryant for her family. And if taking
24 Kobe from the Lakers is worth \$100 million a year, then it's
25 worth more what was taken from this family for the rest of

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1 their life. She is worth more to this family.
2 You know, we brought in a psychological expert,
3 Dr. Reading. And he explained to you very thoroughly -- I
4 think he explained some of which you would know, and then he
5 explained some other things about how particularly these young
6 girls have been devastated by the events of that night,
7 separately by the loss of their mother in that tragic event,
8 and then separately by the loss of the love of their mother and
9 how this is something that has affected them from grades to
10 behavior to changes in personality.
11 I mean, if you think about it, each of them has been
12 robbed. They've been robbed of who they were before. They've
13 been robbed of that safety -- it's so important for you to
14 think about the safety of our home. And when Dr. Reading said
15 war zones, at least they have an understanding that they are
16 there and it can happen.
17 But here, it's the most horrific experience. It's one you
18 can't really process. It's one that never goes away. It's
19 because you feel safe in your home. You have love in your
20 home. You have familiarity, you have memories, you have
21 smells. You know, you could have the worst day ever and you
22 come home and you get in your bed and you're safe. And that
23 was as violently and as horrifically taken away and destroyed
24 as possible through this fire caused by a heater that the
25 defendant knew was going to start a fire and kill someone at

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1 some point.
2 So not only have they lost themselves, who they were,
3 their hopes, their sort of -- you know, a child has sort of no
4 book. They can do whatever they want. They don't know
5 limitations. They don't know sadness of this sort. They don't
6 know death. They don't know grief. They don't really know
7 pain. They don't know difference. They don't know loss.
8 And so now you have three young girls that are
9 experiencing the worst of worst that life can offer you and
10 having to live like the walking wounded. And the same with
11 Kenneth.
12 And so we brought in Dr. Reading. And, again, the
13 defendant, no expert, no one said he's wrong, no one to
14 contradict him. Instead they use this deception tactic, and it
15 was deceptive. And Dr. Reading explained to them that, look,
16 in his report you can't quote from the psychological tests and
17 try and tell anyone that Mr. Shinedling is overreporting
18 because it's very simple. The people they were measuring this
19 test against haven't gone through what Mr. Shinedling went
20 through. He went through the most horrific events and has the
21 worst type of post-traumatic stress disorder possible.
22 And even when you consider all of that, he didn't
23 overreport. You are totally distorting these scales. And even
24 then, these scales are from written tests. No one makes a
25 conclusion from just the written test. You have to look at the

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1 whole picture. He told them that.
2 And despite that, the defense came in and tried to make it
3 sound like Mr. Shinedling is overreporting. I mean, again, at
4 some point the defense attorney has to say to himself, "So we
5 sold the defective home heater that we know could start a fire
6 with the safety device we know is not going to work. We knew
7 there would be a fire," and now that fire happened. And now
8 the worse thing we could ever imagine happened, it killed a mom
9 in her own home with her children there, with her husband
10 frantically trying to save his other children. And we're going
11 to say in that case that Mr. Shinedling is overreporting?
12 At some point common sense, decency stops them, but they
13 can't help themselves because they know they're responsible.
14 They know you're going to make them pay for all the harm that
15 they caused. And they're desperate and trying to use any
16 tactic they can to get away with it. And you're not going to
17 let them get away with it. This is not how the legal system
18 works. It is not how it should work.
19 When you're thinking of damages, I want you to understand
20 that for Mr. Shinedling, it's for the next 37.4 years, so it's
21 four years and then 37.4 years. Four years from the date of
22 the incident and 37.4. It doesn't get easier.
23 There's not a day goes by he doesn't think about his wife.
24 He's tried to fill the void with alcohol. It didn't work. He
25 tried to fill the void with another person, two other people.

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1 It didn't work. And so this is a loss that he's going to
2 experience every single day for the rest of his life. And it's
3 the most terrible way to lose someone unexpected through a
4 defective product.
5 So the words that the judge explained to you, you have to
6 compensate for each item of harm, so I've assigned a yearly
7 value to them as a way of showing you how you can come up with
8 a logic of a dollar amount.
9 And so if you just think what is companionship worth,
10 having your companion, your best friend with you, we all go
11 somewhere and we don't know anyone and we have our wife or
12 spouse or best friend, someone to love us and make us feel
13 comfortable. When we're weak, they're strong. When they're
14 strong, we're weak. They're companions, someone that has your
15 back so you know you're not alone. That was who she was for
16 him. Someone to give you comfort, you know, when life isn't
17 going well, or when life is going well, just a touch, just the
18 knowing that someone cares about you, your wife, your best
19 friend. That's \$20,000 a year.
20 Care, 20,000 a year.
21 Assistance, 20,000 a year. Affection, I mean, just think
22 about how much is a hug worth? How much is a kiss worth? How
23 much is a touch on the shoulder worth? These are things we all
24 take for granted from loved ones. And your job and our job is
25 to try to put a value on that. And I think \$40,000 a year is a

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1 reasonable value.
2 Society, what this means is that you're part of a clan or
3 group. This is part of your marriage, your group, the
4 Shinedling family, that's been taken away. \$20,000 a year.
5 Moral support, 20,000 a year.
6 Protection, 20,000 a year.
7 Sex, I mean, for a lot of people, no matter how much you
8 have it, sex is an important part of being a human being, and
9 it's an important way of showing and expressing your love for
10 someone, and that's been taken away from him. He doesn't have
11 that bond with his wife. He doesn't have that special
12 connection, the physical connection. And that's been taken
13 away forever. So 40,000 a year is reasonable for that.
14 And then love. The law recognizes that when you lose a
15 loved one, probably the most important thing that you lose is
16 their love. And it's like words can't even capture what love
17 means and what it is, but we know Amy loved Kenneth, loved him,
18 and that's been taken away forever.
19 So I put a total amount of \$300,000 per year. And so when
20 you go through the verdict form, it's going to be broken up
21 into past, wrongful death damages, and future. And I think
22 that for the last four years, it should be four million. And
23 then if you multiply 37.4 times 300,000, that's 11 million,
24 \$220,000 for Kenneth for past and future wrongful death
25 damages.

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1 Now, again, that's for 37.4 years or 40-plus years. And I
2 want you to think, how long is 40 years? That's a long, long
3 time. In fact, when you get to the girls' damages, that's for
4 70 -- for Ava, it's for 70 years.
5 But, you know, just really quickly, 40 years ago in the
6 '60s or, you know, 40-plus years ago we had Martin Luther King,
7 John F. Kennedy, the IBM Electric, the Beatles, we walked on
8 the moon, and "THE HONEYMOONERS," just to put into context how
9 far in time a span of 40 years is, so that when you're thinking
10 I'm compensating Mr. Shinedling for the loss of the love,
11 companionship, sex, affection from his wife for the next 40
12 years, you have to think to yourself it's from the time that we
13 had Martin Luther King around and when we first walked on the
14 moon and when the Beatles were the, you know, popular band of
15 the moment. That's how long these damages have to last and
16 cover.
17 You think about this. I have other slides of the '70s.
18 We have Watergate, first "STAR WARS" movies.
19 The '80s, we had Pac Man. Ronald Reagan was the
20 president. How long ago was that?
21 The '90s, we had Milli Vanilli. Some people may remember
22 that name. Apartheid was abolished.
23 2000s, we had George Bush, YouTube starts, MySpace starts
24 and ends.
25 And so I just want you to get a picture of that when

1 you're thinking about the length of time. And it's also very
2 important to understand that, look, when you total these
3 numbers up, it's going to be a large number. But that's
4 irrelevant. The largeness of the number is not really relevant
5 because the law says if a person is harmed, they're entitled to
6 damages.

7 So it could have been just one plaintiff. If it had been,
8 let's say, the husband of a wife and they had no kids and I
9 came in here and I said, "I wanted, you know, \$15 million for
10 damages for him," you wouldn't think that that's a high number
11 based on 40 years of damages and the instructions that the
12 judge gave you.

13 But what happened here is the defendant's conduct affected
14 four people. And it affected them in three different types of
15 ways. And so the largeness of the damages is not a function of
16 anything I'm doing. It's a function of the harm caused by
17 their defective space heater was so wide and so deep and so
18 prevalent that it causes the damages to be high.

19 So I want you to think of that. Don't think, well, these
20 are really humongous numbers out of context. They're not
21 humongous numbers when you're thinking of the harm that was
22 caused and the length of time that it's causing.

23 With the girls, I also did a similar thing, companionship,
24 and I looked at these words and tried to assign a value of
25 what's been taken away from them. And you heard the testimony.

1 These girls have been robbed of their mom. You know, your
2 connection with your mother is the closest connection you have
3 to anyone. She brought you on this earth. She's your tether
4 to this earth. She is someone that loves you no matter what.
5 She is someone that looks out for you, takes care of you. And
6 these girls have been robbed of that.

7 Talking to their mom about their first boyfriend, the good
8 times, the bad times, when they're going to have -- get
9 married, should they get married, when they have children,
10 taking care of children, the troubles of parenthood, the joys
11 of parenthood, the troubles of sickness, the joys of life,
12 simple things, like going to soccer games, going to Disneyland,
13 those little moments in time that make life worth living and
14 that make you feel safe and that make you feel loved no matter
15 what have been taken.

16 And so I total that number, and that's 280,000 per year.
17 And so if you multiply for them, it would be 43 years, because
18 Mr. Shinedling's life expectancy is shorter than Amy's, so the
19 kids would have the loss of their mom's love for longer. They
20 would have it for 43 years. So for them, I came up with
21 4 million, past wrongful death damages, and then 12,040,000 for
22 future, and that would be for each.

23 So Kenneth is 4 million past, 11,220,000 future.

24 Addison is 4 million past, 12 million future.

25 Alexia is 4 million past, 12 million future. And Ava is

1 4 million past, 12 million future.

2 Now, the next topic we're going to go to are what are
3 called direct injury emotional distress damages. And direct
4 injury just means is Sunbeam liable under any theory -- the
5 judge explained to you -- if they suffered severe emotional
6 distress, and was their conduct a substantial factor.

7 So there's direct and bystander, and I'm going to explain
8 it this way: Direct is they were directly affected by the fire
9 because their life was at risk. They were in the home, fire
10 started, and they were directly injured, and they suffered
11 distress as a result of being present in that fire situation.

12 The bystander injury is something totally different. And
13 what that means is there's something so unnatural and harmful
14 about watching or knowing that a loved one is dying in your
15 presence, the helpless noise, that is called bystander damages.

16 And so there's direct injury damages for their harm caused
17 them directly, and then there's bystander damages for them
18 knowing that their mom died and for him knowing that his wife
19 died, and those are two different damages.

20 And so for those damages, you have to come up with dollar
21 amounts. And, again, those damages are going to last a
22 lifetime. For Ava, it's 70 years -- 75 years. For Alexia,
23 it's 70 years. For Addison, it's 67 years. And for Kenneth,
24 it's 35 years.

25 And so for the past direct injury, emotional distress

1 damages, I came up with 1 million for Kenneth, 2 million for
2 future, 2 million for bystander emotional distress damages to
3 him for knowing that his wife died and the helplessness and
4 that feeling that he's described to you, and then for future,
5 10 million. So that's 1 million past direct injury, 2 million
6 future direct injury, 2 million past direct injury, and 10
7 million future bystander -- sorry -- 2 million past bystander
8 and 10 million future bystander emotional distress injury.

9 For the girls, each of them I came up with same amount,
10 1 million for past direct injury, 2 million for future direct
11 injury, 2 million for past bystander, and 10 million for future
12 bystander.

13 The last topic --

14 Your Honor, how much time do I have?

15 THE COURT: We can talk about it, but I thought we'd
16 take our lunch break at noon. And you started about quarter
17 after 10:00.

18 MR. HOMAMPOUR: So the next topic is this negligence
19 of Mr. Shinedling, the alleged negligence. And my
20 understanding is they're saying two things: One, he was
21 negligent because he allowed combustibles to get too close to
22 the fire, and, two, he was negligent because he could have
23 saved his wife.

24 Now, No. 1, they have the burden of proof on that, and
25 they have to show that he failed to do something as a

1 reasonably careful person would have done and that his
 2 negligence was a substantial factor.
 3 Here's the most critical instruction on this. Sudden
 4 emergency. The law recognizes that if you're confronted with a
 5 sudden and unexpected emergency situation in which someone is
 6 in actual or apparent danger of immediate injury, you didn't
 7 cause the emergency, and you acted as a reasonably careful
 8 person, even though there's a different course of action,
 9 you're not negligent.

