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1 Amy, Kenneth, and Ava were sleeping in the master bedroom at
2 the time of the fire. Addison, Kenneth, Alexia, and Ava were
3 all present at the scene of the fire.

4 Amy Celeste Shinedling died on January 5, 2011, in
5 a fire at plaintiffs' home. Amy Shinedling was 35 years old
6 at the time of her death. Addison, Alexia, and Ava have all
7 undergone therapy since the incident.

8 The subject heater was manufactured by Sunbeam on
9 October 10, 2006. The subject heater provides radiant heat.

10 Can I go ahead and state my opening?

11 THE COURT: All right.

12 So stipulated?

13 MR. O'CONNELL: So stipulated, Your Honor.

14 THE COURT: Very well.

15 Mr. Homampour, please give us your opening
16 statement.

17 OPENING ARGUMENT BY PLAINTIFF

18 MR. HOMAMPOUR: In essence this case is about a
19 defective home heater that started a fire that killed a
20 mother and a wife. The home heater was defective because it
21 had a safety feature that did not work, and the safety
22 feature is an automatic shutoff that is supposed to turn the
23 heater off before it starts a fire, and that did not work
24 with this radiant heater.

25 To understand why this happened, we have to sort of

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1 go back in time. And you'll hear expert testimony explaining
2 to you the difference between radiant heaters on one hand and
3 non-radiant heaters. I'm going to try and explain that to
4 you briefly right now.

5 This is a radiant heater. This is not the subject
6 heater. The subject heater was burned and it was destroyed
7 essentially. This is similar to the heater that was involved
8 in the incident. This is a fan heater. It is not a radiant
9 heater. Despite the size difference, they are the same
10 wattage and essentially provide the same heat although
11 different form of heat comes out. But this is 1500 watts;
12 this is 1500 watts.

13 Now, non-radiant heaters produce heat by blowing
14 the heat from the inside of the heater out into the room.
15 Non-radiant heaters never produce heat high enough to cause
16 combustible materials like clothing or towels to catch on
17 fire. So in order for a towel, for example, to catch on fire
18 or for clothing to catch on fire, heat of over 450 degrees
19 Fahrenheit has to blow onto it to start a fire.

20 The heat from non-radiant heaters never gets above
21 approximately 150 degrees Fahrenheit. They just don't
22 produce that high of amount of heat. Non-radiant heaters
23 have a device in them, a thermostat, that if they sense the
24 heat is getting over approximately 185 degrees Fahrenheit or
25 200 degrees, it shuts it off.

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1 So the heat coming from non-radiant heaters is
2 never high enough to start a fire in the first place with
3 ordinary combustible materials because it never gets to
4 450 degrees. Even if something got hot enough that it got
5 halfway close to starting a fire, non-radiant heaters have a
6 thermostat sensor in them that recognizes the temperature and
7 shuts the machine off. Whether it's tipped over or
8 otherwise, if the sensor senses something over 185 degrees,
9 it shuts off. So it doesn't even come close to starting a
10 fire.

11 So you could get a towel or clothing within three
12 feet of a heater that is non-radiant, and it will not start a
13 fire, period. Our expert will show that. And the defendant
14 will tell you that they're not aware of any fire ever
15 occurring when clothing or combustible material gets within
16 three feet of a non-radiant heater.

17 Radiant heaters are a totally different animal.
18 Radiant heaters radiate heat away from the heater. It is
19 like the sun. So if you are on a cold day, 60 degrees
20 outside, but you go out and stand in direct sunlight --
21 you're at a park or you're at some outdoor event -- and all
22 of a sudden you start sweating, that's because your body and
23 objects accumulate the heat that is produced in a radiant
24 format. When the sun radiates on you, even though the
25 outsides are cold, you will get hot because your temperature

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1 will gradually increase.

2 That's the same with clothing and towels. If an --
3 if a pile of clothing is within three feet of the heater
4 that's a radiant heater, the temperature of that pile will
5 increase potentially to over 1200 degrees. Remember, I told
6 you anything over 450 degrees starts a fire.

