

STATE OF NEW MEXICO
COUNTY OF RIO ARriba
FIRST JUDICIAL DISTRICT COURT

No. D-117-CV-2017-00089

ERIC ARMSTRONG and
LUKE ARMSTRONG,

Plaintiffs,

vs.

EXPRESS RANCHES, LLC,

Defendant.

TRANSCRIPT OF PROCEEDINGS

JULY 10, 2019

THE HONORABLE MATTHEW J. WILSON PRESIDING

A P P E A R A N C E S

FOR THE PLAINTIFFS:

Lee Hunt, Esq.
Aimee Bevan, Esq.

FOR THE DEFENDANT:

Nicholas Rimmer, Esq.

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THE COURT: We are back on the record in the matter of D-117-CV-2017-89, Luke and Eric Armstrong versus Express Ranches, LLC. I note that counsel and the parties are present in the courtroom.

Any preliminary matters we need to address before we bring out the jury?

MR. HUNT: Good morning, Judge.

THE COURT: Good morning.

MR. HUNT: First of all, we have the Jury Instructions.

THE COURT: Okay.

MR. HUNT: Our task was to get them in order. So what we have here and we also have it on a disc, is the -- the Instructions starting with the -- the time has now come to give you final instructions. So, the full set of the final is what we have.

THE COURT: Okay.

MR. HUNT: And I wanted to make note --

THE COURT: You may approach, yes.

MR. HUNT: There are two minor changes from what were discussed yesterday. One of them is in the 302 Instruction. We've looked at it and what we realized is we were working off an earlier draft when we were all discussing it, so there's

1 one paragraph that was slightly amended. I've shown that to
2 Mr. Rimmer. He does not have an objection on numbered
3 Paragraph Three of that set.

4 THE COURT: Okay. And I'll note the -- the changes.
5 And Mr. Rimmer, you had no objection to them?

6 MR. RIMMER: No, Judge.

7 THE COURT: Okay. Then I'll go ahead and accept that
8 302 Instruction as amended.

9 MR. HUNT: Very good. The last is on the Punitive
10 Damage Instruction. Again, in Paragraph Three of that
11 Instruction -- I'll wait 'til you get there. (Pause.)

12 Numbered Paragraph Three is the Cumulative Conduct
13 Instruction under New Mexico law. And it had previously read,
14 "If you find that the conduct of James Rockenfield, taken as
15 a whole," and that was an error. It should have read, and
16 what it does read now, "If you find that the conduct of Express
17 Ranches, taken as a whole."

18 So, that also has been corrected. And again, I showed
19 that to Mr. Rimmer and my understanding is he has no objection
20 with that change as well.

21 THE COURT: Okay. Any objection to that?

22 MR. RIMMER: No, Judge.

23 THE COURT: All right. So, I'll note that
24 modification. I'll accept that modification as well.

25 MR. HUNT: One other issue not related to the Jury

1 Instructions, but --

2 THE COURT: Well, before we move on to the Jury
3 Instructions, or from the Jury Instructions, is the order of
4 the proposed Instructions at this point acceptable to the
5 attorneys?

6 MR. HUNT: Yes.

7 THE COURT: The order as compiled at this point, the
8 order of the different Instructions to be read by me to the
9 jury, is that acceptable to you Mr. Rimmer?

10 MR. RIMMER: Yes, Judge, it is.

11 THE COURT: All right.

12 MR. RIMMER: Thank you.

13 THE COURT: So, I will intend -- and we'll do one
14 final discussion on the Jury Instructions, but I intend to
15 number them in order as presented to me by the attorneys.

16 MR. HUNT: Very good.

17 THE COURT: All right. And you had another
18 preliminary matter?

19 MR. HUNT: I did, Judge. This goes back to the
20 Court's Order in detailing kind of the Defendant's issues on
21 not -- one, Ms. Funk not appearing for deposition and not
22 providing information on net worth.

23 The Court entered an Order compelling the Defendant
24 by five o'clock on Friday to provide information on net worth
25 and then it set out a few other things.

1 I had a -- a number of conversations with Mr. Rimmer
2 about those issues. He did produce some information. I mean,
3 he produced a map, produced a tax bill. He did not produce
4 anything related to net worth, and I take him at his word a
5 hundred percent, which is he tried really hard, and did
6 everything he could, and wasn't able to get that.

7 So, I didn't bring that to the Court beforehand
8 because of that issue. I don't think there was anything
9 to compel when he's saying, "I've tried and my hands are
10 tied." Nonetheless, we think that there should be a remedy
11 for that, 'cuz that still is an issue that is part of what the
12 jury has to decide.

13 So, the remedy we propose, and I would propose to do
14 this before the close of our case, is allow us to read the
15 first two numbered paragraphs of this Court's Order -- the
16 Order Compelling Production of Information. I think it's part
17 of the Court record, so I think it's certainly something that
18 is proper to present to the jury. I don't intend to introduce
19 it as an Exhibit or anything like that, but allow us to read
20 it.

21 And what it says is: "Defendant Express Ranches
22 refused to produce Nedra Funk, it's managing member, sole
23 owner, and person who verified discovery responses, for
24 deposition despite requests by Plaintiff. Plaintiff intended
25 to depose Ms. Funk in part on the net worth of Express Ranches."

1 The second paragraph says, "Defendant Express Ranches
2 has failed to provide information requested in discovery
3 related to the net worth of Defendant Express Ranches, even
4 though it indicated in its discovery responses that such
5 information would be provided."

6 So, we would simply read those two paragraphs to the
7 jury and then that would permit us to argue from them in
8 closing. So that's the --

9 THE COURT: All right. So, let me interrupt you
10 there.

11 So, if there's a cell phone that someone hasn't turned
12 off, turn it off. If anyone in the audience interrupts this
13 proceeding again with a cell phone, I'll confiscate your phone.
14 Sorry for interrupting you, Mr. Hunt.

15 MR. HUNT: No, Judge. So, that's the proposed remedy.
16 I did discuss that with Mr. Rimmer, and I'll let him respond,
17 but I believe that there may in fact be agreement that that's
18 as good as we can do at this stage of the proceedings.

19 THE COURT: All right. Mr. Rimmer, do you have a
20 response?

21 MR. RIMMER: Yes, your Honor. This is a situation I
22 never wanted to be in -- failing to comply with the Court
23 Order. And as I told Mr. Hunt, we -- I don't have access to
24 and I do not have in my possession an appraisal of the
25 property to be able to provide a market value for Express

1 Ranches, LLC.

2 I do understand that the nature of the case, and such
3 information, you know, is critical to Plaintiffs' case. I
4 just -- you know, I stand here contritely and I do admit that
5 I was unable to comply with the substance of the Court Order.
6 And I'll leave it to the Court's discretion on how you want to
7 craft the remedy.

8 THE COURT: All right.

9 MR. RIMMER: You know, considering this remedy, it
10 sure beats the equal.

11 THE COURT: Okay.

12 MR. RIMMER: That's my thought.

13 THE COURT: All right. Well, I agree with you on
14 that Mr. Rimmer, so I'm going to grant your request, Mr.
15 Hunt.

16 MR. HUNT: Very good.

17 THE COURT: At what point do you want to read this,
18 as I said, your case-in-chief -- at your close of your case-
19 in-chief?

20 MR. HUNT: Yes. I think --

21 THE COURT: Okay.

22 MR. HUNT: -- that will be the last thing I do during
23 the case-in-chief.

24 THE COURT: All right. Do we want a preliminary
25 instruction before I allow you to read that to the jury, or do

1 you want me to read it to the jury?

2 MR. HUNT: Tell me that -- preliminary instruction,
3 what would -- if you gave one, what would that be?

4 THE COURT: The Court has ruled on a matter that the
5 jury needs to consider as conclusive, and the Court is going
6 to allow Plaintiffs' attorney to read that -- and I'm
7 summarizing -- that conclusive -- conclusive decision onto the
8 record to you.

9 MR. HUNT: Very good, I would like to do it that
10 way.

11 THE COURT: All right. We'll go ahead and do that.
12 But we'll need to prepare something, so it sounds a bit more
13 formal --

14 MR. HUNT: Mm-hmm.

15 THE COURT: -- than how I presented -- presented it
16 to the attorneys and parties.

17 MR. HUNT: Okay.

18 THE COURT: So, we'll need to formulate something.
19 But at the time -- at the time you conclude your case.

20 MR. HUNT: Okay. All right. I think that's it for
21 us, Judge.

22 THE COURT: Okay. Any other preliminary matters, Mr.
23 Rimmer?

24 MR. RIMMER: Not at the moment, Judge. Actually, one.
25 Speaking with Mr. Hunt this morning, and thinking

1 through the -- the process, I thought it would be a waste of
2 time if Plaintiff closes their case, we excuse the jury, I make
3 my Motion and you bring back the jury, I close my case and
4 then they leave again for Mr. Hunt's Motion. If there's a way
5 we could make any Motion on the directed verdict at the end of
6 both parties' cases. I think the Rule says it can be made at
7 any time during trial, and I just -- I wanted to just
8 procedurally ask you about that up front so we don't have
9 a -- a -- excuse -- recesses for no reason.

10 THE COURT: Okay. Well, if you intend to present any
11 evidence, I intend to follow the normal procedure of --

12 MR. RIMMER: Okay, fair.

13 THE COURT: -- of, you know, Plaintiffs is going to
14 say, "I rest my case, Judge," and then I'm going to recess the
15 jury. And then we'll take up Motions that we need to take
16 up.

17 MR. RIMMER: Sure.

18 THE COURT: And then I'll bring them back in, and then
19 you can present your case, and even if it's a short case, then
20 I'll have to recess them again.

21 MR. RIMMER: Sure. I don't intend on presenting any
22 evidence.

23 THE COURT: Okay. So, if you're not going to present
24 any evidence that may allow me to ask Mr. Hunt if he rests his
25 case and then I can ask you --

1 MR. RIMMER: Yes.

2 THE COURT: -- if you would present your first
3 witness, and if you say, "We rest," and then we can go into
4 Motions, well I can recess or excuse the jury and we can take
5 up the -- the different Motions we can take up.

6 Do you have any objection to that, Mr. Hunt?

7 MR. HUNT: No, I don't have any objection. I think
8 given that it's, we rest and then Defense rests, I think that's
9 the best way to handle it.

10 THE COURT: Yeah, I agree. Okay. So, if you're not
11 going to call any evidence or -- or present any evidence or
12 call any witnesses, then after Mr. Hunt rests his case,
13 we'll -- I'll ask you to call your first witness and you can
14 at that point state you -- you rest.

15 MR. RIMMER: Thank you, Judge.

16 THE COURT: All right. And then we can -- I'll excuse
17 the jury, obviously, and we'll get into what Motions we need
18 to address. All right.

19 Is there any other preliminary matters?

20 MR. RIMMER: No, Judge.

21 THE COURT: All right. And do we have all the
22 jurors?

23 THE BAILIFF: Yes, sir. All present.

24 THE COURT: All right. Let's go ahead and bring them
25 in. All rise for the jury.

1 [WHEREUPON, the jury entered the
2 Courtroom, and the following
3 proceedings were held in Open
4 Court.]

5 THE COURT: All right. The attorneys and parties may
6 be seated. Good morning, Ladies and Gentlemen.

7 THE JURY: Good morning.

8 THE COURT: We're going to go ahead and continue with
9 the Plaintiffs' presentation of their evidence. Mr. Hunt, if
10 you would call your next witness please.

11 MR. HUNT: Judge, we call Dr. Monty McGowen.

12 THE COURT: All right sir, if you could come across
13 the courtroom, up the ramp to my right. Watch your step going
14 up the incline there.

15 Let me have you raise your right hand.

16 THE WITNESS: Yes, sir.

17 THE COURT: Do you swear or affirm that the testimony
18 you will give in this case will be the truth, the whole truth
19 and nothing but the truth under penalty of law?

20 THE WITNESS: Yes, sir.

21 THE COURT: All right, you may be seated. And Mr.
22 Hunt, you may proceed.

23 MR. HUNT: Thank you, Judge.

24 ---

25 ---

1

DR. MONTY McGOWEN

2 The witness herein, having been first duly sworn upon oath, was
3 examined and testified follows:

4

DIRECT EXAMINATION5 **BY MR. HUNT:**

6 Q Good morning.

7 A Good morning.

8 Q I know you had a chance to tell the jury your name.

9 A Monty McGowen.

10 Q And tell us what you do.

11 A I'm a chiropractor.

12 Q And where do you practice?

13 A Raton, New Mexico.

14 Q Tell us a little bit -- what training does it take to
15 become a chiropractor?

16 A I received my Bachelor of Science from New Mexico State
17 University in Biology and a minor in Chemistry, and then
18 a Bachelor of Science from Parker -- Parker University
19 and Anatomy, and then my Doctorate of Chiropractic from
20 Parker University.