10 So the best example is if there's a fire in the corner and
 11 on your left you have a bucket of water, and on your right you
 12 have a fire extinguisher, you choose the bucket of water in an
 13 emergency situation to put out the fire, well, the defendant
 14 couldn't come in and say, "It's your fault. You should have
 15 used the fire extinguisher," because both -- a reasonable
 16 person confronted with an emergency situation would do, and you
 17 can't fault a person in hindsight not knowing maybe I should
 18 have used the fire extinguisher.

19 That's recognized by the law that the defendant can't
 20 blame you in that circumstance because you're confronted with
 21 some emergency situation and you don't have the luxury of time
 22 to research, plan and do whatever.

23 So as to Ava, it's ridiculous, and it's offensive that
 24 they make that argument. And Captain Nelson explained to you,
 25 you would never leave a child, three-year-old, outside on

1 frost -- icy ground alone who could potentially come back and
 2 kill herself trying to save her mom. So he was definitely not
 3 negligent for doing that, and it's outrageous they would even
 4 make that claim. And if they try and say now that "We're not
 5 making the claim," it's outrageous. They started making the
 6 claim in opening, continued it and argued it throughout.

7 The claim that Mr. Shinedling was negligent for keeping
 8 combustible materials, I want you to pay very close attention,
 9 they are claiming only he was negligent. There is no claim his
 10 wife was negligent. There's no claim his children were
 11 negligent. And if we're just looking at Mr. Shinedling, the
 12 evidence is very clear, he did not keep any combustible
 13 materials within three feet of the heater. He told you he made
 14 sure paths were clear for his wife, and he kept the combustible
 15 material at least three feet away in hampers. And there were
 16 piles of clothes, they were not in front of the heater and they
 17 were not within three feet.

18 Now, the defendant's going to say, "Well, we got" -- "We
 19 got two people. Stuart said there was a bag of clothes, and
 20 Whedon said that he said there were clothes scattered. So the
 21 law tells you, look at statements with caution. If you do not
 22 believe a party made the statement, you don't consider the
 23 statement at all. Was it reported accurately?

24 And then if you -- you should view testimony about an oral
 25 statement outside the courtroom with caution. Why? It's 2011,

1 and they have audio recorders and they have transcription. And
 2 when investigators who are doing a real investigation
 3 investigate something, they record it, they transcribe it, and
 4 you hear it in this courtroom.

5 So first with Detective Stuart, he didn't tag the bag that
 6 he's claiming he saw with any evidence tag. There's no picture
 7 of the bag. He points to a picture where he says the outline
 8 was, but there's no picture of any bag with clothing near the
 9 heater, even though they had tags for other items of evidence.

10 Why is he saying there's a bag? I don't know. Maybe he
 11 got together with the defense. Maybe he's confused. Whatever,
 12 it doesn't matter. The fact is there was no bag of clothes.

13 Mr. Shinedling clearly didn't keep it in front of the heater
 14 when he went to bed, because what Palmer's test showed you is
 15 if you get a bag of clothes in front of that heater, within
 16 half an hour it's going to start on fire. So he -- there was
 17 no bag of clothes.

18 What happened was what we believe happened, what the
 19 evidence shows you is that the hamper had clothes in it, the
 20 hamper fell over, the clothes got in front of the heater, and
 21 they started a fire. And there's no evidence that
 22 Mr. Shinedling himself caused that. So when you're evaluating
 23 negligence, he wasn't negligent.

24 As to Mr. Whedon and the whole scattered around, again, he
 25 got together with the defense, went over his testimony. None

1 of that was in his testimony. None of that was in his report.
 2 None of that was in his notes.

3 I get a chance to talk to you, so I'm going to end now --
 4 at the end of this, so thank you very much for paying
 5 attention. I appreciate it.

6 THE COURT: All right. Ladies and gentlemen, given
 7 it's 11:35, I'm inclined to go ahead and break for lunch now
 8 and then have the defense, and then the plaintiff gets to give
 9 a short rebuttal. Any objections to that, please raise your
 10 hand now. Okay.

11 Why don't we then go ahead, take our lunch break. If you
 12 could please remember the admonitions. We've come a long way.
 13 You're not officially deliberating, so you can't talk to each
 14 other about the case. You can't do any research or
 15 investigation. You can't watch or read anything about the
 16 case. And then you've got to keep an open mind until you've
 17 heard all the arguments.

18 Okay. Melissa, do we have one of our fine court security
 19 officers that will take charge of the jury just for the lunch?

20 THE BAILIFF: Yes, Your Honor.

21 THE COURT: Do we need to swear you in for that?

22 THE BAILIFF: Yes, please.

23 THE COURT: Bear with me, ladies and gentlemen. We
 24 don't usually have this situation.

25 Robert, why don't you raise your right hand. Please state

1 your name for the record.
 2 THE BAILIFF: Robert Young, Y-o-u-n-g.
 3 THE COURT: Do you solemnly swear to keep this jury
 4 together, take them to lunch, not permit any person to speak or
 5 communicate with them, nor do so yourself, and unless by order
 6 of the Court, have them come back after the lunch and then hear
 7 the remaining of the closing arguments?
 8 THE BAILIFF: I do.
 9 THE COURT: All right.
 10 (Out of the presence of the jury.)
 11 THE COURT: All right. I understand that they got
 12 rid of the option, so they're just going to be eating
 13 downstairs. So I would ask you to be sensitive to that. If
 14 you're going to eat downstairs, don't eat close to them, and
 15 stay away from them.
 16 MR. HOMAMPOUR: We've been eating in the same room
 17 the whole time and no one sat close to them. Everyone's
 18 sitting away.
 19 THE COURT: Okay.
 20 MR. HOMAMPOUR: So could I just -- the timing, I
 21 have -- did I have about 30 minutes left? But not that I would
 22 use it. I'm just making sure your timing is consistent with
 23 mine.
 24 THE COURT: Yeah, you have about 30 minutes.
 25 MR. HOMAMPOUR: And what time are we coming back?

1 THE COURT: We'll be back -- I guess we didn't say.
 2 They'll probably be back at 1 o'clock -- no, I'm not going to
 3 say 1:00 -- what, about 12:45?
 4 Ask Bobby what time he'll have them back.
 5 THE COURTROOM DEPUTY: 1 o'clock.
 6 THE COURT: 1 o'clock they'll be back. So if you
 7 could get here about ten till or quarter till.
 8 THE COURTROOM DEPUTY: Court is in recess.
 9 THE COURT: Please be seated, ladies and gentlemen.
 10 Mr. Wolensky, are you ready to give defendant's closing
 11 arguments, sir?
 12 MR. WOLENSKY: I am, Your Honor.
 13 THE COURT: Please do so.
 14 MR. WOLENSKY: Thank you, sir.
 15 Good afternoon, ladies and gentlemen.
 16 Deception, lies, hiding the ball. That's what I'm accused
 17 of, what Mr. O'Connell is accused of, Mr. Prins, men and women
 18 of Sunbeam, and every independent witness who is called. Facts
 19 are a stubborn thing. They really are.
 20 And I don't know if it was -- if you caught this, but
 21 plaintiff's attorney in his hour-and-45-minute opening went
 22 from deception, lies, misleading, we're trying to pull the wool
 23 over your eyes, directly to damages. There was never a mention
 24 of the facts of this matter, of this incident. And what I hope
 25 to do over the next hour or so is to discuss the facts that

1 were brought out in court.
 2 Now, a lot -- plaintiff's attorney played snippets of
 3 things. I will also show you some snippets of testimony.
 4 Snippets are just that. You had a chance for about a week to
 5 see all the evidence, to see all the witnesses, to judge the
 6 credibility of everything. And so you will know -- and you
 7 know if plaintiffs' attorneys has pulled the wool over your
 8 eyes, or if I am.
 9 But that's the beauty of the civil justice system. Our
 10 civil justice system is the greatest civil justice system in
 11 the world. Men and women have died for our civil justice
 12 system. A case like this can't be tried anywhere in the world.
 13 You can't try a case like this in North Korea. You can't try a
 14 case like this in Iran. You can't try a case like this in
 15 almost any other place in the world.
 16 And so what you're doing this past week and what you will
 17 be doing in the hours and perhaps days to come is you are
 18 determining a dispute, a dispute based on evidence that is
 19 presented by both sides. And that is an incredible duty. It
 20 is also a sacrifice that all of you are actually giving your
 21 time for this particular lawsuit. And Mr. O'Connell and I and
 22 Mr. Prins and the men and women of Sunbeam thank you for your
 23 time.
 24 Now, there's an incredible amount of sympathy involved in
 25 this case. Regardless of what plaintiff's attorney says, my

1 heart, Mr. O'Connell's heart, Mr. Prins' heart, and the hearts
 2 of the men and women of Sunbeam do go out to Mr. Shinedling and
 3 his children, his entire family. The set of circumstances is
 4 tragic.
 5 When we -- when His Honor first questioned you and we had
 6 a chance to question you, this issue came up. You might not
 7 have known then about how much sympathy there was actually
 8 going to be involved in this case, but you all answered that
 9 you could give both sides a fair shake, an impartial trial.
 10 And so while you've had a chance to hear the plaintiff's side
 11 of the story in closing, now you'll have a chance to hear mine
 12 and Sunbeam's. And so I thank you for also keeping an open
 13 mind.
 14 Now, I told you early on in my opening that I thought this
 15 was really a very simple case. And after hearing all the
 16 evidence, I still think it's a very simple case in that
 17 essentially what the plaintiffs are saying is that with respect
 18 to our warnings concerning the auto safety shutoff switch, that
 19 we led Mr. Shinedling to believe that that would, in fact,
 20 prevent all fires, especially fires with respect to
 21 combustibles that are placed or inadvertently put in front of
 22 the heater.
 23 Now, I also told you that I believe that this heater, our
 24 Holmes heater was not defective. And I told you why. I told
 25 you, first of all, there's no claim that the heater