7 So with radiant heaters, if you get clothing or
8 ordinary towels, and you're at home and you're sleeping and
9 the dog runs by and knocks over clothing or someone gets up
10 and goes to the bathroom and knocks over clothing and
11 clothing or any cotton or towel gets within three feet of a
12 radiant heater, if it is not covering the heater, if it's
13 just in front of it, a fire can start, because these radiant
14 heaters produce 1200 degrees Fahrenheit heat.

15 This radiant heater also has an automatic shutoff
16 device that tells the user -- and we'll go over that in the
17 manual -- that as designed, this radiant heater is supposed
18 to shut off before it gets into an overheat situation.

19 What the defendant knew and what any engineer with
20 basic training would tell you is that the sensor inside this
21 radiant heater doesn't work and will not shut off this heater
22 in the event clothing or towels get within three feet, and
23 here's the reason why. The sensor only measures the
24 temperature inside the heater. But because a radiant heater
25 radiates away from the heater, it can't sense that a pile of

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1 clothing is now at or above 450 degrees Fahrenheit and is
2 going to start a fire.

3 So since, I think, the '90s, the Consumer Product
4 Safety Commission -- and I'll show you this document in a
5 moment -- has said in communications: Do not use heater
6 unattended in a room while sleeping. The reason you don't
7 want to use a radiant heater in a room unattended while
8 sleeping you'll hear is because while you're sleeping, if
9 clothing or material gets within three feet of that radiant
10 heater producing 1200 degrees Fahrenheit heat, a fire can
11 start. It will not shut off itself.

12 Compared to the non-radiant heater, you can sleep;
13 you can leave it unattended. It never produces enough heat,
14 high enough heat to ever start a fire with clothing or
15 material.

16 Both of these heaters have warnings. There are
17 warnings on the tag. There's a warning at the bottom. The
18 warning at the bottom for this heater, the radiant heater,
19 says: Risk of fire. Keep combustible materials such as
20 furniture, papers, clothes, and curtains at least three feet
21 away from the front of the heater and away from the sides and
22 the rear. And it says: Do not -- same sort of warning on
23 here about objects being -- don't let it get closer than
24 three feet to the front of the heater. I think it also says
25 in the -- I can't read this.

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1 There is no warning on the radiant heater telling
2 the user that this will not work and shut itself off even
3 though the manual tells the user there is an automatic safety
4 shutoff that will turn off the heater. So what our expert
5 will explain to you and what science has known is radiant
6 heaters should never be used at home in a room while you're
7 sleeping unattended because the risk of fire is too great.

8 A person can comply with the warning label and keep
9 clothing or combustibles three feet away from the heater and
10 a fire can start if the clothing or materials get
11 inadvertently or by accident within three feet of the heater,
12 and the heater will shut off.

13 Difficult to see to your left and to your right are
14 some of the exhibits that you're going to see in this case.
15 I don't have my glasses on. I can barely see. Over here we
16 have the Tower Courts heater manual for the subject heater.
17 On the heater manual you'll see that it says auto safety
18 shutoff with instant tip-over protection. The heater is
19 equipped with a patented technologically advanced safety
20 system that requires the user to reset the heater if there is
21 a potential overheat situation. When a potential overheat
22 temperature is reached, the system will automatically shut
23 the heater off.

24 That is not true with the radiant heater. That is
25 the manual for the radiant heater involved in the incident,

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1 and that is not true. This heater will not shut off before a
2 fire starts, and that is because of the design defect in the
3 heater that that temperature sensor can't sense elevated
4 temperatures outside of the heater within three feet of the
5 heater unless something is blocking the heater.

6 So you're going to hear that the company has done
7 minimum testing through something called Underwriters
8 Laboratories. Underwriters Laboratories, you've seen the UL
9 mark. It's usually in white plastic stamped on things. All
10 that means is that this product has undergone some minimum
11 testing, not exhaustive, not extensive, not every test, but
12 some tests.

13 UL will charge the company money, a few thousand
14 dollars, and say we'll test your product. If you pass our
15 minimum standards, you can put the UL mark as a marketing
16 tool on your device; however, it's agreed that UL is a
17 private standard. It is not the law. They are minimum
18 standards.

