

REPORTER'S RECORD
TRIAL COURT CAUSE NO. 75576-CV

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3	TYLER LEE AND LEIGH ANN LEE,) IN THE DISTRICT COURT OF
	INDIVIDUALLY AND AS NEXT)
4	FRIEND OF SYDNEY ROSE LEE,)
	MINOR)
5)
	vs.) BRAZORIA COUNTY, TEXAS
6)
	BERKEL & COMPANY,)
7	CONTRACTORS, INC.)
	MAXIM CRANE WORKS, L.P.,)
8	DIXON EQUIPMENT SERVICES, INC.,)
	FLOYD DIXON, ISAAC DOLAN,)
9	JAMES DAVIDSON, ANDREW BENNETT,)
	AND LINK-BELT CONSTRUCTION)
10	EQUIPMENT CO.) 149TH JUDICIAL DISTRICT
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14	<hr/> OPENING STATEMENT BY MR. MCKINNEY <hr/>	
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17	On the 21st day of April, 2015, the following proceedings	
18	came on to be heard in the above-entitled and numbered cause	
19	before the Honorable Terri Holder, Judge presiding, held in	
20	Angleton, Brazoria County, Texas.	
21	Proceedings reported by computerized stenotype machine.	
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(NO EXHIBITS)

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PROCEEDINGS

(Beginning of requested excerpt)

THE COURT: Mr. McKinney?

MR. MCKINNEY: Morning break, or you want me to start, Judge?

THE COURT: Go ahead.

MR. MCKINNEY: I'm going to do it like this.

Good morning.

UNIDENTIFIED JURORS: Good morning.

MR. MCKINNEY: Okay. There's a lot I want to cover and I don't have as much time as Mr. Arnold had to speak but before I get into it, I need to make some instructions. This gentleman right here is Doug Mena. He's my law partner. Doug knows a lot more about cranes than I do and Doug will be examining all of the witnesses in this case on the topic of cranes. This is my associate, Brandon Mullen(phonetic). Brandon's going to be helping us with the trial and handling our limited matters with technology. In the back -- stand up, please, Ken. This is Ken Blum. Ken Blum is the vice president of operations for Berkel. Mr. Blum will testify in this case. He will be called to the witness stand by Mr. Arnold.

When Mr. Blum testifies, his hands are going to shake because he has Parkinson's disease. Some people think that his hands shake because he's nervous. The most fearless

1 man -- or the second most fearless man in this courtroom is
2 Ken Blum. He will answer every question that Mr. Arnold has,
3 and he will answer every one of those questions honestly.

4 It is a privilege for me to represent Berkel.
5 Berkel is unlike any company I have ever represented before in
6 35 years of doing this. Berkel is an ESOP. I thought ESOP
7 was a Greek guy who wrote some stories called *Aesop's Fables*.
8 I learned that in high school. It turns out an ESOP company
9 is owned by its employees. When you go to work for Berkel and
10 you've been there for 90 days, you become an owner of the
11 company. And when you leave Berkel, you leave, they write you
12 a check for when you retire, all of your ownership interest
13 goes into your retirement fund. I've never represented a
14 company that was owned 100 percent, which Berkel is, by its
15 employees. That's new for me, and I like doing that.

16 Now, what happened that day was a tragedy. As
17 I was sitting at the counsel table, like I have done in maybe
18 a hundred and twenty or a hundred and thirty cases over the
19 years, listening to Mr. Arnold give his side of the story, I
20 was saying to myself the same thing I've said the other
21 hundred and twenty or thirty times I have done this: Lord, I
22 hope that jury understands that there are two sides to this
23 case. I sure hope that's what that jury is keeping in their
24 mind.

25 You may have noticed that I go second and Maxim

1 goes third. So you're going to hear one perspective in this
2 case and Mr. Arnold gets to decide which witnesses are called
3 and in what order. That's totally within his control.
4 Mr. Arnold will call virtually every witness in the case in
5 the order he wants you to hear from them. We pick up the
6 pieces afterwards. That's the way our system works and that's
7 because Mr. Arnold and Mr. Lee, the plaintiffs, have the
8 burden of proof. And I'm going to talk some more about that
9 in just a minute.