<p style="text-align: right;">Page 105</p> <p>1 malfunctioned, there's no claim that there was a manufacturing 2 defect in the heater, and that, in fact, the design of this 3 heater was an excellent design. 4 And I say that because of the safeties that are built into 5 it and specifically the automatic safety shutoff. That's a 6 very important device. And you've heard about this device from 7 Mr. Prins and from Mr. Loud. And even the plaintiffs' attorney 8 said -- I'm sorry, the plaintiffs' expert, Dr. Palmer, said 9 that the safety shutoff substantially reduces the risk of fire. 10 It didn't say -- nobody said, and as we'll go through the 11 instructions and warnings, that it eliminates the risk of fire. 12 So we knew -- Sunbeam knew that while this was a good device, 13 the automatic safety shutoff was a good device, that it didn't 14 eliminate the risk of fire. 15 And so what did we do? As per the design hierarchy, we 16 put warnings -- not one warning, two warnings, three or four 17 warnings -- several warnings, warnings in plain English that 18 were clear and conspicuous. And everybody agrees, including 19 Dr. Palmer, that had the warning been followed, had there not 20 been clothes or combustibles placed within the three-foot area, 21 that it would be virtually impossible for a fire to start. 22 And so I'm going to talk more now about the heater and 23 about the instructions. Now, I also said, ladies and gentlemen 24 of the jury, in my opening, that you are the judges of the 25 credibility of all the witnesses and all of the evidence in</p>	<p style="text-align: right;">Page 107</p> <p>1 plaintiff's attorney has been using to cross-examine our 2 people. We collected that, and we produced all that. 3 And we're sorry that the plaintiff's attorney thinks that 4 we should produce more documents from a heater that was 5 designed literally 20 years ago. And in my world, I'd love to 6 have produced all documents, but they were just not available. 7 But just because we don't produce documents and we're not 8 able to produce documents doesn't mean that a product is 9 defective, that it's unsafe or unreasonably dangerous. 10 We're the ones, before yesterday, other than 11 Mr. Shinedling, there was no evidence put on by the plaintiff 12 at all about this fire. There weren't any firefighters. There 13 weren't any detectives. There weren't any investigators. We 14 produced all of this independent evidence. And I do have to 15 say, you had a chance to look at Detective Stuart yesterday. 16 Now, I was sort of accused of meeting with him and 17 planting this plastic bag. Well, let me tell you this, that 18 Detective Stuart, the arson and bomb squad for San Bernardino, 19 a sniper, was called to that scene within an hour or two. His 20 sketch that we'll look at in a little bit was drawn that day. 21 The pictures that you saw yesterday, and I'll show you again 22 today, the pictures were taken that day. He found a big 23 plastic bag of clothes. And we'll talk about that in a minute. 24 So instead of hiding things, we were the ones who were 25 actually producing evidence about this particular fire.</p>
<p style="text-align: right;">Page 106</p> <p>1 this case. I've told you that we trust in this. 2 And let me be even more clear. You have been an extremely 3 attentive jury. You've watched. You've listened. You've 4 taken notes. And so Mr. O'Connell and I, on behalf of Sunbeam, 5 we place our trust in you, in your determination of the 6 credibility of each witness, in your determination as far as 7 who was misleading and who wasn't. We put our trust in you to 8 make the determination as far as who is lying and who wasn't, 9 who is withholding evidence and who wasn't. 10 We trust you to do all this. We trust you in terms of 11 your determination of who was being straight with you and who 12 wasn't and in your determination, also, of who really produced 13 all the evidence and who did not. And, of course, we trust in 14 your determination of who was telling the truth and who wasn't. 15 Another issue that came up is hiding evidence. Now we've 16 been accused of hiding evidence, of being deceptive, and so on 17 and so forth. I think you'll remember during the course of 18 these deliberations that, in fact, it was Sunbeam who went out 19 to the plaintiff's home and collected evidence. We collected 20 all the evidence. The plaintiffs didn't. We collected the 21 evidence. The plaintiffs' representatives didn't. We 22 collected all the evidence from the fire scene so it could be 23 evaluated by both sides. 24 In addition to that, it was our experts who collected all 25 of the UL documents, all of the CPSC documents that the</p>	<p style="text-align: right;">Page 108</p> <p>1 Now, talking about Detective Stuart a little more, the 2 plaintiff, Mr. Shinedling, he did testify in his case when he 3 was being examined and also cross-examined by me, that 4 everything was three feet away from the heater. 5 Then Lance Stuart came in yesterday. And let's show 6 Exhibit 1.15. And what I'd like to do is to blow up the area, 7 enlarge the area around the heater. And so he came in 8 yesterday, and he explained that when he came in, it was sort 9 of like an archeological dig where there are layers of debris 10 that are removed. And he said -- he testified yesterday that 11 there was the -- he found a bag of clothes very close to the -- 12 can you enlarge that even more, please. 13 He found that bag. And Mr. Shinedling also said -- let's 14 go -- okay. That's very good. And so, in addition to that -- 15 and this is the bag of clothes that he was talking about. And 16 Mr. Stuart -- I'm sorry. Mr. Shinedling also said that at 17 least one of his versions was that a laundry hamper had tipped 18 over. 19 And Mr. Stuart, Detective Stuart, he testified yesterday, 20 he said, "I found evidence of that laundry hamper. I found the 21 bottom of the laundry hamper, the laundry hamper which was on 22 Mrs. Shinedling's side." And so in order to find the bottom of 23 the laundry hamper, in order to be able to find that rectangle, 24 he could not have -- he could not have -- 25 Your Honor, I think -- is there a hard time seeing?</p>

<p style="text-align: right;">Page 109</p> <p>1 JUROR NO. 8: Seems like the room's flipped on one 2 side. It's landed on another side. That's why I was having 3 trouble. And I'm having difficulty placing the objects. 4 MR. HOMAMPOUR: Your diagram's upside down. 5 MR. WOLENSKY: Okay. Let's not enlarge it that 6 much. 7 JUROR NO. 8: There we go. 8 MR. WOLENSKY: Let's leave it like that. 9 So anyway, Detective Stuart, he found the bag of clothes, 10 and he also found the remnants, the bottom of the laundry 11 hamper, and he could not have seen the bottom of the laundry 12 hamper if it had tipped over. 13 We also showed photographs of the scene for the first time 14 yesterday. We showed the exterior photographs of the fire, and 15 also we showed the photographs from Detective Stuart's 16 investigation. So the point is that we are -- we have not 17 hidden anything as we are -- as we are accused of. 18 Now, in openings, I gave you a roadmap of sorts of what I 19 thought this evidence was going to show. And I told you and I 20 think the evidence showed that the Shinedlings did, in fact, 21 own four space heaters. They owned two of the Holmes space 22 heaters. 23 They used two of the space heaters, the Holmes space 24 heaters, and this little General Electric heater in their 25 master bedroom. The space heaters were in constant use in cold</p>	<p style="text-align: right;">Page 111</p> <p>1 Mr. Shinedling also told us that he read and understood 2 all of the instructions and the warnings that came with the 3 heater. And the interesting thing was that on Friday -- last 4 Friday, Mr. Shinedling testifies about the automatic safety 5 shutoff and about how he thought that it was failsafe. He 6 believed that a fire could not start because of the existence 7 of the auto safety shutoff. 8 But then I think you'll remember that I questioned 9 Mr. Shinedling about the fact that he was interviewed and 10 deposed many times after January 5 of 2011. As a matter of 11 fact, he was first interviewed on January 5 by the sheriff's 12 office and then by Mr. Whedon, and he was interviewed again by 13 Mr. Whedon, and, in addition to that, he was interviewed by 14 other sheriff's departments -- deputy sheriffs, I should say, 15 in that month. 16 He also gave an examination under oath, which we explained 17 was like a deposition, on March 31 of 2011. And then after 18 that he was deposed in this litigation by Mr. O'Connell. And I 19 think that occurred sometime, I don't know, March or April of 20 2013. 21 And I asked him, did he ever tell anybody in the context 22 of either the investigations or the statement under oath or the 23 deposition, did he say to anybody that "I thought the automatic 24 safety shutoff would have prevented the fire. And the answer 25 to that was "no." Mr. Shinedling never, not once said to</p>
<p style="text-align: right;">Page 110</p> <p>1 weather. And where they lived, the Shinedlings lived, it got 2 very, very cold, especially in the winter months. 3 So these heaters, and specifically the radiant heater, was 4 used, even if you think it's used about eight hours a day, and 5 it was probably used more than that, because Mrs. Shinedling 6 would also use the heater if she was working or in the bedroom. 7 These heaters -- or this heater, this radiant heater was used 8 for thousands of hours. 9 And then I asked Mr. Shinedling whether he had any problem 10 whatsoever with the radiant heater, and he said "no." And I 11 asked him did he see smoke from the heater? "No." Sparks from 12 the heater? "No." Arcing? "No." Did he ever take it in for 13 repairs? "No." "No." "No." "No." "No." So this was a good 14 functioning heater. There was never any difficulty with it. 15 And, in addition, we know it worked properly because he 16 said that once the heater happened to tip over, just happened 17 to tip over, and when the heater tipped over, it shut off, just 18 the way it's supposed to. 19 Another time I believe one of the girls plugged in the 20 heater in the great room or the family room, and the heater was 21 too close to a -- I believe it was a couch. It might have been 22 a chair. I think it was a couch. And eventually the automatic 23 safety shutoff shut the unit down and had to be reset. So 24 Mr. Shinedling knew how this space heater operated and that, in 25 fact, it was operating well up until the day of the fire.</p>	<p style="text-align: right;">Page 112</p> <p>1 anyone, "Hey, how come the automatic shutoff did not prevent 2 this fire?" 3 If he had an understanding from reading the instructions, 4 as he told you, ladies and gentlemen of the jury, that the 5 automatic safety shutoff would prevent all fires, especially 6 when combustibles, clothes got too hot within the three-foot 7 area, then how come he didn't say -- how come he didn't say, " 8 expected that the heater would shut down before a fire started, 9 before the combustibles ignited?" 10 PowerPoint Slide 10, please. Here is Mr. Shinedling's 11 testimony from trial. 12 "Let me ask -- let me ask this. Did 13 investigators ask you how you thought the fire 14 started? 15 "ANSWER: I believe it was the space 16 heaters." 17 111. 18 "When you told the investigators that you 19 thought it was a space heater, did you tell him you 20 thought the automatic shutoff did not work? 21 "ANSWER: I never mentioned it. 22 "QUESTION: And you never mentioned it to 23 anybody until Friday?" This is this past Friday in 24 trial; correct?" 25 "ANSWER: No one's ever asked."</p>

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1 But then I asked him about a deposition, his deposition
2 that he gave, and he couldn't quite remember it, and so I
3 actually read a portion of the deposition. This is from his
4 deposition in 2013:
5 "Do you recall today" --
6 MR. HOMAMPOUR: I'm sorry, what page are you
7 referring to?
8 MR. WOLENSKY: 111.
9 "Do you recall today any of those specific
10 warnings and instructions?
11 "ANSWER: Basically I remember the distance.
12 "QUESTION: Okay. What was the distance?
13 What do you mean by that?
14 "ANSWER: Approximately three feet.
15 "Okay. When you say 'approximately three
16 feet,' what do you remember about approximately
17 three feet?
18 "That there shouldn't be anything in front of
19 it within three feet.
20 "QUESTION: To keep materials at least three
21 feet away from the front of the heaters?
22 "Yes.
23 "Okay. Anything else?
24 "How to turn it on, how to adjust the comfort
25 level, the temperature."

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1 That's the only thing Mr. Shinedling was able to tell us
2 about the instructions and the warnings. Again, he never -- he
3 never mentioned his view, the import of this automatic safety
4 shutoff until Friday.
5 I respectfully suggest to you, ladies and gentlemen, that
6 Mr. Shinedling knew and understood that the only way to prevent
7 fire -- prevent the risk of fire was to make sure that these --
8 that combustibles and clothes were kept the three feet away.
9 Now, in addition, in opening, I think the evidence proved
10 this, that Mr. Shinedling knew that the Quartz heaters, radiant
11 heaters were very, very hot. As a matter of fact, in
12 cross-examination, we went through this about how hot it really
13 was. And I used the analogy of an electric oven, and
14 Mr. Shinedling kind of agreed. But he knew that when you stood
15 in front of it, that it got very hot. And he knew and
16 understood that he had to keep combustibles and clothing three
17 feet away from the heater.
18 He also knew that it was very important that he should not
19 leave an operating radiant heater unattended. And he knew this
20 because he testified that -- I think it was a couple nights
21 before or maybe a week before, that he went to sleep with his
22 girls because it was a cold night and they needed the heater,
23 the radiant heater.
24 And so Mr. -- there's no question that Mr. Shinedling knew
25 how hot it could get. Mr. Shinedling knew that the only way to

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1 eliminate that risk was to keep combustibles three feet away.
2 And based on his testimony in this case in this courtroom, I
3 suggest that Mr. Shinedling did not believe that the automatic
4 shutoff could prevent all fires.
5 Now, I want to warn you against something, also, because I
6 just showed you snippets of testimony, like plaintiffs'
7 attorney did before. And lots of times snippets need to be put
8 into context. And it's going to be your memory that's going to
9 drive what happened in this courtroom and what was said, who
10 said it, and how it was said. So I just wanted to let you know
11 that I understand all about snippets.
12 And despite what was said this morning, I certainly
13 don't -- did not intend, and I don't think I was, and I don't
14 intend right now to be deceptive. So I don't want you to think
15 that I'm just taking little snippets here, little snippets
16 there without knowing that it is important to keep everything
17 in context of the proceedings in this case.
18 Now, what was different on the morning of this fire?
19 Well, I think the testimony is pretty clear that for the days
20 preceding, the Shinedlings -- at least Mrs. Shinedling was
21 cleaning out -- doing substantial housecleaning, removing and
22 collecting, gathering, and eventually going to throw away
23 clothes. So that was the big difference.
24 And during this period of time, you'll remember during
25 Mr. Shinedling's testimony, that he testified, of course, that

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1 everything was in neat piles three feet away, walkways and all
2 that, when he went to bed. However, he also did testify when
3 he gave the examination under oath, that there were clothes
4 just everywhere, all around on the floor.
5 And let's put 249.66 on. This is Exhibit 249.66. This
6 was a diagram that was actually used during the course of the
7 trial with the layout of the room and where everything was.
8 You'll remember -- you know, I asked Mr. Shinedling, also,
9 about approximations of distances and things like that.
10 And then let's put 1.15 back up again, 1.15. Okay. Now,
11 we're going to, I think, have to enlarge the area a little bit.
12 Yeah, just enough. Okay. I hope we don't lose context on it.
13 You can see in the upper left, that's the master bed, and
14 then you could also see where the heater -- where the heater
15 was.
16 Now, this is Detective Stuart's sketch that was done on
17 the day of the incident, and there were measurements taken and
18 all that. But you can see from that sketch that there are
19 actually two boxes in front of the bed. Detective Stuart found
20 the two boxes. There's also, again, the bag of clothes. And
21 then you could see where the heater is as well as the -- as
22 well as the laundry hamper.
23 Now, the bottom line is on this night there were a lot
24 more combustibles in the area than in previous weeks and
25 months. And this was the difference. This is why there was a