19 The defendant will also agree just because a
20 product has a UL stamp or passes UL standards does not mean
21 it's safe.

22 MR. WOLENSKY: Objection, Your Honor.
23 Argumentative.

24 THE COURT: Overruled.

25 MR. HOMAMPOUR: You'll hear that testimony from

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1 their own expert. It doesn't mean that the product is safe.
2 And you will also hear from the defendant's own product
3 engineer that no matter what UL does, Sunbeam still has its
4 own obligation to make sure that it provides the safest
5 possible product. This is from the defendant's own corporate
6 representative.

7 Now, the testing that UL did doesn't address the
8 defect we talked about. UL does the following testing only.
9 They will test these heaters to see if they shut off in
10 situations where they block the heater. What that does is
11 when you put a towel on or around the heater and block it,
12 any elevated temperature goes back into the heater and
13 triggers that sensor, because once this thing starts getting
14 hot because there's combustible material -- a towel or
15 clothing or a T-shirt -- near or right on it, the heat goes
16 back into that sensor and the sensor triggers and shuts it
17 off.

18 But when you take the clothing and you don't put it
19 on the heater and you put it within three feet or an inch,
20 they know that automatic shutoff that they market to people
21 in the manual will shut it off, they know it won't work. And
22 Underwriters Laboratories doesn't do this test. They don't
23 test to see if heaters will shut off with the towel within an
24 inch or three feet.

25 Here's the warning on the tag. We've already gone

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1 over this warning. Again, a person can comply with the
2 warning and a fire will still start with this radiant heater
3 if combustible materials accidentally get in front of the
4 heater.
5 So with the non-radiant heaters, even if you get
6 combustible material, clothes -- again, combustible material
7 has special meaning in this case. It doesn't mean
8 gasoline-soaked material. Combustible material as we're
9 using the phrase means T-shirts, towels, clothing. With the
10 non-radiant heater, if you deliberately violate that warning
11 and you put a T-shirt right next to the heater, a fire will
12 not start because the design of the heater has the safety
13 system that works with non-radiant heaters. The temperature
14 sensor will shut it off before it starts a fire and because
15 the non-radiant heaters never produce high enough heat to
16 start a fire.
17 With the radiant heaters, if that warning is by
18 accident violated by a dog or someone getting up in the
19 middle of the night, the design safety feature to shut it off
20 doesn't work.
21 You'll hear about something called the SafetyMax.
22 In 2007 the company realized by making a safety feature that
23 if you get clothing or towels within three feet of the heater
24 but not covering it, that the machine may have to shut itself
25 off because it will start a fire. So the evidence of this

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1 SafetyMax is to show you the company knew before this fire
2 ever started that there are scenarios where the heater will
3 start a fire outside of a towel actually being draped onto
4 the heater.
5 So what they did is they have this beam that shoots
6 down the face of the heater, and if it senses anything within
7 half an inch breaking the beam, it shuts itself off. Again,
8 our expert will explain that safety feature would not
9 necessarily have prevented this incident. You'll decide that
10 later. But the point of that safety feature is it shows the
11 company knew that if combustible materials get close enough
12 to the heater but aren't covering it to cause the temperature
13 sensor to work, that a fire could start.
14 The Consumer Product Safety Commission, you're
15 going to hear about that. They are a government agency, and
16 they get involved sometimes in deciding if certain products
17 have to be taken off the market. They don't get involved in
18 every situation with every product. Sometimes they do.
19 Well, back in 2005 the Consumer Product Safety
20 Commission looked at radiant heaters, and they wrote a letter
21 to Underwriters Laboratories and they pointed out that unlike
22 air heaters, radiant heaters have the possibility of raising
23 the surface temperature of an object in the path of the
24 radiant flux very high. They conclude there's a possibility
25 of continued heating until ignition temperatures are reached.

