

### QUESTION 1

Did the negligence, if any, of any of the parties named below proximately cause the occurrence in question?

“Berkel” means Berkel & Company Contractors, Inc. and its employees.

“Maxim” means Maxim Crane Works, L.P. and its employees.

“Negligence” means failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

“Ordinary care” means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

“Proximate cause” means a cause that was a substantial factor in bringing about an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

Answer “Yes” or “No” with respect to each of the following:

- a. Berkel      Answer: yes
- b. Maxim      Answer: yes

If your answer to Question 1 is "Yes" for Berkel, then answer the following question. Otherwise, do not answer the following question.

**QUESTION 2**

Did a Berkel employee acting in the course and scope of his employment believe that injury was substantially certain to result from his conduct on the date in question?

"Berkel" means Berkel & Company Contractors, Inc. and its employees acting in the course and scope of their employment.

An employer is responsible for the actions of its employees committed in the course and scope of their employment, which may include intentional actions that are closely connected with the employee's authorized duties.

Answer "Yes" or "No."

Answer: yes

If your answer to Question 2 is "Yes," then answer the following question. Otherwise, do not answer the following question.

### **QUESTION 3**

Was the conduct you have found in Question 2 the conduct of a vice principal or manager of Berkel?

A person is a "vice-principal" if that person is a corporate officer; or that person has authority to employ, direct, and discharge an employee of the company; or that person is engaged in the performance of nondelegable or absolute duties of the company; or the company has confided to that person the management of the whole or a department or division of the business of the company.

A person is a manager or is employed in a managerial capacity if that person has authority to employ, direct, and discharge an employee of the company; or the company has confided to that person the management of the whole or a department or division of the business of the company.

Answer "Yes" or "No."

Answer: yes

If you answered "Yes" to Question 1 for more than one of those named below, then answer the following question. Otherwise, do not answer the following question.

**QUESTION 4**

Assign percentages of responsibility only to those you found caused or contributed to cause the occurrence. The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The percentage of responsibility attributable to any one is not necessarily measured by the number of acts or omissions found. The percentage attributable to any one need not be the same percentage attributed to that one in answering another question.

For each party you have found caused or contributed to cause the occurrence in question, find the percentage of responsibility attributable to each:

a.	Berkel	Answer:	<u>90%</u>
b.	Maxim	Answer:	<u>10%</u>
Total			<u>100</u> %

If you have answered "Yes" to Question 1, then answer the following question. Otherwise, do not answer the following question.

### QUESTION 5

What sum of money, if paid now in cash, would fairly and reasonably compensate Tyler Lee for his injuries, if any, that resulted from the occurrence in question?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

Answer separately, in dollars and cents, for damages, if any. Do not reduce the amounts, if any, in your answers because of the negligence, if any, of any party. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

- a. Medical care expenses actually paid or incurred in the past.

Answer: \$192,000

- b. Medical care expenses that, in reasonable probability, Tyler Lee will incur in the future.

Answer: \$11,601,006

- c. Physical impairment sustained in the past.

Answer: \$1,000,000

- d. Physical impairment that, in reasonable probability, Tyler Lee will sustain in the future.

Answer: \$7,200,000

- e. Physical pain and mental anguish sustained in the past.

Answer: \$3,000,000

- f. Physical pain and mental anguish that, in reasonable probability, Tyler Lee will sustain in the future.

Answer: \$4,500,000

- g. Disfigurement sustained in the past.

Answer: \$2,000,000

- h. Disfigurement that, in reasonable probability, Tyler Lee will sustain in the future.

Answer: \$ 3,000,000

- i. Loss of earning capacity that, in reasonable probability, Tyler Lee will sustain in the future.

Answer: \$ 2,200,000

If you have answered "Yes" to Question 1, then answer the following question. Otherwise, do not answer the following question.

### QUESTION 6

What sum of money, if paid now in cash, would fairly and reasonably compensate Leigh Ann Lee for injuries, if any, to her husband, Tyler Lee, that resulted from the occurrence in question?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

Answer separately, in dollars and cents, for damages, if any. Do not reduce the amounts, if any, in your answers because of the negligence, if any, of any party. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

- a. Loss of household services sustained in the past.

"Household services" means the performance of household and domestic duties by a spouse to the marriage.

Answer: 0

- b. Loss of household services, that in reasonable probability, Leigh Ann Lee will sustain in the future.

Answer: 0

- c. Loss of consortium sustained in the past.

"Consortium" means the mutual right of the husband and wife to that affection, solace, comfort, companionship, society, assistance, sexual relations, emotional support, love and felicity necessary to a successful marriage.

Answer: \$ 100,000

- d. Loss of consortium that, in reasonable probability, Leigh Ann Lee will sustain in the future.

Answer: \$ 100,000

If you have answered "Yes" to Question 1, then answer the following question. Otherwise, do not answer the following question.

### QUESTION 7

What sum of money, if paid now in cash, would fairly and reasonably compensate Sydney Rose Lee, for the loss, if any, of parental consortium that resulted from the physical injury to Tyler Lee?

"Parental consortium" means the positive benefits flowing from the parent's love, affection, protection, emotional support, services, companionship, care, and society.

In considering your answer to this question, you may consider only the following factors: the severity of the injury to the parent and its actual effect on the parent-child relationship, the child's age, the nature of the child's relationship with the parent, the child's emotional and physical characteristics, and whether other consortium-giving relationships are available to the child.

Do not include interest on any amount of damages you find. Do not reduce the amounts, if any, in your answer because of the negligence, if any, of any party. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

Answer in dollars and cents for damages, if any, that—

- a. were sustained in the past.