<p style="text-align: right;">Page 117</p> <p>1 fire on the night of the accident per the testimony about what 2 happened in the morning of January 5th, that there was an 3 alarm, the blare of the smoke alarm, and that Mrs. Shinedling 4 yelled "fire." 5 Mr. Shinedling then grabbed the baby -- or the -- Ava, the 6 two-year-old, and ran out with her, but before running out, 7 stopped in the area of the heater. And he described for you 8 what he saw, that somehow his wife got on the floor, was on the 9 floor, she looked to be okay, and she was moving or scooting 10 backwards. 11 At this point there was a small fire, according to 12 Detective Stuart. It was about two feet wide at that point. 13 And then Mrs. -- Mr. Shinedling ran out with his daughter and 14 saved the other two -- his other two little girls. 15 Mr. Shinedling testifies about a number of versions of 16 what he saw when he had stopped at the heater. And no question 17 that this is a traumatic event, no doubt about that at all. 18 Mr. Shinedling says either that the laundry hamper tipped over, 19 which we know didn't happen from Lance Stuart's testimony, or 20 that the unit, the heater was on fire, and it looked like the 21 clothes were going to catch on fire. We know the unit was not 22 on fire to start with because there was no malfunction, no 23 manufacturing defect. 24 And then eventually he ended up with the girls at his 25 neighbor's house, at Kathleen Henderson's house when the first</p>	<p style="text-align: right;">Page 119</p> <p>1 use the safety devices. 2 In addition, if you look at your warning -- at your 3 owner's manuals, the only warning that you get with respect to 4 seat belts is that if you don't wear your seat belt, you're at 5 serious risk of injury or death. It doesn't say anywhere, 6 yeah, even if you wear the seat belts, you can die. 7 So according to the application of the design hierarchy by 8 the plaintiffs, then all cars should be taken off the road, all 9 SUVs should be taken off the road, all trucks should be taken 10 off the road, because that's the practical application of what 11 they're saying about the space heater. 12 Now, let's talk about Dr. Palmer a little bit. 13 Dr. Palmer, the neutral, according to plaintiffs' attorney. 14 Dr. Palmer is a retained expert like every other retained 15 expert that comes into this courtroom. He got paid. He got 16 paid substantial money. He got paid for his reports. He gets 17 paid for his testimony. He got paid for his testing. Okay? 18 So let's make no mistake that there's no higher ground with 19 Dr. Palmer than Mr. Loud. 20 Let's look at Slide 19, please. 21 As far as Dr. Palmer goes, you'll remember that he 22 testified that he's not been employed by a product 23 manufacturer -- a consumer product manufacturer, as a matter of 24 fact, by any manufacturer. Mr. Palmer has never designed a 25 consumer product.</p>
<p style="text-align: right;">Page 118</p> <p>1 responders arrived. 2 Now, what I'd like to talk about, now that we've talked a 3 little bit about the facts, is the heater. And this heater was 4 actually designed in the mid-1990s. It was first sold in 1999. 5 And, actually, radiant heaters had been around for 80 years. 6 So this wasn't a new technology in terms of how radiant heaters 7 do, in fact, heat. There were about 10 million radiant 8 heaters, and I'm talking about 10 million H307 heaters. 9 Now the plaintiff, and specifically Dr. Palmer, says that 10 the product should not be sold as warnings cannot eliminate the 11 risk of fire 100 percent. In other words, if the product 12 cannot eliminate the risk of fire, the risk of death, then you 13 have to take the product off of the market -- out of the 14 market. 15 Think about that. There's the safety -- the automatic 16 safety shutoff, it's been testified to, significantly reduces 17 the risk of fire. That's the testimony. And then in addition 18 to that, warnings are given to further reduce and pretty much 19 eliminate that risk of fire. Okay? 20 And what the plaintiffs are saying is, "Well, you know, 21 the one person dies, then that product should be taken off of 22 the market." Let's think about that for a minute. We all -- I 23 think we all get into our cars to go home or to come here. 24 Cars have seat belts that we wear. They also have airbags 25 which are passive in terms of the protection they give. So we</p>	<p style="text-align: right;">Page 120</p> <p>1 Next slide. 2 He was asked -- he's also given a lot of information about 3 warnings, and he says that he's given some testimony about the 4 effectiveness of warnings. He's asked: 5 "Have you prepared an instruction manual or 6 warnings for a consumer product? 7 "No. 8 "Have you ever prepared an instruction manual 9 or warnings for a space heater? 10 "No, I have not. 11 "Prior to today, have you ever testified at 12 trial regarding the effectiveness of warnings and 13 instructions in electrical appliances? 14 "No." 15 He's never done any of this. 16 Next slide, please: 17 "Have you taken a course in warnings and 18 instructions?" 19 And the answer is "No." 20 Now, you've heard a lot of testimony about the automatic 21 safety shutoff and what its capabilities are, what it can do 22 and what it can't do. I'm going to rely on your memory because 23 you're probably a little bit tired of hearing about the auto 24 safety shutoff and what it can and cannot do. 25 I will just tell you that Sunbeam knew, the industry knew,</p>

<p style="text-align: right;">Page 121</p> <p>1 users knew, from reading the warnings, that the automatic 2 safety shutoff would open up this device, little device, would 3 open up when the temperatures inside the unit, which is where 4 it was located, reached 185 degrees, would open up, shut down 5 the unit. 6 And by the way, that's a temperature that would open up 7 whether it was a radiant heater, whether it was a ceramic 8 heater, whether it was a convection heater. That was the 9 temperature. 10 And so the purpose of the design was to make sure that 11 there was not an overheating condition within the unit. And 12 that's the purpose of it. That's why it opened up. And when 13 we go through the warnings and instruction manual, just the 14 plain English, you'll see that that is really the only 15 conclusion that an ordinary consumer could come to. 16 Dr. Palmer also testified, and I might have said this 17 early on, but Dr. Palmer also testified that the auto safety 18 shutoff significantly reduces the fire -- the risk of fire. 19 And he was able to even prove this. He was able to prove this 20 through his own testing. He did lots and lots and lots of 21 testing, 50 to 60 hours I think his testimony was. And in most 22 of these tests, the automatic shutoff device, in fact, opened 23 up. 24 Mr. Palmer's testing is very interesting, because unlike 25 what plaintiffs' attorney says, it's -- he didn't get</p>	<p style="text-align: right;">Page 123</p> <p>1 -- there are many benefits to the heater. Mr. Loud went 2 through these benefits for the heater. I'm not going to repeat 3 all of them. In a house like Mr. Shinedling's, this wasn't a 4 tiny bedroom. This was a large master bedroom, and it has two 5 floors because it's a cathedral ceiling. 6 And the fact of the matter is that that little GE heater, 7 you could run that all day and all night alone, and that was 8 not -- or even with another one, and that was not going to heat 9 up the room the way that the radiant heater would. 10 Now, let's talk about the design and development of the 11 heater as well as the standards to which it was designed. And 12 specifically I want to talk about Underwriters Laboratories. 13 Underwriters Laboratories creates standards. These standards 14 are created by the people who literally have spent their lives 15 developing products in a particular area. 16 So here we're talking about portable space heaters. They 17 are created by engineers who work in the area of developing 18 space heaters. And as we heard, I think you'll remember, this 19 is not only UL employees, but it's also manufacturers, such as 20 Sunbeam, and it's not a bad thing that manufacturers are 21 involved. It's also the CPSC. Yes, they are actually involved 22 in developing standards. And in addition to it -- to that, 23 it's like consulting manufacturers are also involved in this 24 regulatory process. And Mr. Loud has been involved in the 25 process not for portable space heaters but for other products.</p>
<p style="text-align: right;">Page 122</p> <p>1 spontaneous combustion on the first try. As a matter of fact, 2 he never got spontaneous combustion. He couldn't get anything 3 to ignite into flame. 4 He was able in the last test that he did, and he was able 5 to do that, and I know this is a dispute, and I'll let your 6 memory control, and you'll be able to see the videotape of that 7 test, but he had to actually move the material, move it away. 8 He actually admitted that because it was creating smoke, too 9 much smoke for his lab, so he moved it away. And then when he 10 moved it, because more oxygen was introduced, that's when he 11 got a flame, and he brought it back into the frame of the 12 camera. 13 Now, people read the instruction manuals and warnings for 14 the space heaters. You know, space heaters are an interesting 15 animal. And they're interesting because, at least where I 16 live, which is here, every winter there's always on TV -- at 17 the beginning of winter, there's always commercials about the 18 weather's getting cold -- relatively for out here, the weather 19 is getting cold, use space heaters, read the instructions and 20 the warnings and take the proper precautions. That's what 21 happens. And when people buy space heaters, like 22 Mr. Shinedling, he said, "I read the instructions manual and 23 all the warnings." 24 Now with respect to the heater -- 25 Let's pull up 356, please.</p>	<p style="text-align: right;">Page 124</p> <p>1 He understands that. Mr. Palmer -- or Dr. Palmer has no clue. 2 Let's look at some slides here, and there's a lot of 3 material, but it's important to understand the type of 4 testimony that Dr. Palmer gave with respect to Underwriters 5 Laboratories. 6 24, please. 7 Okay. This is Dr. Palmer's trial testimony. All right. 8 We're talking about on those groups and committees, there's 9 engineers, and I'm not going to read all this, but these are 10 the type of people who are involved on these committees. 11 Engineers at UL are involved, and Dr. Palmer really didn't 12 know -- no, let's go back to the previous. 13 Okay. And, you know, he gives -- Dr. Palmer is giving 14 answers like, "Well, one might assume," "That's their job" -- 15 "That's their sole job," and "Generally, yes." And so there's 16 CPSC people, and he didn't even know if CPSC had representation 17 on this committee or not, yet he spent a lot of time dissing 18 the UL standard. 19 Let's go to the next slide, 26. Let's go to the next one, 20 27. 21 Then he's -- it says, "Would it surprise you if there are 22 representatives from CPSC on a committee?" 23 And he finally says, "it wouldn't surprise me." 24 Next: 25 "Is it your opinion that these standards are</p>

<p style="text-align: right;">Page 125</p> <p>1 just thrown together by this large group of people 2 to give a manufacturer a free ride so that they 3 have a safe product?" 4 And he does answer: 5 "No, that's not my opinion. 6 "QUESTION: Well, how does -- well, when they 7 put together the standard, what do they do; do you 8 know?" 9 And he answers, "I'm not sure I understand your question." 10 Maybe -- that's just plain English, and he doesn't 11 understand that. 12 And then: 13 "QUESTION: They're putting together a 14 standard for space heaters. Do you know what they 15 do to create that standard? 16 "ANSWER: I got a general sense of what they 17 do. I don't know specifics." 18 Next slide: 19 "And these tests are put together by this 20 group who is intimately involved in and has 21 specific expertise in the creation of the product 22 line involved, and they put these tests together to 23 try to ensure the safety of the public? 24 "Yes, that's the overall intent." 25 Next:</p>	<p style="text-align: right;">Page 127</p> <p>1 else in the world ever figured out. 2 "You believe that the test or tests are 3 insufficient; is that your opinion? 4 "ANSWER: I do. 5 "QUESTION: And do you know better, based on 6 your design experience and the design of heaters, 7 your experience on being involved in the creation 8 of standards better than all of these specific 9 people who have been involved in the creation of 10 the standard, who have given their lives toward 11 designing heaters and manufacturing them and 12 creating safe standards? 13 "ANSWER: What I have seen and based on my 14 investigation is that there is very clearly a 15 hazard that is not mitigated by the tests that are 16 outlined in UL and, therefore, UL has a hole in it, 17 if you will. 18 "Is it what" -- "is it when you say everybody 19 agrees? 20 "No, I don't. There may be some people on 21 that committee who would agree with me. I don't 22 know. What is" -- "what is in the standard, what 23 we would call the lowest common denominator, that's 24 what everybody did agree on, the lowest common 25 denominator."</p>
<p style="text-align: right;">Page 126</p> <p>1 "And then they put together tests that -- 2 normal operating tests, and there's abnormal 3 operating tests for these portable space heaters. 4 And abnormal testing is where they create the 5 standards and the tests to address hazards that are 6 not readily apparent in just the operation of the 7 product itself? 8 "ANSWER: I suppose that's one way of putting 9 it. 10 "QUESTION: You'd agreed with me that under 11 the standard for space heaters, that there are a 12 number of tests that under the abnormal test that 13 each heater would be required to pass?" 14 And he says, "Yes, they are required to pass those." 15 Next: 16 "And then when they go through all this 17 hazard analysis and all this testing, then they 18 come down to the last part of the standard, and 19 that's warnings and instructions; correct?" 20 And he says, "Yes, that includes a section on warnings and 21 instruction." 22 But he believed that he knew better than anybody else. 23 Considering that this product's been around for, first of all, 24 about 80 years ago, and that standards have been developed over 25 a period of time, he found a hole in the standard that nobody</p>	<p style="text-align: right;">Page 128</p> <p>1 But yet Dr. Palmer didn't look to see who was on that 2 committee. He had no idea of how the committee conducted its 3 business. He had no idea that everybody on the committee 4 understands the purpose of an automatic shutoff in a radiant 5 heater. 6 MR. HOMAMPOUR: Objection. That's not in evidence. 7 There was no testimony on that topic whatsoever from anyone. 8 THE COURT: Overruled. 9 Again, ladies and gentlemen, you may recall from the 10 instructions I gave, closing arguments is not evidence. If the 11 evidence is different than what either of the attorneys say, 12 you go with what your recollection of the evidence was. 13 Please continue. 14 MR. WOLENSKY: Thank you, Your Honor. 15 Next slide. 16 "You know better than all those people, is 17 that what you're telling the jury?" 18 And he answers, "I'm observing from an engineering 19 standpoint a hazard." 20 The question really is, how can you determine a hazard if 21 you don't know what the purpose of a design is? The purpose of 22 the design is what the industry knows and the evidence that has 23 been -- that has been put before you. The purpose of the 24 design is to make sure that there is no overheating condition 25 within the -- within the unit, within the space heater. That's</p>