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1 So the concept I explained to you, the Consumer
2 Product Safety Commission recognized that in 2005 and told
3 Underwriters Laboratories about it. The defendant knew about
4 it because they were on a committee with the Consumer Product
5 Safety Commission and Underwriters Laboratories on some of
6 these standards.
7 Later in 2005 there's another communication where
8 the Consumer Product Safety Commission tells Underwriters
9 Laboratories in essence what I just explained to you, and
10 that is that air heaters like this one, the smaller one, they
11 avoid igniting combustibles in two ways: First, no commonly
12 found materials ignite at the air temperatures exhausted by
13 the heater. That means the max temperature can't start a
14 fire with common combustibles with these air heaters.
15 Second, air heaters don't accumulate heat in the
16 object, whereas a radiant heater accumulates the heat in an
17 object to the point where the object will get to ignition
18 temperatures. So you'll see that again the Consumer Product
19 Safety Commission is telling the testing laboratory used by
20 defendant: Here's an issue that we're seeing with radiant
21 heaters and starting fires.
22 Of course, the -- Your Honor, one second. For some
23 reason it stopped working.
24 (Pause in proceedings)
25 MR. HOMAMPOUR: All right. I'll just do it the

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1 old-fashioned way.
2 So in 2005 the Consumer Product Safety Commission
3 sent out a bulletin. These bulletins are, you know, for the
4 companies like Sunbeam and other manufacturers of space
5 heaters to pay attention to. It says: To prevent the risk
6 of fire, never leave a space heater on when you go to sleep
7 or place a space heater close to any sleeping person. Turn
8 the space heater off if you leave the area.
9 None of that information which the defendant's own
10 expert will agree is important information for the user to
11 know is communicated to the user in the manual or in
12 warnings. So my client you'll hear -- we'll get to the
13 incident -- he had no idea when he bought this radiant heater
14 that the automatic shutoff wouldn't work. He had no idea
15 that this radiant heater could actually start a fire. He had
16 no idea that this radiant heater should not be used while he
17 is sleeping with his wife and baby in bed. And he had no
18 idea it shouldn't be used while unattended.
19 So he did not know, and he'll tell you he didn't
20 know because he read the warning and there was no warning by
21 the company to not use this radiant heater in his room while
22 he was sleeping with his baby and his wife.
23 He will tell you had he gotten that simple
24 information, he absolutely would not have used this radiant
25 heater in his bedroom. You'll hear he had two heaters, one

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1 radiant and one not radiant, and he would have used another
2 heater. He would not have used a radiant heater if he had
3 known that there was a real risk of fire if materials got
4 within three feet and that that automatic shutoff wouldn't
5 turn it off.

6 THE COURT: You want to take a moment just to see
7 if you can get it to work?

8 (Off-the-record discussion)

9 MR. HOMAMPOUR: In 20 years I've never had it
10 actually not work during opening or closing, but that's okay.
11 I'm just going to keep going, Your Honor, and not waste time.
12 You're going to hear deposition testimony in the
13 next few days from the defendant's director of project
14 management. He'll agree that heaters should not start fires.
15 And that's important because if you take our incident, and
16 obviously you know a fire started because a radiant heater
17 was used, you'll hear from our expert and he'll explain it to
18 you very simply. If my client had been told not to use the
19 radiant heater while sleeping and we have this non-radiant
20 heater which provides the same wattage in his bedroom in the
21 same location, there would be no fire. There would be no
22 death, and we wouldn't be here.

23 I was going to play you some video deposition of
24 the defendant's employee, Mr. Vernaglia, which you'll hear as
25 we go into the case. Let me just tell you what he's going to

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1 testify to.

2 I asked him: The owner's guide distributed with
3 the subject heater tells the consumer the heater has an auto
4 safety shutoff; correct? His answer is yes.

5 And it tells the consumer that when a potential
6 overheat temperature is reached, the system will
7 automatically shut off -- shut the heater off; correct? He
8 acknowledged it should shut the heater off in an overheat
9 situation.

10 He also agreed: So the consumer has an expectation
11 that if a potential overheat temperature is reached, the
12 system will automatically shut the heater off; correct?
13 Correct. And the evidence is going to show that that
14 automatic shutoff did not work despite the consumer having an
15 expectation the heater would shut it off before it started a
16 fire.

17 You'll hear that I asked the defendant: Are there
18 any documents anywhere at your location where you discuss how
19 to make Quartz heaters safer? His answer: No, not that I
20 know of. Sunbeam, you heard all of the different products
21 they make in voir dire, and there are no documents anywhere
22 at their company where they talk about how to make these
23 radiant heaters safer.