Answer: \$50,000

- b. in reasonable probability will be sustained in the future.

Answer: \$500,000



Answer the following question regarding Berkel only if you unanimously answered “Yes” to Question 1 regarding Berkel. Otherwise, do not answer the following question.

To answer “Yes” to any part of the following question, your answer must be unanimous. You may answer “No” to a part of the following question only upon a vote of ten or more jurors. Otherwise, you must not answer that part of the following question.

### **QUESTION 8**

Do you find by clear and convincing evidence that the harm to Tyler Lee resulted from gross negligence attributable to Berkel?

“Clear and convincing evidence” means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

“Gross negligence” means an act or omission by Chris Miller,

- (a) which when viewed objectively from the standpoint of Miller at the time of its occurrence involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
- (b) of which Miller had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others.

You are further instructed that Berkel may be grossly negligent because of an act by Chris Miller if, but only if—

- 1. Miller was employed as a vice principal or in a managerial capacity and was acting in the scope of employment, or
- 2. Berkel or a vice principal or manager or the company ratified or approved the act.

A person is a “vice-principal” if that person is a corporate officer; or that person has authority to employ, direct, and discharge an employee of the company; or that person is engaged in the performance of nondelegable or absolute duties of the company; or the company has confided to that person the management of the whole or a department or division of the business of the company.

A person is a manager or is employed in a managerial capacity if that person has authority to employ, direct, and discharge an employee of the company; or the company has confided to that person the management of the whole or a department or division of the business of the company.

Answer “Yes” or “No.”

Answer: yes

Answer the following question only if you unanimously answered "Yes" to Question 8. Otherwise, do not answer the following question.

### QUESTION 9

You are instructed that you must unanimously agree on the amount of any award of exemplary damages.

What sum of money, if any, should be assessed against Berkel and awarded to Tyler Lee as exemplary damages for the conduct found in Question 8?

"Exemplary damages" means any damages awarded as a penalty or by way of punishment but not for compensatory purposes. Exemplary damages includes punitive damages.

Factors to consider in awarding exemplary damages, if any, are—

1. The nature of the wrong.
2. The character of the conduct involved.
3. The degree of culpability of the wrongdoer.
4. The situation and sensibilities of the parties concerned.
5. The extent to which such conduct offends a public sense of justice and propriety.
6. Berkel's net worth.

Answer in dollars and cents, if any.

Answer: \$ 8,500,000

FILED  
at 9:08 o'clock *W* M.

MAY - 5 2015

*Ronda Burchett*  
Clerk of District Court Brazoria Co., Texas  
BY \_\_\_\_\_ DEPUTY

### CONCLUDING INSTRUCTIONS

#### **Presiding Juror:**

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.
2. The presiding juror has these duties:
  - a. have the complete charge read aloud if it will be helpful to your deliberations;
  - b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
  - c. give written questions or comments to the bailiff who will give them to the judge;
  - d. write down the answers you agree on;
  - e. get the signatures for the verdict certificate; and
  - f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

#### **Instructions for Signing the Verdict Certificate:**

1. Unless otherwise instructed, you may answer the questions on a vote of ten jurors. The same ten jurors must agree on every answer in the charge. This means you may not have one group of ten jurors agree on one answer and a different group of ten jurors agree on another answer.
2. If ten jurors agree on every answer, those ten jurors sign the verdict. If eleven jurors agree on every answer, those eleven jurors sign the verdict. If all twelve of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.
3. All jurors should deliberate on every question. You may end up with all twelve of you agreeing on some answers, while only ten or eleven of you agree on other answers. But when you sign the verdict, only those ten who agree on every answer will sign the verdict.
4. There are some special instructions before Questions 8 and 9 explaining how to answer those questions. Please follow the instructions. If all twelve of you answer those questions, you will need to complete a second verdict certificate for those questions.

Do you understand these instructions? If you do not, please tell me now.

*Tami Holden*  
\_\_\_\_\_  
JUDGE PRESIDING

### Verdict Certificate

Check one:

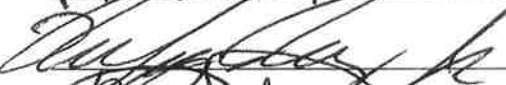

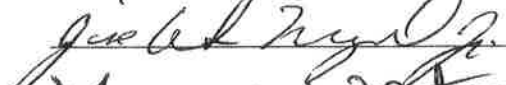





       Our verdict is unanimous. All twelve of us have agreed to each and every answer. The presiding juror has signed the certificate for all twelve of us.

Signature of Presiding Juror Printed

Name of Presiding Juror

☒ Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

       Our verdict is not unanimous. Ten of us have agreed to each and every answer and have signed the certificate below.

	Signature	Named Printed
1.		Bri Hany Kibodeaux
2.		Rufino Ramirez Jr
3.		Morgan Crocker
4.		Jose A. San Miguel, Jr.
5.		Tanya Watson
6.		Shawn M. Gura
7.		Ruben Jasso
8.		DONNA F. SPRAGUE
9.		NATHAN RAO
10.		Mirah Provenzano
11.		ANNE A. COMEAUX

If you have answered Question 8, then you must sign this certificate also.

### Additional Certificate

I certify that the jury was unanimous in answering Questions 1, 8, and 9. All twelve of us agreed to each of the answers. The presiding juror has signed the certificate for all twelve of us.

Anne A. Comeaux  
Signature of Presiding Juror Printed

ANNE A. Comeaux  
Name of Presiding Juror