21 Q And to get your Doctorate in Chiropractic medicine, how
22 long does that take?

23 A It's a four-year program. I -- I did it in three, post-
24 graduate.

25 Q You were in a hurry?

1 A I was in a hurry. Yes, sir.

2 Q All right. And how long have you been practicing?

3 A I'll be starting my twenty-third year.

4 Q And in -- in addition to the schooling, did you also do
5 any training after you finished your schooling?

6 A Oh yes. I'm licensed in Colorado and New Mexico,
7 therefore, we have continuing education every year --
8 multiple hours every year.

9 Q And within chiropractic medicine, what is -- what is
10 your focus in terms of the human body?

11 A The spine -- the spine. Musculoskeletal system, but
12 mostly the spine.

13 Q All right. And so, including the musculoskeletal -- the
14 muscles -- the muscles that relate to the spine --

15 A Yes, sir.

16 Q -- and everything that goes along with that?

17 A Yes, sir.

18 Q And within your practice, is -- do you continue to take
19 education even up until now?

20 A Oh yes, every year.

21 Q How many hours a year are you required?

22 A We're required between sixteen to eighteen hours every
23 year. Colorado and New Mexico require different, so I
24 have to stay up with both.

25 Q Sure.

1 MR. HUNT: Judge, what I'd like to do now is move that
2 Dr. Monty McGowen be admitted as a medical expert in the
3 musculoskeletal system, as a chiropractic doctor.

4 THE COURT: Any objection, or do you wish to voir dire
5 the witness?

6 MR. RIMMER: No objection.

7 THE COURT: All right. So, I'm going to grant the
8 Plaintiffs' request. The witness will be qualified as an
9 expert.

10 Q (Mr. Hunt continuing) And Dr. McGowen, let's jump right
11 in. And Eric Armstrong, has he been a patient of
12 yours?

13 A Yes, he has.

14 Q When did you first treat him?

15 A He first became my patient in around 2011, when he became
16 a patient -- established patient.

17 Q All right. So, first let's talk about between 2011 and
18 2014.

19 A Mm-hmm.

20 Q 2014 is when the incident that this jury is here to talk
21 about. For those -- that time period, what did you --
22 how often did you treat him and what were you treating
23 him for?

24 A I didn't treat Dr. Armstrong very often, but for
25 headaches -- upper cervical region is what I treated him

1 for.

2 Q During those -- and about how many times?

3 A Two or three times a year.

4 Q Okay.

5 A Not very often.

6 Q All right. At any point during the time that you treated
7 him before 2014, did you treat his mid-back or lower
8 back?

9 A No. No.

10 Q At any point before that time, did he complain to you or
11 present with any problems related to the mid-back or
12 lower back?

13 A Not to my knowledge, no.

14 Q And not to your knowledge meaning, --

15 A No.

16 Q -- did you look at your records --

17 A I did.

18 Q --- before you came in today?

19 A No.

20 Q Do you keep records on every appointment?

21 A Yes.

22 Q Now, after the incident that occurred in October, when
23 did you begin seeing him?

24 A Within a week -- within a week-and-a-half.

25 Q And -- and did you have a chance to look at all your

1 records related to the treatment?

2 A I did.

3 Q When he came to see you, what -- what was going on? Tell
4 us about that. Tell the jury about that.

5 A In the incident that we're talking about, he -- he fell.
6 I mean, upon impact, he fell and he hit the ground. And
7 so, what I was treating him for was a thoracolumbar
8 sprain/strain. Okay? And what a sprain is, is where a
9 ligament -- ligaments connect bone to bone. Okay? When
10 the ligament is torn, that is called a sprain. It can
11 be a partial tear, you know, a minor, but it's a sprain.
12 When the muscle tears a little bit and the tendon, that's
13 a strain. And so, that's what I was treating him for.

14 Q Okay. And where was it?

15 A In his mid, lower back.

16 Q Okay. And so, maybe just -- in -- mid -- kind of, if
17 you could, stand up and sort of point to that out to the
18 jury.

19 A Sure. So, you have your cervical spine. Okay? And you
20 have a thoracic spine, and you have your lumbar spine.
21 Okay? The transition segment between your thoracic
22 spine and your lumbar spine is the thoracolumbar
23 region.

24 In your spine, it creates a spring, okay, so that
25 upon impact, that spring gives, like a shock absorber.

1 Okay? It was that thoracolumbar area, it's
2 transitioning from this kind of curve to this kind of
3 curve. His injury was in that area. And that's a
4 typical area to become injured in a fall.

5 Q And the strain -- excuse me, the strain part of it --

6 A Mm-hmm.

7 Q -- so the -- did you reach a conclusion, based on your
8 treatment of Mr. Armstrong, that there had been torn
9 ligaments as a result of the fall, after being impacted
10 by the shot?

11 A Yes. I mean, and that's the nature of a sprain/strain.
12 And there will be pain, tightness, lack of range of
13 motion.

14 Q So, what happens? So, okay, the ligaments are torn.

15 A Mm-hmm.

16 Q Either partially or fully.

17 A Sure.

18 Q And what's the body do to kind of help take care of
19 that?

20 A It splints. I mean obviously, everything gets tight and
21 splints as the body starts to try to repair itself and
22 heal.

23 Q Okay. And when the body starts to repair itself and try
24 to heal, what does it do?

25 A Well, over time, it will form scar tissue. Think of it

1 this way. Muscle is like wood -- it has grain. Okay?
2 When the muscle contracts, it comes together. When it
3 relaxes, it comes like this.

4 Now what scar tissue does, if there's a tear, it
5 comes and it -- it lays down scar tissue, fascia, over
6 that.

7 Now that Type Three Collagen that's used to heal
8 that, okay, is bulk here. It doesn't lay down with the
9 grain -- it lays down haphazardly. Okay? And so, that
10 creates tightness because that muscle than can't do
11 this. Okay? So, that makes sense? And that's how it
12 heals.

13 So, that tissue is never like the original because
14 it -- it's laying down. Now over time, it will try
15 to straighten out, but it will never be like the
16 original.

17 Q And the same thing. I mean, so, that was you were
18 talking about the ligaments.

19 A And the muscle.

20 Q What about the -- I think you also said -- or is that
21 also when the --

22 A Mm-hmm.

23 Q And the muscle tears apart from what? The bones?

24 A Well, the muscle tears within the -- like the belly of
25 the muscles.

1 Q Okay.

2 A Okay? Because muscle span joints -- that's how we move.
3 Right? And so, it -- it will tear -- most -- most of
4 the time, it gives in the belly -- in the middle. If it
5 gives at the tendon, where the muscle connects to the
6 bone, it will create a tendonitis. Okay?

7 But most of the time, and I think in -- in Dr.
8 Armstrong's case, it was more in the belly of the muscle,
9 and that's where there's a lot of tightness in those
10 paraspinal muscles along the left side of his thoracic
11 region. Sorry.

12 Q And talk about kind of the first -- really, I guess,
13 the first couple of years after you treated him. I
14 guess, initially, there's a hope that it -- he recovers
15 and --

16 A Mm-hmm.

17 Q -- that it's a hundred percent recovery.

18 A Mm-hmm.

19 Q And did that happen for him?

20 A No, no. I mean, what happened was as, you know, we --
21 we progressed right away. As time has gone on, he -- he
22 comes to see me about every -- twice a month, as I looked
23 at it, about twice a month.

24 He's consistently tight on this left side, low, at
25 that thoracolumbar area. And we're talking not quite

1 five years since the incident. And he is abnormally
2 tight in that area consistently.

3 I would have expected his progress to be
4 better -- I really would, considering his physical
5 condition going in, which was excellent. But it remains
6 very tight on that left side.

7 Q And based on your training and experience, and also your
8 clinical treatment of Mr. Armstrong, have you reached a
9 conclusion of what's the cause of the continual
10 tightness on the left side?

11 A I believe the -- the initial trauma creating those
12 problems, I believe, looking at his x-ray and seeing
13 where the fragment of where the bullet is, I believe
14 that it's lodged near the external oblique muscle on the
15 left side. Okay? And what that muscle does, is it
16 connects to the lower thoracic ribs, and those ribs
17 connect to the lower thoracic spine, right here. Okay?
18 And -- and then it connects to your -- your hips -- your
19 iliac crest actually -- your pelvis.

20 And again, I believe that the foreign body in that
21 muscle keeps it from performing as it should, as it
22 originally would if there wasn't foreign body, be it
23 scar tissue or a foreign body.

24 Q And does the body often form scar tissue around --

25 A It would.

1 Q -- an object?

2 A It would. It would try to encapsulate that.

3 Q And I think you talked about this some, but these
4 are -- these are problems that are ongoing for
5 Eric --

6 A Yes.

7 Q -- even today?

8 A Yes. And -- and what that does, it -- it inhibits some
9 range of motion in those segments. 'Cuz your spine --
10 you have twelve thoracic vertebra and five lumbar. And
11 at that -- at that thoraco -- thoracolumbar region, okay,
12 it -- it takes on a lot of stress because it's at the
13 apex of that shock absorber I was talking about. There's
14 an apex, so that's where I find many people later, in
15 life, they have trouble there. Okay? But after an
16 injury, I would expect him to have more trouble. I would
17 expect that he has osteoarthritis right now, in my
18 opinion, and that's something that will likely continue
19 to worsen as years go by.

20 Q So, the -- the -- the thoracic and kind of lumbar issues
21 that you're talking about --

22 A Yes.

23 Q -- with Eric, how do you expect -- if you're look --
24 you're projecting forward?

25 A Yes.

1 Q I mean, he's fifty-three right now, and he's been dealing
2 with it for, as you said, almost five years.

3 A Mm-hmm.

4 Q Is this now an issue that you believe will be with him
5 permanently?

6 A Yes. Yes. What's there now, we can't reverse. What
7 I'm highly suspicious of, it's there now. But what I
8 believe is there now won't reverse, and I would
9 anticipate as we get older that that's going to
10 continue.

11 What happens is, again, when there's lack of
12 motion between those segments, okay, and the ligaments
13 have been hurt and damaged, and there's lack of motion,
14 the body is going to try to grow that together again to
15 stabilize. Well, that growing together is called
16 osteoarthritis. It's growing that joint together.

17 I mean it wouldn't be five years. It wouldn't
18 even be ten years, but fifteen to twenty to twenty-five
19 years, it's likely that it could even fuse at some point,
20 because that's the progression as we age, and that's
21 just the truth.

22 Q Sure. And how's that going to affect -- first of all,
23 how does that affect him now, and also, kind of going
24 into the future? Affect him meaning activities --

25 A He's not --

1 Q -- what he can expect.

2 A He's not going to be able -- he's not going to be able
3 to comfortably do anything that creates jumping. No.
4 Because again, anything that creates a -- you know, a
5 pressure along that spring, it's going to affect that
6 area -- that thoracolumbar. It's going to affect it.
7 And so, any type of extreme sports -- or not even extreme
8 sports. I wouldn't want him jumping.

9 Q What about running?

10 A No, no. Because again, pounding. I mean that consistent
11 pounding would do what I'm talking about. Axial force.
12 Does that make sense?

13 Q Does it mean downward?

14 A Yes, downward -- downward force.

15 Q Okay.

16 A Pushing down on that spring. You know, and so running,
17 you know, every step you take, there's axial force.

18 Q You've worked with Eric now for a number of years.

19 A Yes.

20 Q Is he someone that frequently complains about what he's
21 dealing with?

22 A No. No. No. I think it -- no, he does not.

23 Q Have you given him medication or anything?

24 A No. No, I can't prescribe medication. I'm a --

25 Q Okay.

1 A I -- I do physical medicine.

2 Q All right. Do you know whether he takes any, related to
3 the back issues?

4 A Not that I'm aware of. I know he watches his diet and
5 he -- he's -- he exercises. He -- I know he cannot
6 exercise like he did before. He was -- he's -- he's
7 different now than he was before, by far.