24 You will also hear that this whole discussion that
25 we've had about the hazards unique to radiant heaters and how

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1 their automatic shutoff doesn't work despite what they put in
2 the manual when you get materials within three feet and the
3 difference between the temperature of non-radiant heaters
4 never getting hot enough to start a fire but radiant heaters
5 starting a fire, none of that is discussed by anyone at the
6 company before this heater was put on the market and sold to
7 consumers -- not one engineer, not one report, not one
8 e-mail, nothing where they discuss these basic concepts I've
9 discussed with you here today.

10 THE COURT: Mr. Homampour, you want to just take a
11 moment. We have our IT expert, and he can consult and see if
12 he can get your system working.

13 MR. HOMAMPOUR: Sure.

14 THE COURT: Ladies and gentlemen, we're take an
15 in-court break. Does anybody need to use the rest room or
16 any facility? Please feel free to stand, stretch just for a
17 moment or talk about anything but the case.

18 (Pause in proceedings)

19 MR. HOMAMPOUR: We'll keep going and I'll call you
20 later if I need help. Thank you.

21 THE COURT: Thank you.

22 MR. HOMAMPOUR: So on the night of the fire -- you
23 heard it was January 2011 -- Mr. Shinedling and his wife
24 lived in a home in Pinon Hills. It was a large home for
25 their family, and heating was very expensive to heat the

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1 entire house because it would heat the entire house and not
2 just single rooms. So he wanted to just heat certain rooms,
3 so he used defendant's portable space heater.

4 He did not know this distinction between radiant
5 heaters and non-radiant heaters. He read the warning. It
6 said keep material three feet away. He complied with that.
7 He didn't know the automatic shutoff would not work. Had he
8 known, he would have never used a radiant heater.

9 On the night of the incident, he's got three young
10 girls. Ava is the baby. She was three years old. She was
11 with her sisters in another room. They heard some coyotes.
12 It scared her, so she wanted to sleep with Mommy and Daddy.
13 So she came and slept with Mom and Dad in bed.

14 Amy Shinedling had rheumatoid arthritis, so she had
15 some impairments that affected her ability to move as quickly
16 as she otherwise would have. She had good days and she had
17 bad days. Sometimes she needed assistance like a walker.
18 Other days she could walk far distances. But it came and it
19 went. She had a bad knee.

20 So on the night of the incident you'll hear that in
21 their bedroom Ava was sleeping in the bed with Kenneth and
22 with Amy. They had two space heaters. They had a regular
23 non-radiant heater providing heat in one corner, and they had
24 a Holmes Sunbeam HQ307 radiant heater in another part of the
25 room providing heat for the room.

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1 They had a hamper full of clothes which
2 Mr. Shinedling will tell you he kept about five feet away
3 from the heater. He didn't get it close enough to the heater
4 so it was within three feet. He kept it five feet away.
5 Because Amy was having some disabilities and had difficulty,
6 they kept a box in the room where they would put trash in,
7 like papers and stuff, and then every other day get rid of
8 it.

9 They had a pile of clothing in another corner of
10 the room, and this was clothing that they were going to
11 either throw away or donate, and that clothing was not within
12 three feet of the heater. So Ava, Kenneth, and Amy go to
13 bed, and then early morning Kenneth is woken screaming. His
14 wife says that there's a fire. He's freaking out. She tells
15 him to take the baby, Ava obviously. He grabs the baby.

16 He comes around. He sees the fire right at the
17 space heater. He is again freaking out. He doesn't know
18 what to do. His wife tells him to go get the girls. By this
19 time when he comes around, she's off the bed and on the
20 floor. He thinks she's escaping, so he takes Ava and goes to
21 the other kids', his two daughters', room and gets his two
22 daughters, and then he goes outside.

23 By the way, it's cold. You'll see in pictures
24 there's snow on the ground at this time of year where they
25 live. He takes his daughters out in their robes with his

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1 baby huddled in his arms. He gets them to safety. They have
2 a hauler, a toy hauler where they keep jet skis or whatever
3 type of equipment in the hauler. He gets his daughters to
4 the toy hauler. As he's running out of the house, he picks
5 up a cordless phone and he calls 911. You'll hear -- I think
6 the defendant is going to play that 911 call. It's
7 harrowing. He's screaming. You can hear his daughters
8 yelling.