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1 the purpose of the design.
2 That's the testimony that Mr. Prins gave and Mr. Loud
3 gave, and that's the purpose. It significantly reduces the
4 risk of fire. Doesn't eliminate it. Nobody said it eliminates
5 it. There's never been that representation that the shutoff
6 eliminates the risk of fire. That's the purpose of all the
7 warnings that we give. That's why we give the warnings.
8 Next slide.
9 "Have you ever witnessed any of the UL 1278 testing being
10 performed in their actual application?"
11 And he says: "I have never seen UL perform these tests."
12 Next.
13 "I mean, you describe it as a minimum
14 standard. Does it say anywhere in the UL 1278 that
15 this is a minimum standard?"
16 "ANSWER: It certainly is not a maximum.
17 "QUESTION: Do you have -- are you aware of
18 any document, treatise, textbook, written
19 scientific paper, et cetera, that describes UL
20 standards as minimum standards?"
21 "ANSWER: I don't know of anything specific
22 that puts it in those words."
23 There is a standard. It is the UL standard you've heard
24 so much about. Standards are critical, because what standards
25 do is it allows developers of products, whether it's a space

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1 heater or a car or any -- or anything else, an amusement park
2 ride, it doesn't matter. Standards are important, because that
3 way you can have -- you can do reliable, repeatable testing to
4 assure that products are safe. That's the importance of a UL
5 standard.
6 Why would anybody -- what would the purpose be if someone,
7 like Dr. Palmer, wanted to bunch up a towel and throw it up
8 against the heater, a radiant heater? What would you find out?
9 You'd find out that if it was a close enough for a long enough
10 time, that, in fact, the combustible -- the cloth, the towel
11 may ignite. That is not new knowledge. And that is why --
12 that is why we at Sunbeam, we have the automatic shutoff to
13 significantly reduce the risk of fire, along with all of the
14 warnings.
15 Next:
16 "Are you aware of another" -- "a nationally
17 or internationally known recognized safety standard
18 that applies to heaters such as the HQH307 that is
19 more stringent than the UL standard."
20 He says:
21 "I haven't evaluated the IEC or CSA standard
22 separately from the UL. So I can't say that I've
23 done a detailed evaluation of the question."
24 Now, let's think about that. Mr. Palmer -- Dr. Palmer
25 comes in, and he is very critical, very critical of the UL

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1 standard. Don't you think that one thing he would do is he
2 would search standards, other standards, either in the
3 United States or internationally, to see if there was a more
4 stringent standard? Sure, he would.
5 And he would want to do that because he would want to find
6 a more stringent standard than Underwriters Laboratories and
7 use it in this case. However, he didn't -- he said he didn't,
8 and that's fine. I take him at face value. But there's no
9 evidence in this case that there is a more stringent standard.
10 Next slide. Yeah. Finally on the slides:
11 "QUESTION: So the answer would be 'no,' you
12 don't know of any other standard that has more
13 stringent requirements than the UL standard?"
14 "ANSWER: I don't have a specific knowledge
15 of another standard that is more stringent."
16 All right. Now, you've heard also -- first of all, this
17 business about the Consumer Product Safety Commission, okay,
18 that Sunbeam hid information from the CPSC about a defect, that
19 we didn't give them defect information. I will tell you that
20 that is a bunch of hogwash.
21 First of all, the fact that an automatic safety switch --
22 safety shutoff does not prevent every fire, it's not a defect.
23 That's by design.
24 And when the CPSC found out about this fire, they didn't
25 just sit behind their desks. As you heard the testimony, they

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1 were out at the Shinedling house. They came out to the scene
2 to investigate how the fire was caused and whether the space
3 heater was involved as a defective space heater.
4 And they requested all sorts of information from Sunbeam.
5 They not only -- well, they asked for exemplar units. They
6 asked for engineering drawings. They asked for the testing, UL
7 testing. They asked for -- they asked for claims information.
8 They asked for all different kinds of documents. And we gave
9 it to them. You have to give it to the Consumer Product Safety
10 Commission, because the CPSC has the ability to find you,
11 prosecute you, and virtually put you out of business as they've
12 done with other companies.
13 We gave them everything. They sent us a letter back. And
14 I think I said this, that the Commission didn't ask or require
15 that the heater not be sold. They didn't ask us to change
16 warnings. They didn't ask us to put a warning on there to say,
17 "Yeah, don't use while sleeping." They didn't ask us to make
18 any changes to the design of the heater. And, finally, it did
19 not ask for the product to be recalled.
20 So the CPSC closed their investigation, and they told us
21 to provide more information if new information comes to us that
22 is relevant to their inquiries.
23 Now, the interesting thing, I think it's really
24 interesting is that Dr. Palmer claims he finds this hole. We
25 don't agree with him, obviously. But Dr. Palmer had the

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1 ability to send his report and all of his testing to the CPSC.
2 My Lord, he could have petitioned the CPSC in the years he was
3 involved in this case to recall this particular unit. He never
4 did. He never did. He never wrote so much as an article, an
5 abstract, or anything that had -- that said that this is an
6 unknown hazard, that the automatic safety shutoff does not
7 prevent all fires.
8 This is all for litigation, ladies and gentlemen. That's
9 what Dr. Palmer was retained for, and that's why he came in and
10 he gave the opinions that he did. He knew that the space
11 heater was not defective. And he knew what the warnings said
12 in plain English also, and we'll get to that in a little bit.
13 Now, interesting, we've been here a week. Plaintiffs put
14 on their case. I told you in opening, I said that out of the
15 10 million units, space heaters that were sold, that there were
16 less than a handful of claims or complaints where combustibles,
17 clothes, got too close to a space heater and started a fire.
18 Plaintiff was given all this. You'll recall that
19 Dr. Palmer testified about gross numbers of claims and
20 complaints for, you know, heaters and all that in his
21 testimony. I'm not going to go through that again.
22 However, what I will tell you is that in all the evidence
23 that was produced by the plaintiffs in this case -- and when I
24 say "produced," I mean put on by the plaintiffs in this case --
25 there's not so much as one claim or complaint that is

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1 substantially similar to the occurrence of what happened at the
2 Shinedling residence, not one. And I will tell you that if
3 there was one, if there were three, if there were ten, if there
4 were 20, they would be pasted all over this courtroom.
5 You would hear almost nothing more than the dangers of
6 this unit. Not one claim or complaint, incident, or fire was
7 introduced involving the HQH307 as a result of combustibles
8 being too close.
9 That's called field data. And field data is important.
10 It's important to manufacturers of products, because while
11 manufacturers feel that their products are safe, such as
12 Sunbeam -- when Sunbeam released the HQH307, this radiant
13 heater, they want to know how it was performing in the real
14 world, and it was performing excellently.
15 And you know why? That's not only because of the good
16 design, but that's also because of the good warnings. People
17 read warnings. The reason why there's not bushels and bushels
18 and bushels of fires is because people read and adhere to the
19 good warnings that are given.
20 Now, I don't know how many times you've seen in this trial
21 all of the warnings, but since -- you're going to have to at
22 least bear with me, once again, because I would probably be
23 tarred and feathered if I didn't show the warnings to you being
24 that this is pretty much a warnings case.
25 And I will tell you that I'm not going to torture the

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1 language, not going to do any wordsmithing. You all have been
2 a very diligent jury, all smart. You'll all figure out what
3 the plain English is. But I'm still going to show you anyway.
4 Okay?
5 So we talked about the on-product warning. And, by the
6 way, you'll have -- you'll have this with you during your
7 deliberations. So there's the on-product warning. And what
8 this does is this -- I won't read it again, but essentially
9 keep combustibles three feet away. Okay? And that's
10 important, because keeping materials, combustibles three feet
11 away reduces the risk of fire.
12 There's also the warning tag, and the warning tag gives
13 pretty much the same warning about keeping lots of stuff,
14 combustibles, three feet away, and it also adds, "Do not place
15 near a bed where pillows or blankets can fall on the unit and
16 be ignited." And it actually starts, I don't know if you can
17 see this, but it actually starts, "Warning: To" -- it's in
18 bold at the top, "Warning, to reduce the risk of fire." That's
19 what it's for, to reduce the risk of fire.
20 And then let's put up 149.2, please. Let's highlight the
21 left side from 1 down to 6. All right.
22 And again, there's the warning. No. 1, "Read all
23 instructions before using the appliance."
24 No. 3, "Heater is hot when in use." And it goes on:
25 "Keep combustible materials such as

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1 furniture, pillows, bedding, papers, clothes, and
2 curtains at least three feet from the front of the
3 heater and keep them away from the sides and rear."
4 And then we go down to No. 6. Can you put that up a
5 little.
6 "Extreme caution is" -- No. 6, "Extreme
7 caution is necessary when any heater is used by or
8 near children or invalids and whenever the heater
9 is left operating and unattended."
10 Then let's go to the warning -- to the information with
11 respect to the automatic shutoff. And let's highlight that
12 area, please.
13 "Auto safety shutoff with instant tip-over
14 protection." And "Heater's equipped with a
15 patented technologically advanced safety system and
16 requires the user to reset the heater if there is a
17 potential overheat situation."
18 A potential overheat situation. When a potential overhead
19 temperature is reached, the system will automatically shut
20 off -- shut the heater off. It can only resume operation when
21 the user resets the unit.
22 Now, nowhere does it say -- and, again, I'll -- this is
23 going to be a determination you'll need to make. Nowhere does
24 it say that the auto safety shutoff prevents all fires or
25 prevents fire from occurring when combustibles are within three

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1 feet of the heater. It says if there is a potential overheat
2 situation. And I think we've explained that.
3 And, in addition, you need -- it's important in your
4 deliberations when you consider this that you can't take a
5 warning or an instruction in a vacuum. It's important to
6 consider the design of the product, the entire product. It's
7 important to look at the product, to look at the safety
8 shutoff, the automatic safety shutoff, understand its purpose,
9 and then how do the warnings support -- or continue and
10 actually reduce or eliminate the risk of fire. So when you're
11 looking at the product, you need to look at everything to be
12 able to put that into context.
13 Now, it is Sunbeam's view that if all materials are read,
14 then the ordinary person would understand and would believe
15 that something could catch fire if combustibles are placed or
16 come within three feet of the operating unit. I think that
17 actually is really the plain English and the unmistakable
18 conclusion that an ordinary person would come to.
19 I really think, you know, based on the information I have,
20 based on the information we presented, and, in fact, based on
21 the testimony in this courtroom, that Mr. Shinedling actually
22 did understand that. And I say that very -- I say that very
23 respectfully.
24 And I want to show you a few PowerPoint slides of his
25 testimony, and this is Slide 15. This is when I cross-examined