8 Q And I -- I think the jury understands what you mean by
9 that, but different in what way?

10 A Obviously, he's -- he's a physical therapist, so I've
11 known him a long time as a physical therapist, even prior
12 to him being a patient.

13 Very active, very strong. He's -- he's not near
14 the size that he was. He -- (laughs) he -- he was a
15 specimen. I'm being very honest. He could run, he could
16 lift weights, he played basketball, he Ultimate Fris --
17 I mean, anything. I mean he ran marathons and he talked
18 about a Tough Mudder thing, I mean, you know, where they
19 do lots of stuff. That's who he was.

20 He's not now. He's not -- he doesn't have the
21 muscle mass by any stretch that he did before.

22 Q Now, I want to talk about a little bit of different
23 issue. Within your practice, is doing either research
24 or just understanding, how does a body respond when
25 there's a foreign object in it?

1 A Again, --

2 MR. RIMMER: Judge, object. I think it is outside
3 the scope of his expert testimony.

4 THE COURT: All right. I'm going to sustain the
5 objection. I -- I'm going to ask you to lay some foundation
6 on that.

7 MR. HUNT: Sure.

8 Q (Mr. Hunt continuing) Within chiropractic medicine, is
9 studying foreign objects, especially ones that affect
10 musculoskeletal systems, something that you've done in
11 the past?

12 A Yes, that would be something we -- that we would have
13 done. Sometimes when people have joint replacements,
14 there can be infection and different things like that,
15 so, I mean, we're always --.

16 Because we're primary care -- meaning people come
17 off the street and come in to see us -- we have to be
18 aware of things. Now, treating that is outside my scope.
19 I mean, I need to refer them to them to the medical
20 doctor or -- or for someone to treat that. But
21 recognizing that there's a problem and making that
22 proper referral is absolutely part of what I do.

23 Q Sure. And in this case, I think what you've talked about
24 is the foreign body -- in this case the piece of the
25 bullet -- is within part of the muscular system of Mr.

1 Armstrong, --

2 A I believe that's exactly where it is.

3 Q -- which then affects the back.

4 A I believe that's exactly where it is, and I believe it's
5 affecting his back, just based on x-rays, seeing where
6 it is, and based on the objective evidence at -- at every
7 visit. It -- it's -- it's just -- it's not -- there has
8 to be a reason that that is continuously tight in that
9 area.

10 Q And you are comfortable, based upon your training, your
11 treatment of Mr. Armstrong, that a cause of those issues
12 in the low back, in the -- the thoracic is the trauma
13 from the incident, as well as the location of the piece
14 of the bullet.

15 MR. RIMMER: Objection, Judge. I think he testified
16 that he's unable to treat issues related to the bullet
17 fragments. I think that question --

18 THE COURT: All right. I'm going to overrule the
19 objection.

20 MR. RIMMER: Thank you, Judge.

21 Q (Mr. Hunt continuing) Go ahead.

22 A I can answer?

23 Q Go ahead, you -- you can.

24 A I believe it's -- I believe it's directly related.
25 Absolutely. Because again, like I said, something is

1 keeping those muscles tight consistently. If there --
2 if there were not a bullet fragment, I would say it has
3 to be from the trauma, 'cuz I have nothing else -- I
4 have no other reason to say why.

5 And so, I know that there's scar tissue that's
6 going to be there. I know that's there for sure. But
7 knowing and looking at the x-rays and seeing where that
8 fragment is, that has to be -- that has to affect that
9 muscle's action, which would create spasm, which
10 would -- it would be consistent, 'cuz it's still
11 there.

12 Q Yeah. And will Mr. Armstrong need treatment going on
13 into the future?

14 A Yes.

15 Q And I think you've already explained this, but do you
16 anticipate that the problems he's experiencing now will
17 continue, and may in fact worsen during the course of
18 his life?

19 A Yes. Because of the -- the injury to the ligaments, the
20 cartilage between the vertebra, due to the consistent
21 lack of motion, that's going to continue to deteriorate
22 with age.

23 Q Is he at risk for any further injury, based on what's
24 going on right now?

25 A Yes, because again, there's -- there's no -- there's not

1 padding there now. A slip and fall would increase his
2 chances of compression fracture at that level, which is
3 something, as we age, we have anyway. But he's going to
4 be more susceptible because he's not starting with as
5 much.

6 Q And what the jury has heard and talked about is the
7 standard within a civil case is a probability. And are
8 you comfortable that all of the opinions you've
9 given today are to a reasonable degree of medical
10 probability?

11 A Absolutely, yes.

12 Q All right.

13 MR. HUNT: I appreciate it. I don't have any other
14 questions right now.

15 THE COURT: All right. Mr. Rimmer, do you have any
16 questions for the witness?

17 MR. RIMMER: Oh yeah, just a couple.

18

19 **CROSS EXAMINATION**

20 **BY MR. RIMMER:**

21 Q Good morning, Dr. McGowen.

22 A Good morning.

23 Q So just to be clear, you have a personal relationship
24 with Mr. Armstrong?

25 A Yes.

1 Q Okay. So, you're here testifying as both a medical
2 expert, but also as a friend?

3 A I'm coming as a medical expert.

4 Q Okay. It's fair to say you do have a personal
5 relationship with him? You've known him prior --

6 A Yes.

7 Q -- to him being a patient?

8 A Oh yes, absolutely.

9 Q Okay.

10 A Raton is a small town.

11 Q Right. Okay. And just to be clear, is osteoarthritis
12 common in individuals over the age of fifty?

13 A Yes, I would say it is.

14 Q Okay. What about sixty?

15 A Yes.

16 Q Does it become more common?

17 A Absolutely.

18 Q Okay. Well, what about seventy?

19 A Yes.

20 Q Okay. And Mr. Armstrong is now fifty-three years
21 old?

22 A I believe so.

23 Q Okay. So, in the fifteen to twenty years you were
24 talking about in the future where he's going to have
25 these problems, he'll be sixty-eight to seventy-three?

1 A Mm-hmm.

2 Q Is that fair?

3 A Yes.

4 Q Okay. And knowing that, and knowing what you said about
5 osteoarthritis being common in individuals of that age,
6 does it change your opinion at all?

7 A None. Because it's been established with lots of
8 research that an injury accelerates at process, because
9 as I said before, there's a lack of cartilage and there's
10 scar tissue there that's not like the original tissue.

11 Q What -- what -- what research are you referring to?

12 A There's -- that's -- that's a standard fact. There's
13 lots of research that we could go to, but that's a
14 standard fact.

15 Q As you sit here today as an expert, are you able to
16 provide any of the research, cite it, anything?

17 A Not at this moment, but again, it's standard fact of my
18 education.

19 Q Okay. Fair enough.

20 MR. RIMMER: I appreciate it, Dr. McGowen. Thank
21 you.

22 THE WITNESS: You're welcome.

23 THE COURT: Any re-direct, Mr. Hunt?

24 MR. HUNT: Just on that last issue.

25 ---

RE-DIRECT EXAMINATION

BY MR. HUNT:

Q So, you were asked -- I think what you were asked was give the name of an article. In the last twenty-three years of your practice, plus the four years or more of your training, was it a well-established fact that injuries to the back, resulting in ligament tears and muscle tears, greatly increases a person's risk of osteoarthritis?

A Absolutely. That's -- that's -- that's elementary education as you move through.

Q All right. And you are satisfied that with regard to Mr. Armstrong, given what he has been through, given the trauma that he suffered in the incident that we're talking about, that increased risk of osteoarthritis, it -- he is at that increased risk?

A Absolutely.

Q And your opinion is that he in fact suffers from osteoarthritis currently?

A I believe he does now currently.

MR. HUNT: Thank you for being here, Dr. McGowen. No other questions, Judge. The witness can be released.

THE COURT: All right. Any reason to retain the witness?

MR. RIMMER: No, Judge.

1 THE COURT: All right, sir. So, you've been released
2 as a witness. You are free to go about your business. Thank
3 you.

4 THE WITNESS: Yes, sir.

5 THE COURT: And if you'd call your next witness, Mr.
6 Hunt.

7 MR. HUNT: Judge. Judge, what we're going to do now
8 is I'm going to read a -- two brief portions of a deposition.
9 And one of them is Michael Norman, who was one of the hunters,
10 and the other was James Wilson.

11 Primarily these were -- this is information that was
12 discussed in opening statement. We're not going to read the
13 whole deposition, but just a portion. I've discussed that with
14 Mr. Rimmer.

15 THE COURT: Any objection to that?

16 MR. RIMMER: I don't, Judge.

17 THE COURT: All right. Without objection, I'm going
18 to allow you to do that.

19 MR. HUNT: Thank you, Judge.

20

21 **EXCERPT OF MICHAEL NORMAN DEPOSITION READ INTO THE RECORD**

22 MR HUNT: This is from Michael Norman, who was one of
23 the hunters. And it's -- first of all, it's from Page Thirteen
24 of his deposition which was taken in April of 2019.

25 He was asked: "And so take us kind of the next step.

1 Mr. Rockenfield, as I understand it, informs you and Mr. Wilson
2 that this -- those are in an area where it's safe to take a
3 shot. Did you then go get set up?"

4 And he says: "We did. I believe we were both on
5 shooting sticks, if I remember right, and then I cannot recall
6 if Jimmy was using a range finder, or I just remember him
7 giving us a yardage. And I was thinking it was two-hundred -
8 and-fifty -- two-hundred-and-forty or two-hundred-and-fifty
9 yards."

10 The next question: "And what you testified to was
11 that Mr. Rockenfield gave you a range of your memory as either
12 two-hundred-and-forty or two-hundred-and-fifty yards."

13 "Yes sir."

14 And the question: "All right. Did you later learn
15 that range that he gave you was not accurate?"

16 And the answer: "Not until I got that report from
17 the Wildlife Department that did reflect one-hundred-and-sixty
18 yards."

19 "And the difference of somewhere between eighty and
20 ninety yards, that's a pretty significant difference as far as
21 aiming at an elk, isn't it?"

22 Answer: "It was on that day."

23 The question: "If you're given a range of between
24 two-hundred-and-forty and two-hundred-and-fifty yards, how do
25 you adjust your sight when you're taking that shot?"

1 "I'm going to shoot just a little high. My rifle was
2 sighted in at two hundred yards, so at two-hundred-and-fifty,
3 I would have been shooting a couple of inches high. I would
4 have aimed a little high. I believe I shot over this elk,
5 because I think I would have seen the dirt fly up if I had
6 shot under her, or I think I would have seen her spook, you
7 know, in a different way than what I remember her just kind of
8 trotting off."

9

10 **EXCERPT OF JAMES WILSON DEPOSITION READ INTO THE RECORD**

11 MR. HUNT: And the next portion is from James Wilson
12 who is the other gentleman who was hunting that day.

13 So the question: "And what do you remember being told
14 about the shot by Mr. Rockenfield?"

15 Answer: "Like I said, it's been a long time ago, but
16 basically he said, 'shoot the bull first' because I had a bull
17 tag at that time and Mike had a cow tag. So he said, 'wait
18 'til we shoot the bull. He mentioned he thought he yarded it
19 at about two-hundred-and-forty yards. Then he asked if we were
20 ready, then he said, 'Okay, shoot.'"

21 Question: "And he had told you it was
22 approximately -- or what did he tell you about the yardage to
23 the best of you memory?"

24 "As I recall, I thought he said two-hundred-and-forty
25 yards."

1 The next question: "When you received the report,
2 and learned the yard -- what the yardage was, what did you
3 learn it?"

4 "I think it was around a hundred-and-sixty yards
5 according to the report."

6 And then the next question: "And essentially, a
7 lifetime hunter, if the yardage is wrong by eight -- eighty
8 yards, what's that going to do to your shot?"

9 "There's a possibility it could make a difference."

10 "And how so?"

11 "Well, like I said, my rifle was sighted in for two
12 hundred yards. He told me it was two-hundred-and-forty, so
13 that would tend to make me want to aim just a touch higher
14 than I normally would have, which would have actually increased
15 the difference if it was actually a hundred-and-sixty. So I
16 would have probably been aiming a little bit higher than I
17 normally would have."

18 That's all we need to read from these depositions.
19 Thank you.

20 THE COURT: All right, Mr. Rimmer. Do you wish to
21 read any portions of the depositions to put them in context
22 from your perspective?