10 What happened that day was a true tragedy. It
11 was awful. No doubt about it. It's a tragedy, however, that
12 no one saw coming. The fundamental disagreement Mr. Arnold
13 and I have -- and I'm glad he said it to you the way he said
14 it in the very beginning of his opening statement -- that
15 Chris Miller disregarded every sign of impending disaster and
16 went forward with this operation. I am glad Mr. Arnold put it
17 like that because the flip side is if Mr. Miller did not
18 disregard -- if there were no signs of impending disaster and
19 what Mr. Miller was doing was normal, normal unsticking an
20 auger process -- and even though you may all agree that
21 Mr. Miller would not be the most pleasant person in the world
22 to work for, I will grant you that, and he's a construction
23 worker, he uses language that we will not be using in the
24 courtroom. I promise you that. But if the flip side of what
25 Mr. Arnold says is true, that there were no signs of impending

1 doom, that no one thought that crane boom was getting ready to
2 collapse and kill or injure someone, then the only logical
3 conclusion is that Berkel did not do anything wrong that day.
4 It's either A or B, and now I'm going to open up the first of
5 my PowerPoint slides.

6 Okay. You haven't heard those words before,
7 the greater weight of the credible evidence. Mr. Arnold and I
8 are going to disagree about a lot of things. You'll have to
9 decide at the end of the case who's got the right of it and
10 who's got the wrong of it. Remember yesterday when Mr. Arnold
11 told you that you would be -- he had two reames of paper --
12 that you would be instructed that the burden of proof in a
13 civil case is if he puts one more piece of paper on top of one
14 of those reames, he wins. Remember that? That is not what
15 the judge is going to tell you at the end of the case. That
16 is not even within a light year of what the burden of proof is
17 in a civil lawsuit.

18 In a civil lawsuit, you will be instructed that
19 you can only find something to be true if that something is
20 proven by the greater weight of the credible evidence admitted
21 before you. So the first thing you have to do -- and this is
22 going to become germane, relevant, important to what I'm
23 getting ready to tell you about the facts of this case. The
24 first thing you have to do before you get into the weighing
25 business and counting the evidence, figuring how much there

1 is, you've got to determine whether you believe it because if
2 you don't believe it, you disregard it. If it's not true, you
3 don't base your verdict on it. It's fundamental American law.

4 So you take the true evidence. You take the
5 true evidence and you weigh that and if the evidence weighs in
6 favor of Mr. Lee, then you say so by your verdict. If the
7 evidence does not weigh in favor of Mr. Lee, the credible
8 evidence, then you also say so by your verdict; and that's
9 your solemn duty as jurors, even if you don't like doing it.
10 Even if you think the outcome might hurt Mr. Lee, that's what
11 you've got to do.

12 So here's some more information: Berkel has
13 been drilling holes in the ground for 56 years. That was not
14 their first stuck auger. That was not their first rodeo.
15 When augers get stuck in the ground, there is a process for
16 getting the auger out. Chris Miller was in the middle of his
17 process; and it's an orderly step-by-step process, trying to
18 get the auger unstuck. It is a fact that Mark Stacy -- and
19 Mark Stacy and Chris Miller are cats and dogs. They've never
20 liked each other. They're not going to like each other.
21 They're going to have to go to different parts of heaven
22 because they are never going to get along for as long as there
23 is time in this universe, okay?

24 So they disagree. They didn't get into a
25 fight. Don't think blows were exchanged. That didn't happen.

1 Miller took over the operation. It went on longer than Andrew
2 Bennett thought it should. Andrew Bennett did get out and
3 say, "This is a waste of time. We're not doing any good."
4 That far we agree.

5 Can you get that thing up, the picture -- okay.

6 This is -- I'm showing you this because I want
7 you to understand something really important. This area right
8 in here is where the entire Berkel crew of ten or so men was
9 standing during the efforts to remove -- to unstick the auger.
10 Right in this area, where as you can see, all the damaged
11 equipment fell when the boom failed.