9 They are outside of the house. You can hear the
10 911 operator telling him: Don't go back in the house. But
11 he wants to go back in to find his wife. So you can hear him
12 go back in the house with the cordless phone. He's about to
13 go try and make sure his wife made it out alive, and the
14 phone goes dead because the wires burned down.

15 He sees his daughter behind him, so he has to go
16 tell his daughter: You can't come in. He goes back out. He
17 goes to a neighbor's house, you know, trying to put his
18 daughters in safety. Can I have a phone? He calls 911
19 again. Can't come into the house. By this time it's
20 burning. Again they tell him: Don't go into the house.

21 Ultimately he learns and we all know that his wife
22 died in that fire. She was unable to escape.

23 It's very simple. The evidence is going to show
24 had Sunbeam communicated to Mr. Shinedling not to use radiant
25 heaters in a room while you're sleeping and unattended and

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1 that safety feature that tells you it's going to shut off in
2 an overheat situation doesn't work, there would be no fire.
3 There would be no death.

4 You're going to hear that Mr. Shinedling has
5 undergone some pretty brutal times taking care of his three
6 daughters, issues of suicide. You'll hear evidence of how
7 hard it's been for him and his daughters to be without a wife
8 and a mother.

9 I was going to show you pictures, but I'll just
10 tell you. They were high school sweethearts, both members of
11 the Mormon church. Very close, very tight family. Life was
12 all about the kids. They loved each other tremendously, were
13 very, very close. They had been married for about 17 years.

14 So you will hear the impact on Mr. Shinedling and
15 those kids is devastating, and it doesn't get easier. It's
16 not like as time goes by, it gets easier. Every event, every
17 day they are reminded that they don't have -- that he doesn't
18 have the love of his life, and they don't have a mom.

19 I'm almost done. Let me outline the claims so that
20 you're clear what we're saying in this case and what the
21 defenses are. So the first claim is that the heater is
22 defective in design. There are two tests for you to use to
23 analyze whether something is defective. First is what's
24 called the consumer expectation test. What that means is:
25 Does it perform as safely as a consumer would expect it to?

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1 We believe the evidence is going to show that a
2 consumer has an expectation that when they use a radiant
3 heater, it will shut off before it starts a fire as the
4 defendant represents in its own manual. So this product does
5 not work as safely as a consumer would expect it to, and it's
6 defective under California law.

7 The second test, we become a little bit more like
8 engineers and we look at what are the risks of a design of a
9 product as compared to the benefits. You'll hear under that
10 risk benefit analysis the risks of using and selling a
11 radiant heater for use at home when people are sleeping
12 unattended are far greater than any benefits.

13 You'll hear there are alternate designs available
14 for defendant. If they want to sell home heaters for people
15 to use when they're sleeping and when it's unattended, they
16 have a whole line of products they can sell instead, and
17 those are non-radiant heaters.

18 You'll hear that a radiant heater does not provide
19 any better heating experience when you're sleeping. In fact,
20 it probably provides a worse heating experience because it's
21 radiating and focused on you when you're under covers. When
22 you're under covers and sleeping, you wouldn't want sun heat
23 on you. You wouldn't want heat in the entire room.

24 So under the risk/benefit test, we believe the
25 evidence is going to show that that heater is defective.

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1 That's the second defect.
2 We also believe the evidence is going to show this
3 radiant heater is defective in warning. What that means is
4 should they have warned about a risk that they knew about or
5 should have known about that a consumer would not know about?
6 The risk is not risk of fire. The risk is that if you use
7 this in a room when you're sleeping unattended and clothing
8 or something by accident gets within three feet, is this
9 heater going to shut off as they told you it would? That
10 risk is it won't.
11 We believe the evidence is going to show that the
12 consumer does not know that. It's not communicated anywhere
13 in their warnings or anywhere in their literature: By the
14 way, this automatic shutoff may not work. So we believe the
15 evidence is going to show that it's defective in warning.
16 Another claim is negligent warning, which just
17 means what a reasonable manufacturer selling products like a
18 radiant heater knowing or should have known these issues we
19 covered with you today should tell the user: Don't use these
20 heaters in a room when you're sleeping. Don't use it
21 unattended. The safety shutoff may not work.
22 We believe the evidence is going to show a
23 reasonable manufacturer would communicate those basic core,
24 you know, necessary information so someone can keep their
25 family safe and not have this sort of event happen.