23 MR. RIMMER: No, Judge. Thank you.

24 THE COURT: All right. Mr. Hunt, if you'd call your
25 next witness.

1 MR. HUNT: Yeah, we're going to call Luke Wilson --
2 or Luke Wilson, he's an actor. (Laughs.) Luke Armstrong back
3 to the stand only to discuss -- we didn't on his Direct
4 yesterday discuss his brother.

5 THE COURT: Okay. We can get into that.

6 MR. HUNT: Very good.

7 THE COURT: All right Mr. Armstrong, why don't you
8 come up to the witness stand. I've already sworn you in so
9 you're still under oath. Mr. Armstrong.

10

11

LUKE ARMSTRONG

12 The witness herein, having been previously duly sworn upon
13 oath, was further examined and testified follows:

14

DIRECT EXAMINATION - CONTINUED

15 **BY MR. HUNT:**

16 Q All right, Luke. You've already been up there, so we
17 don't have to go through introductions and everything.

18 When you were there yesterday, I failed to ask you
19 an important part of your testimony. And I want to ask
20 you about your brother. And I want to ask you about
21 this.

22 I mean obviously the jury, in very short order, is
23 going to have this case and get to decide it. And one
24 of the things they're going to have to deal with is how
25 this incident has affected Eric. And so, let's talk about

1 that for a minute. Just with that intro, help us
2 understand.

3 First of all, before this incident, you guys --
4 I know Eric said you guys are really close. Is that
5 true?

6 A Yes.

7 Q How often do you see each other?

8 A Well, you know, obviously we're both one of five
9 children -- four boys, one girl. Obviously, us moving
10 out West, I started the State Patrol in Trinidad, so
11 Trinidad and Raton is basically just divided by the hill,
12 so we were really close in distance-wise.

13 Even growing up, you know, we lived out -- you
14 know, before cable, before satellite, before -- so, I
15 mean we had the farm and we did a lot of activities. We
16 were a multi-sport family, all -- all of us.

17 Q And that continued even to your adult life, didn't
18 it?

19 A Yeah, there's always -- you got a family reunion,
20 obviously everything is a little slower nowadays, but
21 there's still a competition that goes on, yes.

22 Q Sure. And say the -- the couple of years before this
23 happened, were there -- Tough Mudders have been brought
24 and I know folks have heard about those.

25 A (Laughs.)

1 Q Did you guys do those together?

2 A So, our -- our dad passed, and to honor our father --
3 and Eric's by far -- I mean I'm -- I'm the runt in the
4 family. The other two brothers are -- are huge. My --
5 my sister played basketball, did the shotput and
6 track. I'm just putting it in perspective as we were
7 a -- a farming community and we looked like it.

8 So, I was always, you know, trying to catch up to
9 my brothers, 'cuz I wasn't six foot like all of them
10 are. And so the Tough Mudder came up and I was like,
11 "What?" (Laughs.)

12 So, you know, it's kind of like the Spartan Race,
13 if you've seen it on TV, to where it is a challenge. I
14 mean, when you complete it, and you see somebody wearing
15 that same shirt, you're like -- you kind of know what
16 they've gone through. It's basically twelve to thirteen
17 miles, and it's just obstacles. In the tough Mudder
18 realm, there's fire and there's electricity, so you're
19 like, what -- I'm like, "What am I doing?"

20 But I understood why we were doing it. So, we got
21 together and flew back to Pennsylvania where we grew up
22 to do it. It's kind a running joke that -- you know,
23 the name of our team because you -- you met Paul. We've
24 had thirty people at times that -- that do these
25 obstacles with us, and sometimes we do it for the slowest

1 person, just 'cuz that's why you do it. You do it as a
2 team.

3 Q Yeah.

4 A Well, so -- so it's basically, you know, we are the
5 completers, not to be confused by the completors.

6 Eric did do the first one and qualified for
7 World's, which is, you know, pretty impressive at forty
8 years old, which means that his time -- he completed all
9 the obstacles, everything else. I completed the race,
10 I did all obstacles but, you know, I would say almost
11 halfway through whatnot, he was able to find me and we
12 completed it together there. But I mean, yeah, it's
13 pretty amazing -- I mean, if you ever get it on YouTube
14 and you watch it, it's -- you've got to be there for a
15 purpose. (Laughs.) It's not a Sunday afternoon, "Hey
16 let's go climb that hill and have a picnic." It -- it
17 hurts --

18 Q Sure.

19 A -- when you're done.

20 Q And that was the kind of stuff Eric did a lot before
21 this happened, wasn't it?

22 A I -- I -- yeah. He -- he did it competitively. I did
23 it for the group activity. Every single one of my kids
24 that are eighteen years old have done it with me. And
25 it has just become -- become that. So, the older kids

1 are kind of preparing the younger kids, you know. And
2 that's the thing we got to look at is, you know, where
3 am I going to be at when they turn eighteen.

4 Q Sure.

5 A And Eric is definitely not going to do it, I mean with
6 everything that's going on with him.

7 Q Sure.

8 A So that is --

9 Q So talk -- I'm sorry, go ahead.

10 A Yeah. So, I mean in reference to just that part of our
11 life, yeah, I -- I think that's over.

12 Q So, talk about the -- I mean obviously you were with him
13 when both you guys got hit, and we've talked about that
14 incident. The effects of that on your brother, help us
15 understand that.

16 A Well, I -- I mean just to go broader. I mean we had
17 horses -- we used to ride horses. So after the testimony
18 I heard, I mean obviously that's out, I mean, 'cuz that's
19 an up-down motion.

20 You know that Ultimate Frisbee, it -- it's
21 competitive. And in Raton, we used up the whole football
22 field of the high school to do that. The basketball was
23 just in a local rec gym.

24 And you know, people get pretty serious, you know,
25 what -- when you -- you think it's church basketball,

1 right, but I mean it was -- it was pretty physical and
2 pretty serious, and they didn't wait for you if you
3 weren't up and down the court.

4 So I -- you know, I've seen him do it. I can't
5 keep up with him, you know, when he was that point. I
6 know we used to challenge each other in weight lifting
7 and things like that. You know, we -- we benched
8 quite a bit one time in our lives and, you know, that
9 stuff.

10 I mean, again, that's gone. I mean, I -- so, we
11 got to figure out other things to do.

12 Q Talk about this part of it. From visiting with your
13 brother and being around him, kind of the -- the
14 emotional, psychological part of it, how has -- and even
15 just maybe the worry of kind of what -- what's down the
16 road. Has there been an effect on him in that way?

17 A Oh definitely. I mean we just -- I mean --

18 Q Help us understand it a little bit.

19 A I have never done a marathon. I think you're crazy, but
20 obviously crazy is -- 'cuz I've done several Tough
21 Mudders. But he's just -- he would be always the one to
22 say, "Hey this is in six months. Do you think you can
23 do this, this and this to get ready for this? You think
24 you can do this? I'll help you out. I'll -- I'll give
25 you a diet program. I'll give you a work-out program to

1 go do it." That just isn't there. I --.

2 Q Okay. Even just the drive to do that kind of
3 stuff?

4 A Well, he's scared.

5 Q Of what?

6 A You know, I mean I know what I went through, but I mean,
7 if that thing moves the wrong way, and you're in the
8 wrong place at the right time, right?

9 I know one time he was a passenger in the car and
10 I don't know what happened. They weren't in a crash,
11 but it was an abrupt stop for whatever reason. I know
12 he talked about that. He's like, "I -- I can't believe,
13 just that seatbelt -- you don't understand."

14 I'm like, "Yeah, I don't understand, 'cuz, you
15 know, I -- I can wear a seatbelt." And I just like,
16 really? We -- we basically wear seatbelts every day.
17 You're a passenger a lot.

18 I know since a lot of this, Debbie drives a lot
19 more, and I don't know if I'm so sad, but I mean, you
20 know, it just --.

21 Q Yeah.

22 A There's a lot of changes in Eric. Like I said, it used
23 to be a challenge as the little brother to keep up. You
24 know, and it's -- I mean, you know what I mean?

25 Q Yeah.

1 A It's --. I don't -- I'm sorry. I don't know how else
2 to say it. (Laughs.)

3 Q You're saying there's no --

4 A That part, it's -- you know, I don't know what we're
5 going to do.

6 Q Yeah. You think your brother is different after
7 this?

8 A Oh, a thousand percent.

9 Q Really?

10 A Yep. Being the little brother -- brother, he was one of
11 my brothers that made me mad because I wasn't that fast,
12 I wasn't -- I couldn't jump that high. And again my
13 other brothers and my sister were athletes. Don't --
14 don't -- please don't get me wrong that I'm shunning any
15 of my family members, 'cuz, you know --.

16 Q Yeah.

17 A 'Cuz there was times when I was a little kid, and the
18 State track meet, we'd go play basketball. It was the
19 four brothers against people that were there. I mean
20 just -- we were always moving. Just always, always
21 moving.

22 And we try to instill that into our kids. I -- I
23 mean the number of -- man I -- I mean, between 4H and
24 ROTC and -- I mean, it just doesn't stop in the sense of
25 activities, 'cuz that's --

1 Q Sure.

2 A -- what we do.

3 Q Yeah.

4 A We're not, "Hey, let's go watch four hours of TV."

5 Q Right.

6 A And it's -- it -- (laughs) it's not us.

7 Q Yeah. Does Eric complain?

8 A No. 'Cuz we -- you know, we don't.

9 Q Would you let him get away with it if he did?

10 A Well, no. You -- just you don't, 'cuz we know. We both
11 know what hurts. We both know what it is, and we're
12 both afraid that if we poke each other in the right
13 spots, we know where the spots are. 'Cuz there was a
14 time that -- I mean he's -- he's a Black Belt. Right?
15 There was a time with my ground fighting, and I told you
16 I was part of our -- as an instructor at our Academy, so
17 the ground fighting, the arrest control, obviously his
18 discipline was different, so we had some interesting
19 times of what happened, you know, within the confines of
20 the Dojo. And, you know, I'd teach him some things I
21 learned. He'd teach me things we learned. And there is
22 no way that we could do that. I mean, if -- yeah, that's
23 not happening again.

24 Q Sure. But even with whatever limits there are from this,
25 Eric -- he still keeps going, doesn't he?

1 A Well, yeah. I mean --

2 Q Still stays engaged?

3 A He's -- he's -- I mean, you know, he's still a
4 pretty good specimen, presents himself well. I mean,
5 motivates -- I mean very active in his community. I
6 mean, you go to Raton -- and I know they've lived there
7 a long time, but I mean, he's lived there a long time
8 and Raton knows who Eric Armstrong and Debbie Arm --
9 don't -- please -- they're not separate. I mean, when
10 you say one, the other one is there.

11 So, they are active in their community. I mean he
12 was telling you about the Boy Scouts.

13 Q Yeah.

14 A I mean, we've done the same. You know, two of mine are
15 Eagle Scouts. I mean, I -- I don't know what else to
16 say. I mean that's just what we do.

17 Q Thanks for telling us about your brother.

18 A You're welcome.

19 Q You've done a good job.

20 MR. HUNT: I don't have any other questions.

21 THE WITNESS: Thank you.

22 MR. RIMMER: I just have one.

23 THE WITNESS: Yes, sir.

24 ---

25 ---

CROSS-EXAMINATION

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BY MR. RIMMER:

Q Mr. Armstrong, just for the sake of the record, how old are you?

A I'm forty-eight.

MR. RIMMER: We're good. Thank you.

THE WITNESS: Oh, okay.

THE COURT: And how old is your brother?

THE WITNESS: What did they say? Fifty-Three?

(Laughs.)

THE COURT: Do you have any other questions?

MR. HUNT: I don't. Thank you.

THE COURT: All right, sir. You can return to counsel's table.

THE WITNESS: Thank -- thank you.

THE COURT: All right. Members of the Jury. The Court has found certain facts to be conclusive. When you deliberate, you are to consider the next two paragraphs that are going to be read by Mr. Hunt as conclusive facts in this case.

Mr. Hunt, if you could read those two paragraphs please.

MR. HUNT: Thank you, your Honor. And this is from a Court's Order.

"Defendant Express Ranches, LLC refused to produce

1 Nedra Funk, it's managing member, sole owner and person who
2 verified discovery responses for Express Ranches, LLC for
3 deposition, despite repeated requests from Plaintiff.
4 Plaintiffs intended to depose Ms. Funk in part on the net worth
5 of Express Ranches, LLC. Defendant Express Ranches, LLC failed
6 to provide information requested in discovery related to net
7 worth -- related to the net worth of Defendant Express Ranches,
8 LLC, even though it indicated in discovery responses that such
9 information would be provided."