12 Now, let's think about this, okay? Chris
13 Miller -- if I may use this -- during the removal operations,
14 was standing right at the base of the auger, okay? Andrew
15 Bennett is in the cab. Mickey Disotell and Chris Prestridge,
16 two disgruntled former employees, are standing right beside
17 the cab. The rest of the crew is all in this area, okay?

18 Now, if you think a crane is getting ready to
19 collapse, is that where you're going to stand? Seriously?
20 You're not going to say something about it, get the heck out
21 of dodge?

22 Not only did the crew not do that, the next day
23 they were taken off to a Chinese restaurant. Everybody seems
24 to remember it's a Chinese restaurant. They were given blank
25 sheets of paper and told, "Write down what you remember.

1 Write down what you saw." I made it a point to ask -- to ask
2 Mr. Disotell and Mr. Prestridge, "Well, did anyone try to
3 influence or limit what you wrote down?"

4 "No, we were free to write down whatever we
5 wanted to say."

6 Okay. So here we have eight or ten men who
7 have just, within 24 hours, experienced a horrifying incident
8 in which a fellow worker lost a leg. Men who are in the
9 immediate aftermath of a huge tragedy, an upsetting -- an
10 incredibly disturbing tragedy. It's the perfect time for at
11 least one of them to unload on Chris Miller and blame him for
12 everything and accuse him of running an unsafe job site, et
13 cetera, et cetera, et cetera; but not a single person said
14 that in the immediate aftermath.

15 Only two people who were there that day
16 criticized the operations, Mr. Disotell and Mr. Prestridge.
17 This is not my first lawsuit in which there was at least one
18 disgruntled former employee testifying against his employer or
19 her employer. It happens. It happens a lot. And so what you
20 do is you just let them talk. Let them get it all off their
21 chest. And the more Mr. Disotell, in particular, talked, the
22 more we learned.

23 I will show you, and it will take a lot of this
24 and a lot of that and look what he said here and look what he
25 said here, that Mr. Disotell is, in fact, all over the place

1 describing what happened that day. But in and amongst what he
2 said -- and this was in response to a question from Mr. Arnold
3 in the early part of his deposition before he got all wound
4 up -- Mr. Arnold asked him, "Well, how many times did that
5 crane tip that day?"

6 He said, "Well, once."

7 It didn't really tip. One or two of the wheels
8 inside the track came off the ground one time.

9 And he went on to say in his deposition, "But
10 you had to be looking real carefully to even see that happen,"
11 one time. Okay. That is not the world getting ready to come
12 to an end, but that was his testimony. Chris Prestridge in
13 the same light. I asked these gentlemen, "You were standing
14 right there next to mister -- Mr. Bennett when he was
15 operating the cab, the crane" -- and by the way, they both
16 think Andrew Bennett's a fine crane operator -- "Did you see
17 him do anything immediately before the boom failed that would
18 have caused, you know, the crane to do something and cause
19 that boom to fail?"

20 No, he didn't see anything like that.

21 And by the way, in these statements that these
22 men wrote, in the depositions of everyone but Mr. Disotell and
23 Mr. Prestridge, it was normal work operations and then
24 suddenly they heard a loud boom above them and they looked up
25 and they saw it all coming down. No one expected this to

1 happen. No one acted the way a normal human being would act
2 if they expected some kind of enormous disaster to take place.

3 So to get back to where Mr. Arnold and I
4 disagree, on the one hand, there were all these warning signs.
5 On the other hand, you have two unhappy former employees who
6 are saying two different things, one before the lawyers got
7 involved and one after, okay? That's your job: To find the
8 credible evidence, find what is the true evidence, and then
9 weigh it. And it is hard work. It's hard work being a juror.

10 But that's not all the evidence Mr. Arnold's
11 going to have in this case. He's going to have paid expert
12 witnesses. I am not a big fan of paid expert witnesses. If
13 you can't get there on what the eyewitnesses said, why should
14 you have to go out and buy the testimony? Why should you have
15 to go out and buy your evidence? So there will be paid expert
16 witnesses who will say, "Well, we've looked at this and we've
17 looked at that and we're engineers and we're getting paid 3-
18 or 400 bucks an hour, 250 bucks an hour, and our opinion is
19 all these bad things happened."