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1 The fourth claim is were they unreasonable as a
2 manufacturer? So would a reasonable manufacturer have sold
3 this product the way they sold it for use sleeping while
4 unattended? We believe the evidence is going to show it
5 won't.
6 The fifth claim is recall. Basically what that
7 covers is if for some reason the defendant didn't know as of
8 2006 of the hazards we've identified through basic science of
9 their heater, did they learn afterwards and should they have
10 at least given a recall or some sort of notice? We believe
11 the evidence is going to show before and after 2006 they knew
12 and they should have at the minimum, bare minimum, sent out a
13 notice or recall telling people: Don't use these heaters
14 while you're sleeping in a room unattended.
15 That covers our claims. The defendant has a claim
16 and they are alleging that Mr. Shinedling was negligent for
17 not saving his wife. We believe that he acted as anyone
18 would in an emergency situation. He did what he was told and
19 he did what his heart told him, and that was to save his baby
20 and to save his daughters. He made every reasonable effort
21 to come back and save his wife even with the 911 operators
22 telling him not to go back in, and he was unable to do so.
23 We believe the evidence is going to show that there
24 was nothing reasonable that Mr. Shinedling could have done to
25 have avoided this incident or saved his wife.

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1 Now, one thing I didn't cover is what happened that
2 night that caused the clothing to get within three feet,
3 because everyone will agree clothing got within three feet of
4 the heater and that's what started the fire. Mr. Shinedling
5 will tell you again that he kept the clothing in a basket
6 five feet away. It wasn't within three feet. He doesn't
7 know personally, because he didn't see it, how clothing got
8 within three feet. He didn't do it.
9 But he will tell you that his wife would sometimes
10 get up to go to the rest room in the middle of the night, and
11 it may have been her that knocked over the hamper and the
12 clothing may have gotten within three feet. He'll tell you
13 that he had no idea that that may start a fire that would
14 kill his wife and that had he known that, he would never have
15 bought this heater.
16 That's our case in its essence. Thank you very
17 much.
18 THE COURT: All right.
19 Mr. Wolensky.
20 MR. WOLENSKY: Thank you, Your Honor.
21 OPENING ARGUMENT BY DEFENSE
22 MR. WOLENSKY: May it please the Court, counsel,
23 ladies and gentlemen of the jury, I along with David
24 O'Connell have the privilege of representing the men and
25 women of Sunbeam in this lawsuit. This is a sad and tragic

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1 accident. There is no question about it. And our hearts go
2 out to the Shinedling family for the loss of a mother and of
3 a wife.
4 Nevertheless, it is our view that Sunbeam is not
5 liable for the accident. The fact of the matter is we will
6 prove that there was no defect in the radiant heater and that
7 it was safe for its intended use.
8 Plaintiffs' counsel in his opening discussed,
9 mentioned a number of times that the heater started the fire.
10 Heaters don't start fires unless the unit somehow
11 malfunctions. There is no evidence in this case, there will
12 be no contention that the heater malfunctioned.
13 The other way for a heater to cause a fire is if
14 there was a manufacturing defect. There is no evidence in
15 this case. There will be no contention that there was a
16 manufacturing defect. So if that is the case, then the only
17 way for a heater to be involved in a fire is if there was an
18 environmental issue or if it was the way it was being used.
19 There is absolutely no dispute in this case that
20 something, combustibles, clothes, trash, garbage, whatever
21 got too close to the heater, well within this three-foot
22 area.
23 The plaintiffs' claim and the plaintiffs' expert,
24 who you'll hear shortly, is simply going to say that radiant
25 heaters get too hot and shouldn't be sold. The fact of the