10 And that's from the Court's Order. Thank you. Thank
11 you, Judge.

12 THE COURT: All right. Mr. Hunt, do you have any
13 other witnesses?

14 MR. HUNT: I don't. I -- I would move to admit this
15 as Exhibit -- I think it would be Eight, since it's been
16 presented to the jury, similar to the deposition. So, that
17 would be the only addition.

18 THE COURT: All right. Let me have the attorneys
19 approach on that.

20 [WHEREUPON, the following side bar
21 conference was held from the Bench.]

22 THE COURT: I thought you weren't moving it into
23 evidence? Did I mishear you?

24 MR. HUNT: You may know that, meaning you may not have
25 misheard me. I very well may have said that. Just --

1 THE COURT: Okay.

2 MR. HUNT: -- as I was standing here, I thought that
3 it may be worthwhile.

4 MR. RIMMER: I don't necessarily think it's
5 appropriate to -- to be admitted into evidence in the case,
6 and to be considered by the jury when they --

7 THE COURT: Okay.

8 MR. RIMMER: -- come to their decision. I think --

9 THE COURT: I'm not going to admit it.

10 MR. RIMMER: Thank you, Judge.

11 [WHEREUPON, the following
12 proceedings continued in Open
13 Court.]

14 THE COURT: All right your request to admit the --
15 that as an Exhibit is denied.

16 MR. HUNT: Very good. Thank you for letting me know,
17 Judge.

18 THE COURT: All right. So, do you have another
19 witnesses, Mr. Hunt?

20 MR. HUNT: Judge, the Plaintiff rests. We have no
21 further witnesses in our case.

22 THE COURT: All right. If Defense would call their
23 first witness.

24 MR. RIMMER: The Defense resets as well, Judge.

25 THE COURT: All right. Ladies and Gentlemen of the

1 jury, there are some matters that we're going to have to
2 address outside of your presence at this point in the
3 proceedings.

4 The Plaintiff and the Defense have both rested, so
5 you're going to be in recess until you're recalled into the
6 Courtroom.

7 During recess, do not discuss this case with anyone
8 other than yourselves, and then only in the jury room when all
9 of you are present. Do not attempt to decide the outcome of
10 the case before you begin final deliberations.

11 Please continue to wear the juror badges while in and
12 around the Courthouse. If someone other than a fellow juror
13 happens to discuss the case in your presence, report that fact
14 at once to a member of the staff. If you happen to see or
15 hear any news accounts of this trial, please report that fact
16 to a member of the staff.

17 All right. All rise for the jury.

18 [WHEREUPON, the jury retired from
19 the Courtroom, after which the
20 following proceedings were held
21 outside the presence of the jury.]

22 THE COURT: All right. Counsel and the parties may
23 be seated. All right. Mr. Rimmer, do you have any Motions
24 for the Court?

25 MR. RIMMER: Yes, your Honor. The Defense would like

1 to make one Motion on the issue of punitive damages.

2 You know, under Rule Fifty, judgment as a matter of
3 law is appropriate if, having been fully heard on the facts of
4 the case, an issue during trial, and the Court finds that a
5 reasonable jury would not have any -- a sufficient basis upon
6 which to render an opinion.

7 Particularly, Judge, in this case, the facts have not
8 established a culpable mental state required to present a
9 claim for punitive damages to a jury. Particularly under
10 Yedidag -- and that's Y-e-d-i-d-a-g -- v. Roswell Clinic
11 Corporation, 2015-NMSC-012, which affirmed 2013 NMCA-096.
12 Also noted in the notes to Jury Instruction 13-1827, an award
13 of punitive damages requires a culpable mental state.

14 I think the testimony presented throughout trial,
15 according to my notes, indicates that Mr. Rockenfield acted
16 with -- without any wanton disregard for the safety of the
17 public. I think when he was making the determination to make
18 the shot, he considered whether the shot would be safe, and he
19 made a determination, and how frankly something did happen.
20 But there was no testimony presented that he had a mental state
21 required as far as wanton disregard for public safety.

22 That's the basis of my Motion under Rule Fifty.

23 THE COURT: All right. Thank you, Mr. Rimmer.

24 MR. HUNT: Thank you, your Honor.

25 Punitive damages are intended to address conduct that

1 includes utter indifference to safety. And in this case, and
2 in one of the cases that was not discussed, the Grasse case,
3 which is also a case out of Roswell, dealt with the cumulative
4 conduct that occurs in presenting a course of conduct that puts
5 people at risk.

6 In this case, what Mr. Rockenfield did -- the
7 testimony in the case that most clearly supports a punitive
8 damage instruction going to the jury is Mr. Rockenfield knew
9 that there were hunters on the Ute Creek Ranch, knew that he
10 was shooting and having shooters fire two high-powered rifles
11 towards the Ute Creek Ranch and towards a heavily used road on
12 the Ute Creek Ranch.

13 He knew that there were hunters on the Ute Creek. He
14 simply didn't know where they were. Firing a -- a gun towards
15 a road, with knowledge that someone may be on that road, is
16 exactly the type of conduct that is considered reckless and
17 wanton.

18 The definition of reckless conduct is the intentional
19 doing of an act with utter indifference to the consequences.
20 When there is a high risk of danger, conduct that breaches the
21 duty of care is more likely to demonstrate recklessness.

22 This case -- were it only the range finder issue,
23 maybe that's simply a negligence issue. When it's the range
24 finder issue, plus the fact of knowledge that you're shooting
25 towards the property line, plus knowledge that there's a road

1 beyond the property line, plus knowledge that the Armstrong
2 group is on the Ute Creek Ranch, plus knowledge that they
3 frequently use that road. For whatever reason, there was a
4 disregard of the safety of the people that were on the Ute
5 Creek Ranch. And the degree of danger with shooting two rifles
6 simultaneously was exceptionally high.

7 And Mr. Rockenfield, as the General Manager of the
8 Express Ranch, certainly was the individual with that decision-
9 making authority. He was the one who was in control of this
10 hunt, and he was the one who was instructing the hunters to
11 engage in conduct that clearly was reckless.

12 Wanton conduct -- and what we have in the Instruction
13 as it's been presented to the Court is reckless and wanton.
14 Not willful. We're not saying it was intentional, but the jury
15 instruction gives multiple different definitions.

16 Wanton is doing an act with utter indifference or a
17 conscious disregard for a person's safety. There was clearly
18 a conscious disregard of the safety of the individuals that
19 were using the Ute Creek Ranch for hunting when these shots
20 were taken.

21 In addition to that, what we have in evidence is
22 Andrew Gallegos, who was an expert who was qualified by this
23 Court in hunter safety and in -- in hunting practices. Mr.
24 Gallegos testified to the Court and to this jury that the
25 conduct was more than negligent -- that it was in fact

1 reckless.

2 I don't know that expert testimony is either necessary
3 or conclusive on that issue, however given all of the facts
4 that have been presented to the jury, quite frankly with almost
5 no contrary facts, taking this issue away from the jury would
6 be one that we think would be improper for this Court.

7 It is a jury question. It is an issue where jurors
8 should be permitted to decide whether they believe shooting
9 high-powered rifles towards your neighbors' road during
10 hunting season, when you know they may be on that road,
11 constitutes conscious disregard.

12 So, we certainly request that the Court deny the
13 Directed Verdict Motion, and allow the jury to decide all of
14 the issues in this case, including the punitive damage
15 issue.

16 THE COURT: All right. Thank you, Mr. Hunt. Do you
17 have a brief reply?

18 MR. RIMMER: Briefly, Judge.

19 THE COURT: Okay.

20 MR. RIMMER: Just as a reply, Judge. I believe the
21 testimony is in fact Mr. Rockenfield knew that the Ute Creek
22 Ranch and that road was in the direction that the shot was
23 being taken, but that his shot -- his mental state at the time
24 the shot was taken was that he had an adequate backdrop, that
25 was constituted on the Atmore Ranch, his property, and that he

1 decided to take that shot based on that understanding of where
2 that shot was positioned.

3 He was not shooting towards the road, and just because
4 the Ute Creek Ranch happened to be in that direction, he did
5 not believe he was shooting onto the Ute Creek Ranch.

6 Thank you.

7 THE COURT: All right. Thank you. I'm prepared to
8 issue a ruling on this matter.

9 I'm going to grant the request for a Directed Verdict
10 on punitive damages.

11 Punitive damages are sums awarded in addition to any
12 compensatory or nominal damages -- damages, usually as
13 punishment or a deterrent levied against a Defendant found
14 guilty of particularly aggravated misconduct, coupled with a
15 malicious, reckless or otherwise wrongful state of mind.

16 I don't believe the evidence in this case establishes
17 that Mr. Rockenfield had the sufficient culpable mental state
18 of mind to allow a Jury Instruction for punitive damages. I
19 don't believe a reasonable jury could find facts in this
20 case to support punitive damages. So, I'm going to grant
21 your request for a Directed Verdict on the punitive damage
22 issue.

23 You're going to need to prepare an Order on that so
24 that there is sufficient record of my ruling in the event of
25 an appeal, Mr. Rimmer, and I want you to include my reasoning

1 in that.

2 All right. Mr. Rimmer, any other Motions that you
3 want to present to the Court?

4 MR. RIMMER: Just one other preliminary matter,
5 Judge.

6 I would like to formally object to the admission of
7 what's been presented as Exhibit Six, which is the
8 demonstrative exhibits, primarily on the basis of
9 authentication. If you look at those exhibits, there --
10 there's a number of typographical drawings, notes on elevation
11 height, and -- and I just -- I don't think any witness testified
12 that they created those exhibits, didn't authenticate that they
13 were based on any real-world information. It seemed to be
14 demonstrative exhibits that Mr. Hunt can use, but they're not
15 appropriate for evidence.

16 THE COURT: Do you have a response, Mr. Hunt?

17 MR. HUNT: The primary response is they were used
18 throughout the trial with no objection. They were used
19 repeatedly with a number of witnesses. At no point was there
20 any disagreement with any of the information contained in those
21 exhibits.

22 So, although they are demonstrative, I think they
23 would be helpful to the jury since they've been presented
24 during the course of the case. So, we would ask that they be
25 permitted to have -- for the jury to have them.

1 THE COURT: All right. I'm going to deny your request,
2 Mr. Rimmer. These demonstrative exhibits were not objected
3 to, and so, the cat's out of the bag, so to speak. They've
4 viewed them, and so, they're a part of the record at this
5 point.

6 MR. RIMMER: Fair.

7 THE COURT: And your request not to allow the -- the
8 jury to look at them during closing arguments or for other
9 reasons, I'm going to deny that request.

10 MR. RIMMER: Fair enough. Need an Order on that, too,
11 or is that good?

12 THE COURT: No.

13 MR. RIMMER: Okay. Thank you.

14 THE COURT: Any other Motions?

15 MR. HUNT: No. That's it, Judge. Thank you.

16 THE COURT: All right. Mr. Hunt, do you have a Motion
17 for the Court?

18 MR. HUNT: Judge, we discussed this yesterday, and
19 the considering of making a Directed Verdict Motion on
20 negligence in the case. I think that to -- our intent is to
21 allow the jury to decide the issue in the case on negligence,
22 and so we're not going to make that Motion.

23 THE COURT: Okay. And just let me state for the
24 record, for purposes of appeal. I -- I -- I think this case
25 should go to the jury on negligence. I think viewing the

1 evidence most favorable to Express Ranches, LLC in -- in the
2 context of foreseeability and a freak accident, I think Express
3 Ranches can make that argument, and I think there's sufficient
4 facts for the jury to accept that argument and make a rule --
5 or decision in favor of Express Ranches. So, in the sense that
6 there is a Motion for a Directed Verdict, I would -- I would
7 have denied it.

8 MR. HUNT: Glad I didn't make it.

9 [Laughter in the Courtroom.]

10 THE COURT: Okay. All right.

11 MR. HUNT: But thank you for the clarification, Judge.
12 Makes me feel better about not doing it.

13 THE COURT: Okay. All right. So now I think we're
14 at Jury Instructions -- final Instructions and closing
15 arguments and deliberations.