20 So is it credible? Does it outweigh the
21 eyewitness testimony? But more importantly, not the
22 eyewitness testimony, the eyewitness behavior, the way folks
23 conducted themselves right up until that boom collapsed. What
24 evidence can be brought that would dispute people acting
25 perfectly normal and saying so the next day? What evidence

1 overcomes that, and how many witnesses can you buy? How many
2 former employees changing their story can you have to overcome
3 what actually happened?

4 Okay. So we're not here because we don't want
5 to be held accountable. We're here because we don't know why
6 that crane failed and we do not believe we overloaded that
7 crane. And now I want to talk about cranes. And I stand to
8 be corrected to a degree, but I'm pretty sure I'm about
9 95 percent right on this.

10 This particular crane, it's a Link-Belt crane.
11 Have you heard the name Link-Belt so far in this trial?
12 Link-Belt was a defendant in this lawsuit. They were a party
13 to this lawsuit and trying really hard to throw us under the
14 bus, by the way. They aren't any longer. That jury charge
15 that you saw up there that Mr. Arnold was throwing around,
16 Link-Belt would be on there, too. I'm going to talk about
17 Link-Belt quite a bit throughout this trial, as will Doug
18 Mena. The Link-Belt crane has a device that's a combination
19 of alarms and function limiters. There are keys that Maxim
20 delivers to Berkel, some of which you can use to override some
21 of the alarms and some of the functions.

22 We have conclusive photographic evidence that
23 those keys were on a key ring attached to the ignition key
24 inside the crane. That's kind of an obscure factual reference
25 that I'm making here, but it's going to come up throughout the

1 trial because there's going to be an allegation, I suspect,
2 that Andrew Bennett overrode one of the alarms. We think
3 that's pure garbage and we think the evidence conclusively
4 proves that, but nonetheless there may be that allegation in
5 the case.

6 When the alarms are functioning properly -- I'm
7 going to cut to the chase and tell you how the story ends and
8 then I'll tell you. The alarms on this crane weren't
9 functioning. The function limiters on this crane weren't
10 functioning. Nothing was working on this crane. When you
11 operate a crane and you get to 90 percent of its rated power,
12 an alarm comes on and says you're at 90 percent. When you get
13 to a hundred percent, an alarm comes on and says you're at a
14 hundred percent and the crane essentially goes into neutral.
15 That never happened. That never happened.

16 Now, Link-Belt, if they were here, they'd be
17 claiming, "Oh, no Andrew Bennett overrode all that stuff. He
18 overrode all that stuff and that's why -- that's why it never
19 happened." But Link-Belt, if they were here -- to speak
20 honestly to you, if I can do that -- would have to admit that,
21 well, if the crane goes to a hundred and twenty percent, which
22 is not going to collapse a boom, it's 20 percent over its
23 load; but it's still well within the safe working distance of
24 the margin of safety.

25 If it goes to a hundred and twenty percent,

1 there's nothing the operator can do about what happens next.
2 If it's working properly, a loud, obnoxious, unpleasant,
3 screeching smoke alarm/fire-alarm-type noise goes on and it
4 won't go off. Chris Prestridge and Mickey Disotell standing
5 5 feet outside the cab -- and we will have testimony from
6 Link-Belt that admits that somebody who's 5 feet outside of
7 the cab would absolutely hear that alarm if it went off --
8 never heard the alarm. No one heard that alarm and that's
9 because no part, no part of the function limiting system, no
10 part of the alarm system on this crane was operating. Now,
11 why is that?

12 Well, the electronics, whatever it is, it's a
13 20-year-old computer system. No technological upgrades. No
14 maintenance schedule. No tech coming out every three or four
15 years. No recommended, "Here's how you troubleshoot it." No.
16 They stick those dadgum things in a crane. They might be
17 there 5 years, 10 years, 20 years; and they just leave them
18 there until they break. Who does business that way? No
19 wonder they're not here.