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1 Mr. Shinedling:
2 "We've looked at" -- "QUESTION: We've looked
3 at this, and here's the warning and instruction,
4 'To reduce the risk of fire' -- and then I read
5 the instruction, and I asked 'Correct?' And he
6 answers, 'Yes.'
7 "QUESTION: So would you agree with me that
8 warning and instruction was not complied with
9 because combustible materials ignited within that
10 range, within that area?"
11 And he says, "Yes," that that warning was not complied
12 with.
13 Now, I asked him all this in the context of this warning
14 that plaintiffs say we should have had. And that is for
15 radiant heaters, not to -- that we should warn not to use a
16 radiant heater while sleeping. And Mr. Shinedling said "yes,"
17 you know, that had he known that, he certainly would not have
18 used it.
19 And so I asked questions concerning whether he actually
20 did heed the instructions and warnings that were given. So
21 that -- Mr. Shinedling agrees that the warning and instruction
22 to keep combustibles at least three feet away was not heeded.
23 Next slide.
24 And then we went to No. 6, that:
25 "Extreme caution is necessary when any heater

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1 is used by or near children or invalids, and
2 whenever the heater is left operating and
3 unattended.
4 "Okay. Now, you went to bed that night with
5 the heater operating."
6 And he says "Yes."
7 I said, "You told us on Friday" -- that was just last
8 Friday -- "you used extreme caution that night?"
9 He says yes, he did -- "Yes, I did."
10 I asked him, "What extreme caution did you use?"
11 And he answered basically everything was in proper -- was
12 the proper distance.
13 So even by those answers, Mr. Shinedling knew that it was
14 important to keep combustibles away from the heater, at least
15 three feet away.
16 But then I asked the same question of the plaintiffs'
17 expert, Dr. Palmer.
18 Next slide, please. Let's go to the next slide.
19 This is when Mr. O'Connell was cross-examining Dr. Palmer.
20 "QUESTION: Do you think sleeping, falling
21 asleep with the heater on is leaving it unattended?"
22 "ANSWER: I would say that falling asleep
23 with the heater on is certainly not paying
24 attention to the heater.
25 "QUESTION: Certainly not using extreme

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1 caution?
2 "No, it is not. It is not using extreme
3 caution."
4 This is their expert. This is not -- this is not
5 Mr. Loud.
6 And then with respect to this warning that the plaintiffs
7 would have us add, which is "Don't use the heater while
8 sleeping," they keep referencing the CPSC document. I think
9 you know, I think you got the idea, that that was a tips
10 document from CPSC, from one staff member. And, in fact, that
11 matter, as far as compelling manufacturers to add warnings,
12 that's been looked at at CPSC forever and ever.
13 And the fact of the matter is that not only Sunbeam, but
14 there is not one manufacturer that has that warning in their
15 manuals, not one. And that was asked of Dr. Palmer. He didn't
16 know that. That was asked of Mr. Loud yesterday. And he said
17 that there was no such -- no such warning.
18 MR. HOMAMPOUR: Objection. That again misstates the
19 evidence. There was not any testimony.
20 THE COURT: Overruled.
21 Again, ladies and gentlemen, the instruction I gave you,
22 attorneys' argument is not evidence. If the evidence is
23 different than how the attorney states, your recollection is
24 what's controlling.
25 MR. WOLENSKY: And I couldn't agree with that more.

1 I agree. I couldn't agree with that more. I said that at the
2 beginning of my closing, that it's going to be your
3 recollection.

4 Now, then Dr. Palmer testified also that -- he said
5 compliance with the warnings on the subject heater, if you
6 comply with them, that that makes it virtually impossible to
7 start a fire. That was Dr. Palmer's testimony.

8 Mr. Shinedling was aware of all these warnings, and he
9 knew how -- that by not following the warnings, the risks of
10 fires were increased. He was aware of all the appropriate
11 actions to take to avoid these risks. And he knew that the
12 heater got very, very hot.

13 So how did this fire start? Well, it's interesting,
14 because Lance Stuart, Detective Lance Stuart came into this
15 courtroom yesterday. Detective Stuart was impartial. He had
16 no dog in this fight. He was subpoenaed, he was called to
17 testify about this investigation, and he did. And that we know
18 from the testimony now of Detective Stuart that there was a
19 full bag of -- a full trash bag of clothes. And he showed the
20 photographs yesterday.

21 Let's pull up 2.74.

22 And you'll recall this photograph, I believe. The
23 photograph where there's the number "1," that's the area of the
24 Holmes heater, and that just to the left, this is where
25 clothing was found. And he testified about that.

1 And he explained that underneath the clothing there was a
2 black plastic bag that looked like a trash bag, I think he said
3 for outdoors, for leaves, and that the bag was about full as
4 best he could tell.

5 And he was asked, well, you know, "How do you know this?"

6 And he said:

7 "Well, because the fire burned down lots of
8 the clothes but not all the clothes. And the
9 clothes actually protected the trash bag. So there
10 was a bag of clothes in the room. It was -- the
11 bag of clothes was not at the foot of the bed. The
12 bag of clothes was very close to the operating
13 heater."

14 Now, plaintiffs' attorney said something today about,
15 "Well, testing will show" -- "my expert's testing shows that
16 you put a bag of clothes that close and it's going to go up in
17 25 or 30 minutes." No, that's not right, because it takes a
18 long time. Even if you are in immediate contact with the
19 heater -- and from Detective Stuart's testimony there's no
20 evidence of that -- he said it's very close, closer than one
21 foot, two inches. And he explained that, about how the bag and
22 clothes kind of shrink, so -- but there's no question that the
23 bag was within the three-foot zone. And it would take hours,
24 literally, for a fire to combust. And that's based on
25 Dr. Palmer's own testing that he did, and I'll leave that also

1 to your recollection.

2 So there is a bag of clothes in close proximity to the
3 space heater. It did not fall over. It was not on the hamper.
4 The hamper did not fall over because there was -- there was
5 evidence of the bottom of the hamper in the location where it
6 was supposed to be. Didn't fall off a bed. It didn't fall off
7 of anything. It was there. That's where the contents burned
8 all the way down, and that's where the remnants of the clothes
9 and the bag was found.

10 Let's go to the next photograph.

11 Now, this photograph, 2.75, actually shows the No. 1,
12 which is -- No. 1, the area of the space heater, the Holmes
13 space heater. No. 2 is the area of the smaller General
14 Electric space heater. And then to the immediate left, you can
15 see again the clothes, the remnants of the clothes and where it
16 was in relation to the space heater.

17 Next, 1.15.

18 And this is Lance Stuart's diagram that shows where
19 everything was located when he investigated. Now, plaintiffs'
20 attorney tried to cross-examine Detective Stuart yesterday
21 saying, well, you know, you didn't have a measuring device, you
22 know, measuring tape, you know, you didn't do this, you didn't
23 do that to try to undermine Detective Stuart's investigation.

24 Again, Detective Stuart had no dog in this fight. He was
25 on scene a couple hours after the fire started. He was making

1 his investigation a few hours after the fire started. He did
2 it. He told us how he did it. And, of course, it's going to
3 be your job to assess Detective Stuart's credibility.
4 But I submit that everything that Detective Stuart said as
5 well as measured and photographed constitute his investigation,
6 which clearly shows where everything was located at the time of
7 the fire, including the large bag of clothes, and there's no
8 question that that bag was just too close to the heater, an
9 operating heater, was left unattended, and eventually smoldered
10 and caught fire.

11 If the three-foot zone had not been violated, we would not
12 be here today.

13 Now, one last thing that I need to do very briefly. I
14 need to show you and give you my view of the verdict form.

15 So the first question is:

16 "Did the heater fail to perform safely as an
17 ordinary consumer would have expected when used or
18 misused in an intended or reasonably foreseeable
19 way?"

20 The answer to that, I think, is clearly "no," that the
21 heater -- just a minute.

22 MR. HOMAMPOUR: You want to say "no." That's what
23 you're arguing, yes.

24 MR. WOLENSKY: I've been on for a while.

25 MR. HOMAMPOUR: That's okay. "No" is the right

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1 answer for the defense.

2 MR. WOLENSKY: Oh, there it is, okay. I was looking

3 for something else. Yeah, did the heater fail -- thank you. I

4 do appreciate that.

5 "Did the heater fail to perform as safely as

6 an ordinary consumer would have expected when used

7 or misused in an intended or reasonably foreseeable

8 way?"

9 Answer, "no." I think it's clear that the ordinary

10 consumer believes that this unit, that this space heater

11 performed as expected when used or even misused in an intended

12 or foreseeable way.

13 Likewise, with respect to Question 2, "Did the risk of the

14 heater's design outweigh the benefits of the design?" And the

15 answer to that is clearly "no." There were -- the benefits of

16 the design were legion. As far as the risk, very, very little

17 risk.

18 Yes, Ms. Shinedling, she did pass away in a very tragic

19 accident, fire. It certainly could have been avoided. But

20 there are very, very, very few people, less than a handful. As

21 I said before, plaintiff has not even presented one other

22 substantially similar claim case, fire complaint on this, which

23 shows the excellent design and performance of this space

24 heater.

25 Then with respect to Question 4 on the failure to warn

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1 claim, "Did the heater have potential risks that were known at

2 the time of the manufacture?" Absolutely we knew. Everybody

3 knew. There's the risk of fire. We knew that. So that

4 question should be answered "yes," I respectfully submit.

5 And "did the potential risks present" -- Question 5:

6 "Did the potential risks present a

7 substantial danger to persons using or misusing the

8 heater in an intended or reasonably foreseeable

9 way?"

10 And the answer to that, I believe, is "no." Because if

11 you follow the instructions, then it eliminates the potential

12 risk of fire. So I submit that is "no."

13 But if you would happen to find "yes" on that, the next

14 question that you would go to is, "Would ordinary consumers not

15 recognize the potential risks?" Absolutely not. I think the

16 evidence is overwhelming that ordinary consumers know what the

17 potential risks are. I think even with -- almost without

18 reading warnings, they know what the risks are, but definitely

19 with respect to our good warnings, there's no question, it's

20 written -- risk of fire is written in our warnings, and

21 ordinary consumers do know that. So I submit to you the answer

22 to Question 6 would be "no."

23 With respect to the negligent design, was Sunbeam

24 negligent in designing the heater? Again, I submit from the

25 evidence that the evidence is clear that Sunbeam was not in any

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1 way negligent with respect to the design of this heater. The

2 design is a good design. It's been thoroughly tested. It has

3 been time tested. And so it's my position that the answer to

4 that question should be "no."

5 And then we go to another, failure to warn. This is

6 negligent failure to warn:

7 "Did Sunbeam know or should it reasonably

8 have known that the heater was dangerous or was

9 likely to be dangerous when used or misused in a

10 reasonably foreseeable manner?"

11 And the question -- the answer should be "no."

12 The warnings -- the good design -- the warnings clearly

13 demonstrate what the dangers are or -- and how to eliminate

14 those dangers. But if you find, yes:

15 "Did Sunbeam know or should it reasonably

16 have known that users would not realize the

17 danger," you know, I still think that that is a

18 "no," because I do think that people know what the dangers are

19 of a radiant heater just by looking at it and by using it.

20 But, again, if you find "yes" on that question,

21 on Question 13, "Did Sunbeam fail to adequately warn of the

22 danger of the heater?" And the answer to that, I respectfully

23 submit, is absolutely not. We gave good and thorough warnings

24 that apprised the consumer of the risks and how to avoid the

25 risk of fire.

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1 And then if you answer, as Sunbeam hopes that you

2 will, answer, then that would be the end of it, and you would

3 then be asked to date and the presiding juror to sign the form.

4 Ladies and gentlemen, I am done with my

5 presentation. I don't get a chance to speak to you again.

6 Plaintiff's attorney does. I'm sure there will be one or two

7 things he's not going to agree with me on. But I do want to

8 thank you on behalf of Mr. O'Connell, Mr. Prins, and the men

9 and women of Sunbeam, because I believe, regardless how the

10 verdict comes out, that you gave us a very thorough -- a very

11 fair and impartial hearing, and I do thank you for that. I

12 respectfully request, though, that you do return a verdict on

13 behalf of my client, Sunbeam. Thank you very much.

14 THE COURT: Mr. Homampour.

15 MR. HOMAMPOUR: Thank you, Your Honor.

16 So I promise I'll be as brief as I possibly can. I have

17 to cover everything because I don't know if any of the nonsense

18 that they just went over and the confusion that he just tried

19 with you works, and so it's my job on behalf of my client to

20 sort of take the camera frame and bring it back into focus and

21 have you realize what we heard, what the facts are, and make

22 sure that we are all still on the same page that this product

23 is absolutely defective. The warnings are defective.