16 I'm going to take a little break.

17 I'm going to remove the Punitive Damage Instructions.
18 I'm going to number these.

19 I said I was going to take a little break, but before
20 we take a little break, I'm going to go ahead and number these
21 Instructions in order that they've been presented to me. I'm
22 going to remove the Punitive Damages Instruction. (Pause.)

23 Oh, I -- I need the Special Verdict.

24 MR. HUNT: Right.

25 THE COURT: I have -- my copy, I marked up.

1 MR. HUNT: Well, the only copy we have includes
2 the Punitive Damage Instruction, so I think it has to be
3 reworked.

4 THE COURT: Oh, good point. Okay. Thank you. So,
5 how much time do you need to do that?

6 MR. HUNT: Probably not a lot. I have the computer.
7 Is it on a disc?

8 MR. RIMMER: About how fast can we ask [inaudible].

9 MR. HUNT: No, we can do it electronic -- I mean we
10 can do it -- I don't know. Fifteen --

11 THE COURT: So, if you can make the correction on your
12 computer, you can send it to me via Proposed Text, if you want
13 to do that, and I can print it off, and then I can present it
14 to the attorneys.

15 MR. HUNT: I think we can do that. I don't know if I
16 can -- yeah, I'm not positive we can do that.

17 MS. ARAGON: Or I can run like the wind.

18 THE COURT: But I'll leave that up to you. If you
19 want to send your assistant back to your office and --

20 MR. HUNT: I don't -- can we give it you on the zip
21 drive or no?

22 MS. ARAGON: On the drive?

23 THE COURT: You can do that, but I'm going to have to
24 ask IT to look at the zip drive before I put it in my
25 computer.

1 MR. HUNT: Right, okay. Well, let's see if we can
2 email it. We'll try that first. (Pause.)

3 MR. RIMMER: Your Honor, are we in recess?

4 THE COURT: No, we're still on the record. (Pause.)

5 Okay. Now, while you're trying to do that, let me
6 ask the attorneys, how -- how much time do you all think you're
7 going to need for closing arguments? I'm just trying to get
8 an idea of where we're going to be at when you -- when we move
9 into closing arguments.

10 MR. RIMMER: I might take five to ten minutes.

11 MR. HUNT: I'll take more than that.

12 THE COURT: Right.

13 MR. RIMMER: Thirty to forty-five?

14 MR. HUNT: I -- I would -- yeah, thirty to forty.
15 Sure -- it -- it won't be any longer than that. So, I think
16 between the two of us, including rebuttal, an hour.

17 THE COURT: An hour? Okay. So, I think we'll --
18 we'll have this to the jury probably by noon.

19 MR. HUNT: Yeah. (Pause.) So, I think we could
20 probably email this to the Court, but we may need --

21 MR. RIMMER: Wi-Fi?

22 MR. HUNT: Yeah.

23 MR. RIMMER: I have a Dongle. [Inaudible.]

24 MR. HUNT: Okay. (Pause.) So what is the Proposed
25 Text? What's the --

1 THE COURT: I knew you were going to ask me that.
2 Since I don't use it, I'm not exactly sure what it is. I know
3 it's sfeddiv9proposedtxt -- do you have that, Victoria?

4 So, it's sfeddiv9proposedtxt@nmcourts.gov.

5 MR. HUNT: We believe that we just sent it from a
6 Gmail account.

7 THE COURT: Just got it.

8 MR. HUNT: All we did was delete those last two.
9 (Pause while printing.)

10 THE COURT: All right. Let me provide counsel with
11 one copy each of the Special Verdict Form. I'm going to go
12 ahead and review it with the two of you. (Pause.)

13 All right. I intend to provide Special Verdict
14 Form -- this Special Verdict Form without punitive damages,
15 with just Questions One, Two and Three to the jury.

16 Any objection to that, Mr. Rimmer?

17 MR. RIMMER: No objection.

18 THE COURT: Any -- any other modifications to that,
19 Mr. Hunt?

20 MR. HUNT: No. Thank you.

21 THE COURT: All right. Anything else we need to
22 address before we take a short recess? I'm thinking about
23 maybe ten minutes -- fifteen minutes at most.

24 MR. HUNT: I will just need to turn the podium, but
25 that's it.

1 THE COURT: Okay. So, we'll take a fifteen-minute
2 recess.

3 MR. HUNT: Thank you.

4 THE COURT: All right. We'll be in recess.

5 [WHEREUPON, a short recess was
6 taken.]

7 THE COURT: We are back on the record in the matter
8 of D-117-CV-2017-89. The attorneys and parties are present in
9 the Courtroom.

10 Anything we need to address before we bring out the
11 jury, start with Final Instructions and enter into closing
12 remarks?

13 MR. HUNT: No procedural matters. Probably it's
14 worth, let's get this up now.

15 THE COURT: Yeah. That's a good idea. Let's do that.

16 MR. RIMMER: Nothing for me, thank you.

17 THE COURT: All right. Thank you.

18 Is it working?

19 MR. HUNT: I believe it is on my end. I think I sent
20 it to you.

21 THE COURT: All right. So, let's go ahead and do
22 that, Andrew.

23 MR. HUNT: It's fine.

24 THE BAILIFF: Did you send it?

25 MR. HUNT: I sent it and it's on here, so it's probably

1 just --

2 THE COURT: It's coming up.

3 MR. HUNT: It's just warming up. Yeah, we got that.
4 Great. Thank you.

5 THE COURT: All right. Perfect.

6 All right. All rise for the jury.

7 [WHEREUPON, the jury entered the
8 Courtroom, and the following
9 proceedings were held in Open
10 Court.]

11 THE BAILIFF: Your Honor, I [inaudible].

12 THE COURT: All right.

13 All right. Counsel and the parties may be seated.

14 Members of the jury, the time has now come to give
15 you Final Instructions that will guide you during your
16 deliberations as the sole judges of the facts in this
17 case.

18 First, I will summarize the issues between the
19 parties. Second, I will state the rules of law governing this
20 case. Please pay close attention to these Instructions. I
21 will read them only once, but the written Instructions will be
22 given to you to take to the jury room.

23 In this case, Plaintiff, Eric Armstrong and Luke
24 Armstrong seek compensation from the Defendant, Express
25 Ranches, LLC, for damages that the Plaintiffs say were caused

1 by negligence.

2 To establish negligence on the part of the Defendant,
3 Express Ranches, LLC, Plaintiffs have the burden of proving at
4 least one of the following:

5 One. James W. Rockenfield failed to use ordinary care
6 when he directed the members of the hunting party to both
7 discharge their rifles at nearly the same time, in an unsafe
8 location, where bullets traveled onto the neighbor's property,
9 endangering people who were occupying that property.

10 Two. James W. Rockenfield failed to use ordinary care
11 when he instructed the members of the hunting party that the
12 elk were approximately two-hundred-and-fifty yards away, when
13 the elk were actually only a hundred-and-sixty yards away,
14 causing the hunters to aim too high and shoot over the top of
15 the ridge and hit Luke and Eric Armstrong while they were on
16 the neighboring property.

17 Three. Defendant Express Ranches, LLC, including the
18 actions of its manager, James Rockenfield, failed to use
19 ordinary care in the manner it conducted the October 7th, 2014
20 hunt, including no policies against hunting near the Lodge,
21 and no policies prohibiting shooting towards the neighbor's
22 land.

23 The Defendant denies any negligence and says that it
24 was an unavoidable accident.

25 A party seeking a recovery has the burden of proving

1 every essential element of the claim by the greater weight of
2 the evidence. To prove by the greater weight of the evidence
3 means to establish that something is more likely true than not
4 true.

5 When I say in these Instructions that the party has
6 the burden of proof on negligence, I mean that you must be
7 persuaded that what is sought to be proved is more probably
8 true than not true. Evenly balanced evidence is not
9 sufficient.

10 An act is a cause of injury if it contributes to
11 bringing about the injury, and if the injury would not have
12 occurred without it. It may not be the only explanation for
13 the injury, nor the reason that is nearest in time or place.
14 It is sufficient if it occurs in combination with some other
15 cause to produce the result. To be a cause, the act,
16 nonetheless, must be reasonably connected as a significant link
17 to the injury.

18 The evidence which you are to consider in this case
19 consists of the testimony of the witnesses, and the exhibits
20 admitted into evidence by the Court, and any facts admitted or
21 agreed to by counsel, and any facts which the Court instructs
22 you to accept as true.

23 The production of evidence in Court is governed by
24 Rules of Law. From time to time, it has been my duty as Judge
25 to rule on the evidence. You must not concern yourselves with

1 the reasons for these rulings. You should not consider what
2 would or would not have been the answers to the questions,
3 which the Court ruled could not be answered.

4 A fact may be proved by circumstantial evidence.
5 Circumstantial evidence consists of proof of facts or
6 circumstances which give rise to a reasonable inference of the
7 truth of the facts sought to be proved.

8 James Rockenfield was an employee of the Defendant
9 Express Ranches, LLC, and was acting within the course and
10 scope of his employment when he participated in overseeing the
11 hunting trip with James D. Wilson and Michael D. Norman on
12 October 7th, 2014. Therefore, the Defendant, Express Ranches,
13 is liable for any wrongful act or omission of James
14 Rockenfield.

15 James D. Wilson and Michael D. Norman were guests of
16 Express Ranches, LLC for purposes of hunting on the property,
17 and at all times, were following the instructions of James
18 Rockenfield, the hunting guide employed by Express Ranches,
19 LLC. Therefore, Express Ranches, LLC is liable for any
20 negligent acts or omissions of James D. Wilson and Michael
21 D. Norman committed during the hunting trip on October 7th,
22 2014.

23 The term negligence may relate either to an act or a
24 failure to act. An act, to be negligence, must be one which
25 a reasonably prudent person would foresee as involving an

1 unreasonable risk of injury to himself or herself, or to
2 another, and which such a person in the exercise of ordinary
3 care, would not do.

4 A failure to act, to be negligence, must be a failure
5 to do an act which one is under a duty to do and which is --
6 a reasonably prudent person, in the exercise of ordinary care,
7 would do in order to prevent injury to himself or herself, or
8 to another.

9 Ordinary care is that care which a reasonably prudent
10 person would use in the conduct of the person's own affairs.
11 What constitutes ordinary care varies with the nature of what
12 is being done. As a risk of danger that should reasonably be
13 foreseen increases, the amount of care required also increases.
14 In deciding whether ordinary care has been used, the conduct
15 in question must be considered in light of all of the
16 surrounding circumstances.

17 Every person has a duty to exercise ordinary care for
18 the safety of the person and the property of others.

19 You are not to engage in any discussion of damages
20 unless you have first determined that there is liability, as
21 elsewhere covered in these Instructions. The fact you are
22 given Instruction on damages is not to be taken as an
23 indication as to whether the Court thinks damages should or
24 should not be awarded.

25 If you should decide in favor of the Plaintiffs on

1 the question of liability, you must then fix the amount of
2 money which will reasonably and fairly compensate them for any
3 of the following elements of damages proved by the Plaintiffs
4 to have resulted from the negligence as claimed.

5 One. The nature, extent and duration of the injury,
6 including disfigurement.

7 Two. Pain and suffering experienced and reasonably
8 certain to be experienced in the future, as a result of the
9 injury. No fixed standard exists for deciding the amount of
10 these damages. You must use your judgment to decide a
11 reasonable amount to compensate the Plaintiffs for pain and
12 suffering.

13 Three. The loss of enjoyment of life experienced and
14 reasonably certain to be experienced in the future as a result
15 of the injury. No fixed standard exists for deciding the
16 amount of these damages. You must use your judgment to decide
17 a reasonable amount to compensate the Plaintiffs for the loss
18 of enjoyment of life.

19 Whether any of these elements of damages have been
20 proved by the evidence is for you to determine. Your verdict
21 must be based upon proof and not upon speculation, guess or
22 conjecture. Further, sympathy or prejudice for -- for or
23 against a party should not affect your verdict, and is not a
24 proper basis for determining damages.

25 If you have found that Plaintiffs are entitled to

1 damages arising in the future, you must determine the amount
2 of such damages. If these damages are of a continuing nature,
3 you may consider how long they will continue.

4 Luke Armstrong is forty-eight years old, and Eric
5 Armstrong is fifty-three years old. According to a table of
6 mortality, the life expectancy of persons age forty-eight is
7 thirty-one-point-three additional years. The life expectancy
8 of persons age fifty-three years is twenty-seven-point-one-six
9 additional years.