20 I can't tell you the crane wasn't overloaded.
21 I can't tell you that. We can't know that if the function
22 limiters and all the other stuff isn't working, and forget
23 about the PRI[sic] being in the way of the computer. A, you
24 can fold it out of the way or you can lean over it and look at
25 it; but more importantly, if the alarms aren't going off, that

1 computer's not telling you anything anyway. That's what the
2 evidence is going to be in this case.

3 So the bottom line is: We have what the people
4 who were actually out there that day said and did and what
5 they wrote the day after, before the lawyers got involved,
6 before there was a lawsuit and we have the paid experts, the
7 two former disgruntled employees whose testimony I will show
8 you contradicts itself and if I got to just pick the part that
9 I like, you would have to agree with me that Berkel did
10 absolutely nothing wrong.

11 Now, the hard part about somebody who can't
12 keep their story straight is you don't know which part to
13 believe. So it's kind of hard to determine whether it's
14 credible in the first place and if you think the conflicting
15 parts are credible, how do you weigh them against each other
16 when it all comes from the same person. It's very difficult,
17 or so I've been told.

18 The last point I want to make is you'll have a
19 chance to meet Chris Miller and Andrew Bennett, live and in
20 person. A number of the other Berkel men will testify by
21 video deposition. If Mr. Arnold's position is the correct
22 position, each of these men is somewhere between extremely
23 reckless about their own lives and safety -- and in
24 Mr. Bennett's case and in Mr. Miller's case, they approach
25 suicidal because those two men -- and Mr. Disotell and

1 Mr. Prestridge because those four men, if they thought
2 something like this was getting ready to happen, they were in
3 the area most likely to be affected by this. If
4 Mr. Prestridge and Mr. Disotell are telling the truth, they
5 were standing essentially in front of a run away train, but
6 they were afraid to get out of the way because they were
7 afraid they would be fired, or so they say.

8 Now, when I heard him say that, I thought, So
9 by your story you're working for the worst, most unsafe
10 company in the world, they're about to kill you, and you won't
11 get out of the way because you're afraid they won't let you
12 work for them anymore? Does that even make sense?

13 Changing subjects: One of the -- I don't know
14 whether you're going to find this to be intensely boring or
15 quite interesting, but one of the aspects of this case will be
16 evaluating not Mr. Lee's future medical needs, there's not
17 that much disagreement on what those future needs are, rather,
18 where the fight lies -- once again, we get down to paid expert
19 witnesses. Where the fight lies is: What are these
20 prosthetic devices going to cost in the future?

21 I'm going to try to preview for you what the
22 evidence in that regard will be, what the history of
23 prosthetic development has been so far, who the witnesses are
24 and all of that.

25 Judge, do you happen to know how much time I

1 have left?

2 THE COURT: You have 14 minutes left.

3 MR. MCKINNEY: 14 minutes. Thank you.

4 Okay. The history of prostheses -- and we're
5 talking specifically prosthetic devices for people who, for
6 whatever reason, have lost a leg above the knee. There's a
7 big difference between losing a leg above the knee and losing
8 a leg below the knee. No one ever wants to be put to this
9 choice, but it's much easier to deal with the loss of a leg
10 below the knee than it is above the knee.

11 Twenty, 25 years ago, the best that people
12 could do was a wooden leg, pretty awful actually. And in time
13 some mechanical elements were introduced and then about 18
14 years ago, the first microprocessor knee was invented and
15 given -- and this is a very important fact. You're going to
16 hear this over and over. It was given a Medicare L Code; L,
17 new word, code. That's going to be a big deal in this case.

18 That microprocessor, evolved over time into a
19 prosthetic called the C-Leg; capital C, leg, two words[sic].
20 The C-Leg today is the basic standard of care. This is what
21 we give to folks who have lost a leg above the knee
22 prosthesis. C-Leg's been around 15 years or thereabouts.