24 First, the snippets phraseology, it's what defense

25 attorneys use to undermine horribly bad testimony against their

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1 client. So when you have testimony, and instead of -- you
2 know, a lot of the times the defense attorneys characterize
3 testimony, and I'm going to give you lots of examples where
4 it's false. By the way, it's 2015. I can insert every word
5 they're using -- when he says "substantially impossible" or
6 whatever phrase that he said that a witness said, I can run a
7 search, and I'll see if that phrase was used. And, like,
8 99 percent of the quotes that he gave to witnesses and
9 testimony that he said you heard wasn't at trial. And so I'm
10 sure some of you caught that, like, "Wait, I didn't hear anyone
11 say that."
12 So I'm able to search and to point out that not only was
13 he deceptive and were they deceptive throughout the trial, but
14 they're continuing to be deceptive in their closing argument by
15 making up testimony that actually wasn't testimony in this
16 case.
17 He said that Dr. Palmer agreed the auto safety shutoff
18 substantially eliminates fires. Nonsense. The phrase
19 "substantially eliminates" was never used by Dr. Palmer, was
20 never asked by Dr. Palmer. The defense just made that up.
21 And again, why are they -- if we all have the ability to
22 search the transcript and before he makes a representation to
23 you this is what someone says, he has five or ten or 20 or 100
24 people back there that can run searches and make sure that he's
25 not misrepresenting stuff to you, why aren't they searching it

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1 and going, "Hey, before I say this to the jury, it's my last
2 chance, I want to be truthful and accurate." And they're not
3 truthful and they're not accurate, because they don't care,
4 because they think at this point, "Hail Mary, let's just start
5 confusing the jury, making stuff up and maybe we'll get away
6 with it." And you're not going to get away with it.
7 The argument that had the warnings been followed, we
8 wouldn't be here is a ridiculous argument in the concept of a
9 dangerous consumer product. It is the equivalent of an auto
10 manufacturer who has a defective seat belt saying if you didn't
11 drive in your car that day fast or if you weren't going left
12 instead of right, it wouldn't matter.
13 That's not the point. The point is your safety device is
14 designed to protect the human being when they get in that
15 situation where a mistake has been made and people shouldn't
16 die. That's the whole concept. If your product can cause
17 death, you need to make it safe for foreseeable uses and
18 misuses. If someone's driving and they make a mistake, you
19 need to put a seat belt in there to restrain them so they don't
20 go out the windshield and die.
21 Same with a home heater. You cannot blame the user or a
22 dog or a mother who's groggy at night or a little child and say
23 it's your fault, you knocked over the clothing or you knocked
24 over the bag and got it in front of the heater. It's not our
25 fault that the safety device that we market to you as shutting

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1 this heater off didn't work. It's not our fault that the
2 safety device we knew would only work sometimes, we didn't tell
3 you that, and you bought the wrong product for use.
4 I mean, it's illogical, and it shows a fundamental
5 disrespect of America. They should not make a profit off their
6 product until it is safe for us to use, period. And if it's
7 not safe and if there's a defect or a safety feature doesn't
8 work, they need to, at a minimum, warn us. If we're not
9 supposed to use this heater while sleeping, they better tell
10 us, because I, for certain, would never use this radiant heater
11 anywhere in my house where people are sleeping ever. And I'm
12 sure you all never will now that you know the truth about these
13 heaters. Information none of us knew because it wasn't
14 communicated to us and it wasn't warned on the product.
15 And the fact that the defendant hasn't gotten those basic
16 issues down and just said, "Look, we're sorry, we screwed up
17 big time. We didn't do the things we should have done.
18 Someone has died. It's a tragedy. Let's make up for the
19 harm," instead they come in and they misquote witnesses and
20 they make up stuff.
21 And, you know, here's the testimony from Mr. Vernaglia.
22 (Videotaped deposition was played, not reported.)
23 MR. HOMAMPOUR: And then here's his testimony:
24 "Do you agree with me that the design of the
25 home heater should not start a fire within the

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1 home?
2 "Yes, heaters should not start a fire."
3 So this whole defense argument, "Oh, heaters start fires"
4 and "It's a risk," and "Too bad" and "If a fire starts, it's
5 your fault." Here's their own guy testifying under penalty of
6 perjury. They understand home heaters shouldn't start fires.
7 And again, non-radiant heaters, they don't start fires.
8 The only heaters that start fires are these radiant heaters,
9 and the only reason they start fires is they have a safety
10 device that doesn't work, period. And they don't tell the
11 consumer that, period. It's very simple.
12 And even they admit that.
13 "Are you aware of a fire ever occurring with
14 non-radiant heaters where you had combustible
15 material within three feet of the heater, touching
16 the heater or on the heater?
17 "Personally, no, I'm not aware of any."
18 The defense I heard was, "Well, the safety" -- "auto
19 safety shutoff substantially works, works some of the time.
20 It's not intended to eliminate fires." Where does it say that?
21 From the testimony you heard from their own guy, from the
22 manual, where does it say it only sometimes works? It doesn't
23 say that. That is just nonsense made up by the defense to try
24 and confuse you.
25 (Videotaped deposition was played, not reported.)

1 MR. HOMAMPOUR: "The purpose of the automatic
 2 shutoff on that heater, automatic shutoff, is to
 3 prevent the heater from starting a fire if
 4 combustible material is within three feet of the
 5 heater."
 6 That is their sworn testimony. That is not a snippet.
 7 That is not some minor thing. That is the evidence in this
 8 case. And we know that that automatic safety shutoff did not
 9 work as he told you it should work. As a consumer would expect
 10 it to work, it didn't work.
 11 Here's one of their defenses: "Well, we designed it 20
 12 years ago, so we're missing documents." I've never heard of
 13 such a defense. You're a big company. You design a product 20
 14 years ago, and now all of a sudden you're going to say you're
 15 missing every document?
 16 And then you heard testimony that they have safety --
 17 Mr. Prins is a safety person and they're monitoring and they're
 18 changing this product. Where are those documents over the last
 19 20 years? So this dog ate my homework, 20 years is a long
 20 time, we lost the records defense is ridiculous.
 21 And where was the testimony from someone saying, "Hey, you
 22 know what, I looked for everything, and because it was 20 years
 23 ago, it was destroyed and we don't have it." You didn't hear
 24 that. You know what you heard? They don't have any documents
 25 because they never did a proper analysis. The reason we're

1 here is because they didn't do their job in the first place to
 2 look at the heater the way we have, logically, systematically,
 3 because if they would have and Mr. Prins shared the defect he
 4 knew about in his head, they wouldn't have sold that heater,
 5 and we wouldn't be here and they'd have their mother and he'd
 6 have his wife.
 7 They said we gave no evidence about the fire, what
 8 happened in the fire. That's a bunch of nonsense. You heard
 9 Dr. Romig explain what happened.
 10 Let's talk about this black bag. First of all,
 11 investigating officers, I don't care if you're C.H.P., fire
 12 department, they're human. And I'm not criticizing him in any
 13 way, but he makes mistakes. And he says he saw a bag with
 14 clothes as evidence. He didn't take any picture of it. He
 15 didn't tag his evidence.
 16 The defense attorney said that was his diagram. He tells
 17 us it was somebody else's diagram. He says those are his
 18 measurements. He tells us they were somebody else's
 19 measurements. There's no tape of the measurements.
 20 And then what the detective told you is, "Yeah, the room
 21 was disturbed." Search the word "disturbed." It's in the
 22 transcript. He confirmed the room was disturbed. He confirmed
 23 that hoses were brought in, and that when the hoses were
 24 brought in, evidence can be moved.
 25 So for the defense to now use post-fire evidence that's

1 not photographed, that's not documented by the actual person
 2 who documented, and now to tell you, well, the bag of clothes
 3 was within three feet of the heater is ridiculous. We know it
 4 wasn't within three feet of the heater before the fire because
 5 it takes 30 minutes for that to combust.
 6 He says, "Well, Dr. Palmer, it's up to you. Look at the
 7 videos." It took hours. Nonsense. There was no testimony,
 8 there's no video showing clothes next to the heater and it
 9 taking hours to combust. It takes less than 30 minutes.
 10 So what that tells you is it doesn't matter if it's a
 11 hamper, bag, whatever. Really it's all a red herring. The
 12 point is Mr. Shinedling went to bed. He kept the path clear.
 13 The clothes were not in the path of the heater. If they were,
 14 the fire would have started much earlier.
 15 Somehow during the night, whether it's a hamper, whether
 16 it's a bag -- we don't think it's a bag. Mr. Shinedling
 17 testified and showed you the bag. It was actually on the other
 18 side of the bed in his diagram. If you look at Exhibit 249,
 19 there's a diagram where he has that same bag, the other side.
 20 Doesn't really matter, bag, hamper; right? Clothes, we
 21 all know, got in front of that heater and started a fire. And
 22 the question is, should that heater have shut off? Did he have
 23 an expectation as a consumer that even if something
 24 inadvertently, God forbid, got in front of that heater, the
 25 heater would shut off, and he thought it would, as we all

1 thought it would, as Mr. Vernaglia told you it should shut that
 2 heater off before it starts a fire, and it didn't. And why
 3 didn't it? Because it's defective, period. It's very simple.
 4 Mr. Shinedling had an expectation that the shutoff would
 5 work because there were two prior events where it worked. It
 6 tipped over, it shut off. It got near a couch or curtains, it
 7 shut off. What he didn't know is there is a very common
 8 scenario where if that heater had clothing in front of it but
 9 only at the bottom, a fire is going to start, and it won't shut
 10 off. Who knew? Mr. Prins and Sunbeam. Did they tell us? Did
 11 they tell the consumer? No. So they failed to adequately
 12 warn. It's that simple.
 13 They make a big point, Mr. Shinedling didn't mention auto
 14 safety shutoff to the investigators. By the way, if he
 15 started -- after his wife died in the most horrific way in the
 16 world, and he's got three girls to take care of and they lost
 17 their mother -- if he started saying within the first week
 18 "auto safety shutoff," they'd be in here going, "Wow, it's
 19 really weird he kept mentioning 'auto safety shutoff.'" Who
 20 would be thinking about auto safety shutoff?
 21 Well, it's not Mr. Shinedling's job to identify defects.
 22 We know it was the auto safety shutoff. Why? Because the fire
 23 started from the heater. So Sunbeam doesn't need us to tell
 24 them or Mr. Shinedling to tell some random arson or detective
 25 or insurance person that it's an automatic -- he theorizes it's