10 These figures are not conclusive. It is the average
11 life expectancy of persons who have reached that age. This
12 figure may be considered by you in connection with other
13 evidence relating to the probable life expectancy of Luke
14 Armstrong and Eric Armstrong, including evidence of their
15 occupations, health, habits and other activities, bearing in
16 mind that some persons live longer and some live shorter than
17 the average.

18 Faithful performance by you of your duties is vital
19 to the administration of justice.

20 The law of this case is contained in these
21 Instructions, and it is your duty to follow them. You must
22 consider these Instructions as a whole, not picking out one
23 Instruction or parts thereof and disregarding others.

24 You alone are the judges of the credibility of the
25 witnesses and of the weight to be given to the testimony of

1 each of them. In determining the credit to be given to the
2 testimony of any witness, you may take into account the
3 witness' ability and opportunity to observe, the witness'
4 memory, the witness' manner while testifying, any interest,
5 bias or prejudice that the witness may have, and the
6 reasonableness of the testimony considered in light of all of
7 the evidence in the case.

8 A witness may be discredited or impeached by
9 contradictory evidence or inconsistent conduct. If you believe
10 that any witness has been impeached or discredited, it is your
11 exclusive province to give the testimony of that witness only
12 such credit as you may think it deserves.

13 You are the sole judges of all disputed questions of
14 fact in this case. It is your duty to determine the true facts
15 from the evidence produced here in Open Court. Your verdict
16 should not be based on speculation, guess or conjecture. You
17 are to apply the law as stated in these Instructions to the
18 facts as you find them, and in this way, decide the
19 case. Neither sympathy nor prejudice should influence your
20 verdict.

21 The jury acts as a body, therefore, on every question
22 on the verdict form which the jury must answer, it is necessary
23 that all jurors participate, regardless of the vote on another
24 question. Before a question can be answered, at least ten of
25 you must agree upon the answer. However, the same ten need

1 not agree upon each answer.

2 After these Instructions on the law governing this
3 case, the lawyers may make closing arguments or statements on
4 the evidence and the law. These summaries can be of
5 considerable assistance to you in arriving at your decision,
6 and you should listen carefully. You may give them such weight
7 as you think proper.

8 However, neither these final discussions, nor any
9 other remarks or arguments of the attorneys made during the
10 course of the trial are to be considered by you as evidence or
11 as correct statements of the law, if contrary to the law given
12 to you in these Instructions.

13 Mr. Hunt, you may proceed with your closing remarks.

14 MR. HUNT: Thank you, your Honor.

15 Good morning.

16 THE JURY: Good morning.

17 MR. HUNT: I asked you on Monday if I could have your
18 permission to visit with you, and I'm going to ask you again
19 if I can have your permission for just a little bit longer to
20 talk about some of the issues in this case. I know you've
21 heard -- I feel like I've been the one talking most in this
22 Courtroom, and so I -- if I could have just a little bit more
23 of your time. Would that be okay?

24 We talked about on Monday also, that in exchange for
25 you coming to Court, owning up to the Summons, and honoring

1 your responsibility, the State of New Mexico would vest in you
2 tremendous power in this case. Tremendous power to hold
3 accountable that up until which, for the last four-and-a-half
4 years has said, "It's not us. Don't hold us responsible.
5 Crazy stuff happens."

6 And the State of New Mexico also vests in you the
7 tremendous power of making a decision. When two lives have
8 been harmed because of the irresponsible actions of another
9 party, and they won't accept responsibility, this jury -- this
10 Courtroom -- you have the right to say what we, as a community,
11 hold and value for human life -- what we value as a jury.

12 And to be honest, over the last couple of days,
13 it's -- this is a bizarre case. And it's a bizarre case, not
14 because of the facts, but because what we have seen. And quite
15 honestly, it's no reflection from the people that are sitting
16 here in this Courtroom. It's not a reflection on Mr. Rimmer.
17 It's not a reflection on Mr. Rockenfield. What we've seen is
18 a party that says, "We're not responsible," but essentially
19 puts on no defense.

20 Mr. Rockenfield came into Court and he told you --
21 probably the first time anybody had asked him, and he said,
22 "Yes, I was negligent. Yes, I was negligent in having them
23 take that shot. Yes, I was negligent in not checking the
24 range. Yes, I was negligent and if there was anything in the
25 world I could do to take it back and do it over, I would. And

1 I hope that this jury," he says, "takes care of it and makes
2 it right."

3 What we really have in this case, and the only reason
4 any of us are here, is because what we have is an empty chair.
5 Express Ranches -- you just heard a statement that the Court
6 allowed us to read to you about thirty minutes ago. We tried
7 to take their deposition and they didn't show up. The Court
8 entered -- allowed us to read that instruction to you.

9 Here we are in Court. No one from Express Ranches
10 even comes to this proceeding. Mr. Rockenfield told you, he's
11 not an officer, or he's not associated. He wishes he wasn't
12 here. But people up the chain made that decision. And they
13 made that decision because they believe that Rio Arriba County
14 is a conservative county, and that a Rio Arriba County jury
15 won't come back with damages that are significant, and we're
16 not going to waste our time.

17 You have the authority and the power to tell them,
18 this was not okay. In our opinion, the safety standards for
19 hunting and the safety standards for everyday life, be it
20 hunting, be it driving, be it at work, matter. And when they're
21 violated, and you choose as a company not to accept
22 responsibility and you trust us to decide it, we will, but
23 we'll do it in a way that matters and that is significant,
24 because human life matters.

25 And so, what I want to talk about a little bit is

1 you're going to get the decisions in this case. You're going
2 to get a verdict form, and you're going to get to fill it out.
3 And there's only three questions. It's a simply verdict form.
4 But those three questions are going to be with the Armstrongs
5 for thirty years -- the rest of their lives. And they're
6 probably going to be with all of us as well.

7 Sitting on a jury doesn't happen very often for most
8 of us -- for most of you. And so, what I ask is even though
9 it will be hard at the end of this, be courageous and be proud
10 of the decision that you render in this case. And render a
11 decision so that years from now, you see each other on the
12 streets, you see each other and run into each other, you can
13 say, "Hey, you remember how we took care of those folks? That
14 was wrong what happened. I still can't believe we had to take
15 time out of our lives to go decide that case."

16 So, I'm going to talk with you for a minute about the
17 verdict form and about how that is going to happen with you as
18 a jury.

19 The first question on the jury verdict form is going
20 to be: Were Express Ranches, LLC, James Rockenfield, Michael
21 Norman and James Wilson negligent? Yes or No.

22 It's remarkable that this jury is still having to
23 decide this question. The evidence has been one-sided on that.
24 One-sided in a number of ways.

25 You've seen this diagram a number -- multiple times.

1 An elevated shot. A shot with the wrong range given. A shot
2 towards not only the neighbor's property line, but towards the
3 neighbor's property line where the road was. Where they knew
4 the road was heavily traveled during this time of year. Where
5 they knew that the Armstrong party used that road and was there
6 that day. Where they knew that a shot, if it goes high, not
7 only is it going to go on to the other property, but it can go
8 on to that road.

9 And so, knowing all of that and setting up to take
10 the shot and not taking the -- the twenty steps to get the
11 range finder, at the least, it's negligent.

12 And what we ask when you put all of those together,
13 and -- and Mr. Gallegos came in here and he talked to us and
14 those weren't the only problems. The rifles weren't sighted
15 in. There weren't any policies in place. There were no safe
16 practices. It was basically, Mr. Rockenfield, take care of
17 them -- take care of our friends from Oklahoma whenever they
18 want to come hunt at this place. Express Ranches used the
19 ranch like it was their personal playground, and they failed
20 to take safety into account.

21 So, when you have the opportunity and you get to
22 Number One: Was Express Ranches -- and as you heard, they're
23 responsible for the conduct of Mr. Rockenfield and the hunters
24 -- were they negligent? Certainly, based on the burden of
25 proof that we talked about, were they most likely negligent?

1 Certainly they were. And we ask that the answer to this
2 question be Yes.

3 The next question: Was any negligence of Express
4 Ranches a cause of Luke and Eric Armstrong's injuries and
5 damages?

6 The two -- Number One and Number Two -- really go
7 together. In this instance, obviously if the shots weren't
8 taken, then Mr. Armstrong -- Luke and Eric wouldn't have been
9 injured. So, was the fact that Express Ranches negligently
10 took a shot, negligently gave yardage, negligently shot towards
11 the road, did that cause their injuries? Certainly their
12 injuries were caused by the bullets. I don't think there's
13 been any other testimony in the case on that issue.

14 And really, those two questions you'll get to decide,
15 and we're proud that you get to decide those issues. We think
16 Express should have admitted it a long time ago, but you'll
17 get to decide those.

18 The real question in this case is Number Three. And
19 Number Three is: In accordance with the damage instructions
20 given by the Court, we find the total damages suffered by
21 Eric -- excuse me -- by Luke and Eric Armstrong -- whoops.
22 Well, you'll get to see these instructions. I'm not sure what
23 I just did.

24 The Instruction -- I'll just give them quotes, and I
25 apologize. We've messed around with the system, and I don't

1 want --.

2 What were the total amount of damages? And so, I want
3 to talk about that for a minute. And I want to talk about it
4 in this way.

5 I've been anxious over the last few days. Anxious
6 because Luke and Eric trusted in me to come tell their story.
7 They trusted in me to draw it out of the witnesses, to present
8 it to you so that what they've been through comes alive. And
9 I hope that we've been able to do that. And what I hope we've
10 been able to do is really help understand that in this context,
11 what we talked about also was in -- basically we're here in
12 civil court because the Constitution guarantees life, liberty
13 and happiness. And when some of those are taken away by
14 somebody else's negligence, it also guarantees the right to
15 present it to a jury. And this right to let the jury decide
16 what's the value in that.

17 And so, what you heard from -- what you heard from
18 Luke and what you heard from folks that talked about Luke, his
19 friends, is that when he was shot in the face with the bullet
20 fragment that goes through there, it tore up some nerves along
21 the way. He lands on his back. He doesn't really remember
22 exactly what's happening. He's on his way to the hospital,
23 and the thoughts that are running through his mind are the
24 thoughts that most of us hope we never have to really think
25 about. "Have I done a good enough job with my kids? Have I

1 taken care of my wife? 'Cuz I just got shot, and I got shot
2 in the face and I don't really know what's going on."

3 And you heard about family. Family is everything to
4 that guy. The bigger the better.

5 And he gets there, and thank heavens it wasn't worse.
6 It wasn't two inches away. But you can't help think about that
7 when you've been hit.

8 And he gets to the hospital and they take care of him.
9 They mend him. He gets some surgeries and they mend him. But
10 it's not the same.

11 His friend, Paul, came in, and I -- I appreciated Paul
12 taking time out to be here. And Paul gave us a little example
13 that I bet came from Luke.

14 He said, "You guys been to the -- the dentist?"
15 Anybody ever been to the dentist and you get that Novocaine
16 and you get shot up in the mouth? And you go home and you
17 can't feel your lips. You can't -- it just kind of has that
18 numb sort of tingling feeling to it. And when you -- when you
19 get home, you can't feel the -- the water when you're drinking
20 it, and the food when you're eating it, and you're just afraid
21 that stuff might be coming out.

22 I'm sorry. Mind if I -- do we need to address
23 that?

24 THE COURT: We're going to have to take a little
25 break.

1 MR. HUNT: Sure.

2 THE COURT: We're going to have to take a brief recess,
3 at the request of one of the jurors.

4 During the recess, do not discuss this case with
5 anyone other than yourselves, and then only in the jury room
6 when all of you are present. Do not attempt to decide the
7 outcome of the case before you begin final deliberations.

8 Please continue to wear the juror badges while in and
9 around the Courthouse. If someone other than a fellow juror
10 happens to discuss this case in your presence, report that fact
11 at once to a member of the staff. If you happen to see or
12 hear any news accounts of the trial, please report that fact
13 to a member of the staff.

14 All right. We're going to take a -- about a ten-
15 minute recess at this point.

16 All rise for the jury.

17 [WHEREUPON, the jury retired from
18 the Courtroom, after which the
19 following proceedings were held
20 outside the presence of the jury.]

21 THE COURT: All right. You all may be seated. Let
22 me just state. We're out of the presence of the jury. I
23 certainly don't like to do that. I've never had to do that in
24 the middle of a closing argument, but there was a request to
25 use the restroom, and I figured it was more of a distraction

1 than -- on that issue than to continue to proceed.