23 We invaded Iraq and Afghanistan after 9/11 --
24 we all know that -- and our troops, after the occupation of
25 Iraq began, began experiencing casualties as a result of IEDs,

1 improvised explosive devices, and an extraordinary number of
2 troops were losing limbs. The Department of Defense went to a
3 company called Ottobock, O-t-t-o, B-a-c-h, two words[sic] and
4 said to Ottobock, "Here's a bunch of money, take that C-Leg
5 and make it do things that will put men and women who have
6 lost their legs back into uniform and back into service."

7 Ottobock said, "Okay. We'll take that
8 challenge."

9 Ottobock was given five years to create the
10 next, new best thing in prosthetics. They fell short on one
11 key element and so at the end of five years, they came up with
12 an interim prosthetic called the Genium. The next layer up is
13 the X3. The X3 refers to the microprocessor that's in the
14 knee. The difference between the Genium and an X3: The X3 is
15 waterproof. The Genium is not. That's the only difference.

16 Now, let's talk about L Codes. Every part on
17 Mr. Lee's leg, every single part, except the X3 processer, has
18 a Medicare L Code. What that lets us do is go back in time
19 and look at the growth -- the rate of growth for the cost
20 increase on all of these different component parts and
21 determine how much the cost of these parts has gone up over
22 time.

23 This isn't something you have to be a paid
24 expert to do. You can -- you can go online. You can't
25 because you've been told not to. If you were allowed to, you

1 could go online. You could look at the Medicare L Codes. You
2 could match the L Codes from online to the L Codes that are
3 actually -- and they should be in evidence. You're going to
4 see this. The L Codes that make up the X3 processor and you
5 could -- you would find out that every L Code, whether it's a
6 microprocessor knee, whether it's a foot, whether -- whatever
7 the component is, the cost increase over ten years, about
8 1 percent a year.

9 That's a big, big deal because that
10 \$11.5 million number that Mr. Arnold mentioned, when you look
11 at the actual L Code costs over time, it shrinks down to about
12 3 million; and we've got no issue with that number. We want
13 Mr. Lee to get the medical care he deserves. No one expects
14 Mr. Lee to dial it back to a C-Leg or even a Genium. The X3
15 is perfectly fine. He deserves not just that, but a swim leg
16 and a running leg and if you listen to the evidence in this
17 case, you will see -- not from our paid expert, although we've
18 had to hire experts, too, to counter these number people that
19 Mr. Arnold's hired. If you look at the prosthetist, the man
20 who makes the prosthetics, look at his costs, if you listen to
21 doctor, Mr. Lee's own treating doctor, you'll see what he
22 needs in the future and you'll have a good sense of what it
23 costs. Our paid witnesses have used those numbers to project
24 the future losses. You have to decide who you believe and how
25 to weigh it.

1 Now, every time I sit back there, I make a
2 bunch of notes about some things that got said that I feel
3 like I need to comment on. So I'm going to go through my
4 notes and see what those might be. We talked about -- oh, the
5 useful life of the prosthesis, five years. That's per John
6 Holmes, the prosthetist who takes care of Mr. Lee. It's not
7 three to four years; five.

8 What's on the horizon technologically speaking?
9 Potentially, potentially, mechanically driven prosthetics; but
10 we're a long way away from that. The only mechanically driven
11 prosthesis that Mr. Holmes will tell you about, his patient
12 give it back. It has a battery life of about six hours. The
13 battery life on the X3 is five days. It weighs a ton. Just
14 not satisfactory. It'll never be waterproof. The only thing
15 that Dr. Meier and Dr. Melton, Mr. Lee's treating doctor,
16 could identify that they see on the horizon is not a change in
17 prosthesis. They couldn't -- so far the X3 looks like it's
18 going to be the Lexus and the long time Lexus in the
19 prosthetic department.

20 There is a potential that in the future the FHA
21 may approve a procedure that's being used in Great Britain and
22 in Australia where instead of a socket -- which I call a
23 sleeve, and I have it wrong; but that's the device that fits
24 over the remainder of Mr. Lee's leg. Instead of using a
25 socket, the prosthesis will attach directly to the bone.