<p style="text-align: right;">Page 157</p> <p>1 the auto shutoff that didn't work. He doesn't need to tell 2 them. Sunbeam knows. 3 Because you heard Mr. Vernaglia, they've never had a fire 4 where combustible materials in front of a non-radiant heater 5 started a fire. And he knew before 2006, before they ever 6 bought this heater, before there ever was a fire, Mr. Prins 7 knew there could be a fire with combustible materials getting 8 in front of radiant heaters. 9 So now I don't even understand the argument. They're 10 saying, "Well, wow, why didn't Mr. Shinedling tell us?" Why 11 didn't you tell us? How about that? Why didn't you tell 12 Mr. Shinedling that if combustibles get in front of that auto 13 safety shutoff on the radiant heater, it may not work and a 14 fire may start? That's the question we should be asking. Why 15 didn't they tell him? 16 He said Mr. Shinedling didn't mention it until Friday. 17 Again, baloney and nonsense. There was a document filed in the 18 lawsuit by Mr. Shinedling that addresses this issue. And then 19 all the depositions from 2014 -- 20 MR. WOLENSKY: Objection. There's no evidence to 21 that, Your Honor, and I don't have a chance to respond. 22 THE COURT: Same admonition I gave you, ladies and 23 gentlemen. Attorney argument is not evidence. 24 MR. HOMAMPOUR: Actually, I have a very, very good 25 memory, and I don't make stuff up.</p>	<p style="text-align: right;">Page 159</p> <p>1 They actually describe these standards as the floor. They 2 encourage manufacturers to do more, to identify the hazards 3 with their product, and to do this devil's advocate process. 4 No one indicted UL. Dr. Palmer never said anything critical 5 about UL. 6 What he said was is that it's -- the point is it's 7 deceptive for the defendant to say because we passed a UL test 8 or four tests, our product must be safe when UL didn't test or 9 address this unique issue that they knew about that their auto 10 safety shutoff doesn't work on radiant heaters. That was never 11 tested by UL. And so you can't say you passed a test you never 12 took. 13 The argument that one person, there's only one claim on 14 this case of a prior fire, that's nonsense. I asked him. So 15 for them to say there's only one case means we can rely that 16 they've told us about all the prior accidents involving these 17 heaters or that we even know about prior accidents involving 18 the heaters where the user or the family figured out what 19 happened, because this is not some obvious thing that your 20 average person looks at and figures out when you have a 21 tragedy. 22 But for them to say there's only one reported incident 23 would require us to believe they've given us all the incidents. 24 And the testimony you heard from Mr. Prins was: 25 "Is there a database maintained by the</p>
<p style="text-align: right;">Page 158</p> <p>1 I asked Mr. Shinedling if he filed -- was there a 2 declaration or document that addresses auto safety shutoff in 3 2014, and he said "yes." And the phrase was used throughout 4 the depositions from 2014. So Sunbeam knew it was the auto 5 safety shutoff. 6 And for them to come and try and trick you and confuse -- 7 I don't even understand what their point was, but just in case 8 some of you understand it, I have to address that it's a bunch 9 of nonsense. 10 They talked to you about that he said in the exam under 11 oath clothing was everywhere. False. I searched the word 12 "everywhere." It is nowhere in that transcript. No one said 13 the phrase from Mr. Shinedling that he -- he never testified or 14 said "everywhere." 15 And there is no examination under oath that we went over 16 what he said at. That's nonsense. Again, they're making stuff 17 up. They got that one Whedon guy to make stuff up by talking 18 to him beforehand, and he started talking about "scattered all 19 over the place," and he waited minutes before he tended to the 20 fire, when it was really a moment. 21 They talk about -- this is important. You know, the whole 22 UL thing -- look, UL is not in the business of providing safety 23 of products. They do testing. You've heard the testimony from 24 Mr. Loud that the CPSC and UL's obligation is not to make safe 25 products.</p>	<p style="text-align: right;">Page 160</p> <p>1 company that details the name of the claimant, the 2 product, model, date of loss, description of the 3 incident, and investigation? 4 "ANSWER: With regard to lawsuits, no. 5 "With regard to property damage or personal 6 injury claims, there is no such database; correct? 7 "Other than what is kept for claims from the 8 call center. 9 "But you don't keep a database for claims 10 from the call" -- "for property damage or personal 11 injury, you don't keep a database that shows the 12 name, what product, model, date of the event, the 13 description of what happened, and an investigation 14 result? 15 "That's correct." 16 So we know if they're not keeping track of all these fires 17 and events, then they can't come into court and tell you there 18 are no other events. So we're limited -- we're limited in 19 finding out about claims they know about by what they tell us. 20 And if they're not keeping track, then they can't come into 21 court and say there's only one incident. That's outrageous. 22 It is intellectually dishonest for them to tell you 23 there's only one reported claim. That is just not fair when 24 they don't keep accurate records and didn't give you any 25 testimony that they've only had one reported claim. There was</p>

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1 not someone that came on the stand, raised his hand, swore to
2 tell the truth.
3 MR. WOLENSKY: Objection, Your Honor. Misstates
4 testimony.
5 THE COURT: Overruled.
6 Same admonition, ladies and gentlemen.
7 MR. HOMAMPOUR: I'm going to try and not cover
8 everything, but they talked about Dr. Palmer never designed a
9 product. Well, first, their expert never designed a space
10 heater. And, second, who cares? Here's my point. It's clear
11 they've never designed a safe product.
12 What Dr. Palmer did is he just did a basic like intro
13 class to engineering. You teach at a regular college to kids
14 on how to design a safe product. That's what he taught us, and
15 that's what he taught them, and that's what was missing from
16 their analysis before they put this product and misrepresented
17 its uses to Mr. Shinedling.
18 They talked about how he's never prepared a warning. So
19 what? Just because you haven't prepared a warning doesn't mean
20 he doesn't have the ability to point out you need to tell
21 people don't use this while sleeping. You need to tell people
22 the automatic safety shutoff may not work.
23 Obviously the defendant doesn't know how to do warnings
24 because we wouldn't be here if they provided an adequate
25 warning. Amy would still be here if they provided an adequate

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1 warning.
2 I mean, think about it. When Mr. Shinedling's at the
3 store and he's picking space heaters -- and he doesn't know the
4 difference between radiant and non-radiant. I'm sure none of
5 you -- maybe one of you or a few of you may have some
6 distinction or understanding, but most of us don't understand
7 the difference.
8 We look at the box. It says "Elite." It looks fancy.
9 It's tall. We think it's going to provide a better heating
10 experience. All of that's wrong, by the way. This small
11 heater provides the same room heating experience, if not
12 better, than this radiant heater which just heats objects.
13 We look at it, we think it's safe. We think it says
14 "tip-over protection." It says, "Turns off heater in an
15 overheat situation." What do we know? We just look at the
16 box. They don't even know what half of the stuff means on the
17 box, and they're the ones selling the product.
18 So when he looks at this, he's making a choice to pick a
19 safe product. Why would he pick an unsafe product? Why would
20 he pick a product that you shouldn't use while sleeping? Why
21 would he pick a product where the auto safety shutoff doesn't
22 work? Why, logically? Because he doesn't know these things
23 because the defendant knows and hasn't told him or us, and a
24 death happened.
25 And for that, they're responsible, because we shouldn't be

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1 here after she's died four years later, they've been -- their
2 mother's been taken away, a wife's been taken away, and we're
3 still here trying to convince these people that they did
4 something wrong, something they should have acknowledged from
5 the minute they walked into this courtroom. We screwed up,
6 let's make up for the harm we caused, instead of trying to
7 trick and deceive you.
8 Remember, you didn't hear any testimony from UL about
9 anything. So they characterize UL, they give their lives to
10 you to work on UL. Nonsense. There was no testimony from
11 anyone that anyone at UL gives their lives or what they do or
12 what they don't do. In fact, what you heard was from
13 Dr. Loud -- excuse me. I don't have that testimony. Remember
14 I asked -- oh, here you go. Mr. Loud.
15 "The UL testing, none of those documents go
16 through the hierarchy. It's not laid out that way.
17 "And the UL work product, you said you don't
18 even have access to it; right?
19 "You're talking about the STP work product?
20 "Right.
21 "ANSWER: No, I don't have access to that.
22 "QUESTION: We don't have access to it, do
23 we?
24 "ANSWER: No."
25 So Mr. Loud, who works on the UL committee for another

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1 product, acknowledges it's not like we have access to what they
2 do. We don't have access to their work product.
3 And then the defense attorney knows that what he testified
4 to, knows it's -- factually it is correct. We, the plaintiffs,
5 Dr. Palmer, even Mr. Loud does not have access to what work is
6 being done on that UL 1278 committee. And yet he comes in here
7 and lies and criticizes Dr. Palmer for not knowing what they're
8 doing in their secret work product that we don't have access
9 to.
10 Again, it's intellectually dishonest. Why am I wasting
11 time pointing out false statements by the defense? How it
12 works is they just don't make them to begin with and we can
13 focus on the core issues rather than wasting time making false
14 statements. Why are they making false statements? Because
15 they don't have a defense. They know they're responsible, and
16 they're trying to confuse you.
17 CPSC is on UL. You didn't hear any testimony that anyone
18 from CPSC is on the UL standard for this product.
19 MR. WOLENSKY: Objection. Misstates testimony.
20 THE COURT: Again, ladies and gentlemen, closing
21 arguments is not evidence. If the evidence is different than
22 what the attorneys say, your recollection governs.
23 MR. HOMAMPOUR: So I'm almost done. First claim,
24 was there a design defect? Did it fail to perform as safely as
25 an ordinary consumer would have expected? Absolutely.

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1 Ordinary consumer would have thought -- would never have
2 thought this heater shouldn't be used while sleeping, that it
3 would start a fire, and that the automatic safety shutoff
4 wouldn't work.
5 An ordinary consumer would believe what's on that box,
6 would believe what's in the manual, would never have bought
7 this if they knew the truth, and would believe it would work
8 safely and it didn't, period. It's unsafe. "Yes" to the first
9 claim.
10 The second claim, failure to warn, remember, two failures.
11 Failure to warn you shouldn't be using this while sleeping,
12 failure to warn the auto safety shutoff doesn't work. Do we
13 know that those weren't warned? Yes. Did they know about
14 those? Yes. Did Mr. Shinedling know about it? No. Find in
15 our failure on failure to warn.
16 On negligence, I've covered that. There's nothing
17 reasonable about what this company did. They were negligent.
18 On damages, now, I asked for 4 million for past wrongful
19 death damages for Mr. Shinedling, 11 million for future
20 wrongful death damages for Mr. Shinedling, and that covers a
21 37-year period. I asked for 4 million for past for each of the
22 children and 12 million future for each of the children, and
23 that covers, I believe, a 41-year period.
24 The defendants did not argue against those numbers, and I
25 would suggest that that means that the numbers are reasonable.

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1 It is your decision -- you're going to decide what's reasonable
2 and not reasonable.
3 But I want you to remember what Dr. Reading told you and
4 what you know from what you've heard. There probably is no
5 story you could construct that is more tragic, more horrifying,
6 more violating to a human being, more long lasting, more
7 scarring, more distressing, more horrific than this event.
8 Waking up from a sleep, there's a fire from a heater that
9 you didn't know was defective, the defendant knew was
10 defective. You have to run and save your baby. You have to
11 run and save your girls, and your wife dies. And you will have
12 that with you as the girls and as a husband for the rest of
13 your life.
14 And you've been deprived of everything that a woman is,
15 that a mother is, and that a wife is to a human being. That's
16 gone forever. And it doesn't get easier. And it stays with
17 you when you sleep, it stays with you when you wake up, it
18 stays with you when you're walking in a crowd, it stays with
19 you when you're at a party, it stays with you when you're at a
20 school event, it stays with you everywhere. That loss is
21 always with them. They are always walking wounded. They will
22 never be full, whole, and complete. They will never feel safe
23 again.
24 And so when you calculate damages, it's for that long
25 duration, and it represents what's been taken away. And,

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1 again, I want to just reiterate and then I'm done, the dollar
2 amounts, in total, may seem large, but if it was just one
3 person that was a claimant, you probably wouldn't have a hard
4 time awarding some of these numbers, but when you total them
5 up, it seems like a lot.
6 But what happened here affected four lives forever and
7 affected them in three different ways: wrongful death damages,
8 loss of their mom's love, companionship, their direct damages,
9 and then the damage of knowing and being present when your mom
10 and your wife is dying. Those are three distinct damages that
11 caused three distinct injuries that Dr. Reading explained to
12 you and that the family explained to you how it's affecting
13 them. And so when you come to damages, just remember that.
14 I want to thank you. I'm sure you're glad that I'm done.
15 I trust everybody -- trust me, this trial would have been about
16 four times as long in state court so you're all very lucky.
17 Thank you very much. I appreciate it.
18 THE COURT: Robert, ready for the administration of
19 the oath?
20 THE COURTROOM DEPUTY: Please state your name.
21 THE BAILIFF: Robert Young, Y-o-u-n-g.
22 (The bailiff was sworn.)
23 THE BAILIFF: Ladies and gentlemen.
24 (Out of the presence of the jury.)
25 THE COURT: All right. As long as Melissa can get

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1 ahold of you and you can get here in ten minutes, you don't
2 have to stay in the courtroom.
3 MR. HOMAMPOUR: What time are we closing shop,
4 though, 5:00?
5 THE COURT: We'll probably let them go home no later
6 than 5 o'clock.
7 MR. HOMAMPOUR: We're going to stay.
8 THE COURTROOM DEPUTY: Court is in recess.
9 (The jury resumed deliberations.)
10 (Proceedings concluded at 4:30 p.m.)
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1 CERTIFICATE OF OFFICIAL REPORTER

2

3 COUNTY OF LOS ANGELES)

)

4 STATE OF CALIFORNIA)

5 I, DEBBIE HINO-SPAAN, FEDERAL OFFICIAL REALTIME

6 COURT REPORTER, in and for the United States District Court for

7 the Central District of California, do hereby certify that

8 pursuant to Section 753, Title 28, United States Code that the

9 foregoing is a true and correct transcript of the

10 stenographically reported proceedings held in the

11 above-entitled matter and that the transcript page format is in

12 conformance with the regulations of the Judicial Conference of

13 the United States.

14

15 Date: June 18, 2015

16

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19 /S/ DEBBIE HINO-SPAAN_

20 Debbie Hino-Spaan, CSR No. 7953

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