1 Quite frankly, I have my doubts about that. I'm not sure that
2 the bone is going to be -- I think that we're going to need a
3 lot of research before we can assure ourselves that the
4 vertical loading on the bone will carry that kind of a load
5 for the lifetime of a human being, but that's -- that's what's
6 on the horizon. Just -- that's what the evidence is going to
7 be. I'm not making that up because I've taken all of these
8 depositions myself. You'll be hearing about it.

9 Just like the 11-and-a-half-million-dollar
10 number -- and by the way, when you're finished hearing what
11 those paid witnesses have to say about how they got to those
12 numbers, you're going to be shaking your heads. I don't think
13 you're going to approve of that kind of methodology in a court
14 of law. Just like those numbers are extraordinary, I
15 anticipate you will hear other numbers throughout this case
16 and at the end of the case that are extraordinary. So I ask
17 you: Really consider these thoughts that I'm going to put
18 before you.

19 In real life -- every one of us has our own
20 tragedy in our lives, if not multiple tragedies, that those
21 near and dear to us have had to deal with. In our own lives,
22 if at the end of the month, you have, after working hard all
23 month, you have 4- or \$500 left over in your checking account,
24 or a thousand dollars left over in your checking account, for
25 most folks that's been a pretty good month.

1 Now, let's talk about a thousand dollars. When
2 you decide to buy a home, whether it's a 100,000-dollar home
3 or a 200 or a 300 or, you know, whatever you can afford, the
4 difference between 100 and \$120,000, if that's your price
5 range based on your budget, those are real dollars. Those are
6 significant dollars in a human being's life. You're not going
7 to be asked to compensate Mr. Lee, nor would any jury be asked
8 to compensate any plaintiff, based on what I like to call
9 lawyer dollars. Lawyer dollars, the minimum bill is a hundred
10 thousand dollars. That's the smallest bill in lawyer dollars,
11 and it goes up into millions. Everything is millions for this
12 and millions for that.

13 And in fact, you will be asked what sum of
14 money, if paid in cash today, would fairly and reasonably
15 compensate Tyler Lee for mental anguish in the past, conscious
16 pain and suffering in the future, loss of earnings in the
17 past, and so on. You can go with lawyer dollars. You'll make
18 the headlines. You will. Or you can think about how every
19 one of us have lived our lives and will live our lives and you
20 can use normal human dollars in the kinds and amounts of money
21 that normal humans think of and deal with on a day-to-day
22 basis and you can award dollar amounts that fairly and
23 reasonably compensate and you will have certainly done your
24 duty as jurors and no one can complain about that.

25 Even if I have a little bit of time left,

1 folks, I'm going to give it back to you. I know you're
2 probably ready to start hearing some evidence and you're tired
3 of hearing from lawyers. Unfortunately, you have to listen to
4 Mr. Diamond. You should listen to Mr. Diamond. He goes last.
5 He'd like your consideration every bit as much as you've given
6 it to me and Mr. Arnold. Thank you.

7 THE COURT: All right. Ladies and gentlemen,
8 we're going to take our morning break at this time. Please
9 leave your notes in your chair or slide them under your chair
10 so they'll be there when you return, and we'll take about a
11 ten-minute break. Please be back at your assembly point at
12 11:15. Thank you.

13 *(Jury leaves courtroom)*

14 *(Requested excerpt concluded)*

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1 STATE OF TEXAS)

2 COUNTY OF BRAZORIA)

3 I, Robin Rios, Official Court Reporter in and for
4 the 149th District Court of Brazoria County, State of Texas,
5 do hereby certify that the foregoing contains a true and
6 correct transcription of all portions of evidence and other
7 proceedings requested in writing by counsel for the parties to
8 be included in this volume of the Reporter's Record, in the
9 above-styled and numbered cause, all of which occurred in open
10 court or in chambers and were reported by me.

11 I further certify that the total cost for the
12 preparation of this Reporter's Record is \$375.00 and will be
13 paid by Arnold & Itkin, LLP.

14 WITNESS MY OFFICIAL HAND this the 27th day of April,
15 2015.

16 /s/Robin Rios

17 Robin Rios, Texas CSR 8910
18 Expiration Date: 12/31/2016
19 Official Court Reporter, 149th District Court
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