2 MR. HUNT: I understand. No, it was -- I agree.

3 THE COURT: Yeah. Just for the record, let me -- let
4 me read what it -- what the juror wrote. And it just simply
5 says: Need to go to the restroom.

6 So, we'll be in recess for ten minutes.

7 MR. HUNT: Can we work on that?

8 THE COURT: Yes, please.

9 MR. HUNT: I don't know what to do on it.

10 [WHEREUPON, a short recess was
11 taken.]

12 THE COURT: We're back on the record in the matter of
13 D-117-CV-2017-89. Counsel and the parties are present in the
14 Courtroom.

15 Anything we need to address before we bring the jury
16 back in?

17 MR. HUNT: Can I ask a question? When -- as far as
18 releasing alternates, just --

19 THE COURT: I'm going to do that at the --

20 MR. HUNT: After all the closing is done?

21 THE COURT: After all the closing is done and I give
22 the final Instruction to the jury. And I -- I'll ask the two
23 alternates to stay behind.

24 MR. HUNT: Okay.

25 THE COURT: All right. All rise for the jury.

1 [WHEREUPON, the jury entered the
2 Courtroom, and the following
3 proceedings were held in Open
4 Court.]

5 THE COURT: All right. The attorneys and parties may
6 be seated. Mr. Hunt, you may continue with your closing
7 arguments.

8 MR. HUNT: Thank you, Judge.

9 All right guys, thank you.

10 We -- I want to step back for one second. This is
11 one of the Instructions that you'll get. And although we've
12 already talked about the negligence part of it and certainly
13 believe that that is an issue that has been decided, and it's
14 one-way I this case -- all of the testimony is on one side,
15 none to the other -- the question is, ordinary care. What a
16 reasonably prudent person would use in the conduct of one's
17 own affairs varies with the nature of what's being done. As
18 the risk of danger increases, the amount of care required also
19 increases.

20 The reason I presented that Instruction is what we
21 know, obviously, is this is a hunting incident involving 30-
22 06 rifles that go a long way. The risk of danger is high
23 without ordinary care. And ordinary care in this case was easy
24 to do -- follow the basic rules of hunting. Follow the basic
25 rules that, in this case, nobody disagreed with.

1 And so, I wanted to mention because the risk of danger
2 is high in this instance. And that's why this jury has the
3 ability to set the standard in what the community is. Set the
4 standard and say, "This kind of conduct, in hunting, because
5 it's dangerous, because we all respect it and believe it is a
6 healthy part of New Mexico, the standard is high. And if you
7 violate it and someone is harmed, then we're going to
8 respond."

9 And so that's what we were talking about -- that part
10 of the Instruction.

11 Instruction Number Three, which is simply, what are
12 the damages suffered?

13 And you also got one other Instruction that you'll
14 get a chance to look at. It's the Damages Instruction. And
15 this is what the State of New Mexico -- the Legislature and
16 the Courts -- this is what they say is required in a case where
17 there are physical harm to people. These are the categories
18 of damages that are -- that are for a jury.

19 The nature, extent and duration of the injury. So,
20 basically what that means is, how does it happen, how much
21 does it interfere with your life, and how long is it going to
22 last.

23 We obviously know how all this happened. It happened
24 with the trauma of having pieces of a bullet hit both of these
25 men with such force that they're knocked to the ground.

1 The duration of it -- what you've heard from the
2 medical experts -- and the Defendants had the option of
3 bringing medical experts in. They had that choice, and they
4 didn't bring anybody in to refute the medical proof in this
5 case. No one.

6 The damages proof -- even Mr. Rimmer at the outset of
7 this case, you'll remember in his opening remarks, he says,
8 "Although we think it was a freak accident, we acknowledge,
9 the injuries are horrific." The injuries are significant and
10 so is the harm in this case.

11 The pain and suffering reasonably -- or experienced
12 and reasonably certain to be experienced in the future. Both
13 the physical pain and the mental suffering is part of what
14 you've heard about in this case. And both are real and both
15 are there forever.

16 The loss of enjoyment of life. That's really the part
17 of it that's -- what are the things that you can't do that you
18 used to? What did you get enjoyment out of? And you heard
19 some of that with Luke. Some of it was your job. You have a
20 dangerous job, a job that puts you in the line of fire, and a
21 job that you've willingly taken on, saying, "I'm willing to
22 sign up for that. I'll be there." But a little bit of that
23 is taken away when now you've been hit. The vulnerability is
24 now something that's not just in theory -- it's real.

25 And you heard the same thing with Eric. The

1 enjoyment. The things that he used to do. Prided himself on
2 being a physical guy. He could get out there and do all kinds
3 of stuff all the time. A little bit of that has been taken
4 away. And even if just a little bit of it is taken away, it's
5 significant.

6 And so, the question that is always troubling, both
7 for me -- we talked about this at the beginning also in jury
8 selection. As a lawyer, when I'm talking to you as a jury,
9 and I'm going to tell you in a minute what we think the
10 jury -- the verdict ought to be, how we think you ought to
11 think about the damages part of it. And we think it's
12 significant.

13 And what we talked about in jury selection was, this
14 is kind of an uncomfortable topic, but it's one that's
15 important. And it's important because civil justice is
16 determined in dollars. Civil justice is determined based on
17 the harm.

18 What's the trade value for permanent harm? And what
19 we're talking about here is thirty years, basically. You heard
20 the Instruction. Four-and-a-half years, plus twenty-seven or
21 thirty years into the future.

22 And what I want you to think about is although Express
23 decided not to come here, imagine they showed up at Luke's
24 house, and they knock on his door. [Knocking sound.]

25 And they say, "Luke, we've got a job we'd like to

1 offer you. We're going to pay you Ten Dollars an hour, and
2 here -- there is a catch. One, you don't get any days off.
3 Holidays, weekends -- no days off. And we're going to pay you
4 for sixteen hours a day, because those are the number -- those
5 are the hours you're awake. We're not going to pay you when
6 you're asleep."

7 Luke says, "Okay. That sounds kind of interesting.
8 Tell me a little bit more about it."

9 And the folks say from Express, "Well, here's what's
10 going to happen. To take this job, first you're going to get
11 shot. You're going to be with your family and you're going to
12 get shot in the face. And you're going to have to go through
13 two surgeries, and it's going to damage the nerves to such a
14 degree that you're going to lose feeling in your lip. It's
15 going to be there, but it's going to be scar tissue. It's
16 going to be tight. It's not going to have the same feeling.
17 You're going to have to use a straw when you drink out of a
18 cup, or a bottle that has kind of a spout on it. You're going
19 to be a little bit embarrassed when you go out to eat, because
20 you're really not going to be able to control the food
21 necessarily, and sometimes it's going to fall. And on top of
22 that, when you kiss your wife, it's not going to be the same.
23 We know you've been married for thirty years."

24 And when I heard that and talked about that, I -- I
25 thought to myself, if I couldn't kiss my wife, that would be

1 a significant harm. That's the spark that starts almost
2 everything else.

3 "And we're going to take that away. You can still do
4 a peck, but that's it. And on top of that, the other thing
5 that we're going to --"

6 Do you need a water? Do you --?

7 UNIDENTIFIED FEMALE: Yeah.

8 MR. HUNT: Okay. Can we --

9 THE COURT: All right, Andrew. Can you do that for
10 me, please?

11 MR. HUNT: Okay.

12 THE COURT: All right. Mr. Hunt, Andrew will do that
13 for you.

14 MR. HUNT: Okay. And so, when Express talks to Luke,
15 they say, "There's some other parts of this job that you have
16 to know about. But remember, we're going to pay you Ten Dollars
17 an hour. When you wake up in the morning and you go to brush
18 your teeth, it's going to be there. You're going to be afraid
19 to brush your teeth before -- after you get dressed because if
20 you get toothpaste on it, you just -- you've kind of got to
21 change clothes and everything else."

22 "When you eat, it's going to be there. It's going to
23 be different than a lip, because it's just going to be skin
24 that we had to pull up, so it's going to be chapped. It's
25 going to be susceptible to a sunburn. It's going to be there

1 with you all the time."

2 "We're also going to break three or four of your teeth
3 and you're going to have to get those fixed. And it's going
4 to mess up your jaw. And it's going to mess up your jaw in
5 such a way that it's going to cause headaches. And those
6 headaches at times are going to be so debilitating that you're
7 just going to have to go lie down in your room and hope they
8 pass."

9 "So, Luke, Ten Dollars an hour for the next thirty
10 years. Are you interested?"

11 I can tell you, Luke would say, "No, thanks. That's
12 not enough. I'm not interested."

13 So, the representative from Express says, "Okay.
14 Eric, we've got a deal we'd like to offer you. Same Ten Dollars
15 an hour. Except it's going to be a little different for you.
16 Instead of getting shot with part of a bullet in the face, it's
17 going to go in your abdomen. It's going to go through your
18 clothes, it's going to go through the skin, and it's going to
19 lodge itself right in -- up in the muscle, kind of up near the
20 ribs. And you're not going to need surgery, but because of
21 where it lodges, you're not going to be able to get it taken
22 out. It's just going to be with you."

23 "It's going to miss a couple of arteries. It's going
24 to miss the organs, but it's going to be there. And doctors
25 are going to tell you, you'd better be really careful because

1 there's a twenty percent at least chance that it could move.
2 And if it moved, it can go into the veins, into the organs,
3 and who knows what kind of problems it can cause. So, you'd
4 better be careful in the kind of stuff that you do. You'd
5 better be careful because you want to make sure it doesn't do
6 any harm -- it doesn't move.

7 "And you're going to have that, and you're going to
8 get to carry that around with you every day. And on top of
9 that, the other thing that we're going to do is we're going to
10 pick you up when you get shot and throw you on the ground. And
11 it's going to tear some ligaments in your back. It's going to
12 tear some muscles in your back. And when those grow back
13 together with scar tissue, you're going to have arthritis,
14 you're going to have loss of use of -- loss of movement, and
15 you're going to have pain. And your back now is going to be
16 different than it was before."

17 "But don't worry. We're going to take care of you at
18 Ten Dollars an hour."

19 And Eric says, "Well, do I get any breaks? Do I get
20 a day off?"

21 And they say, "No, that's not part of it. It gets
22 you until your thirty years. Thirty years from now is how long
23 you get to deal with this."

24 Well, Eric would say the same. Eric would say, "I'm
25 not interested. I don't want to get shot. Living with the

1 trauma of that alone, I don't want to do it. I don't want to
2 do it because I like my back just the way it is, and once you
3 start having back problems, they don't go away. And I don't
4 want to carry around a bullet. I have no idea what's going to
5 happen with that thing. I'm not interested."

6 And so, when you get back to the jury room, and you
7 get to decide on damages, one of the questions you ask, is Ten
8 Dollars an hour, is that too much? Is that unreasonable in
9 this case, or is that fair compensation for what they've been
10 through? And you may think it's not enough.

11 If they got asked the same question, "Would Fifteen
12 Dollars an hour be enough?"

13 And they'd say, "No."

14 "Would Twenty?"

15 But as a jury, you get to decide those things. And
16 you get to decide -- you can understand, when we're talking
17 about thirty years, those numbers are not insignificant.

18 At Ten Dollars an hour, for thirty years, it's One
19 Million Seven Hundred and Fifty Thousand, for Luke, and the
20 same for Eric.

21 At Fifteen Dollars an hour, it's a little bit over
22 Two-and-a-Half Million Dollars.

23 At Twenty Dollars an hour, obviously it's a little
24 over Three.

25 As a jury, you have the opportunity to say, in this

1 case, justice for two men whose lives have been changed, is
2 not cheap. And when you add it up over a lifetime, it becomes
3 significant, and it becomes figures that are large, and we
4 won't in any way say that they're not. But so is the harm.

5 And if the sum of your fellow jurors say, "You know,
6 I think that's too much." And that very well may be part of
7 the conversation. Remind them that this is a lifetime. Is
8 Ten Dollars an hour for living with that too much?

9 Because when Express knocked on the door to Luke and
10 Eric and made them this proposal, and Luke and Eric would have
11 said, "No," Express is going to tell them, "Guess what? You
12 don't have a choice in this matter. We make that choice for
13 you. We're going to make that choice for you and you're going
14 to have to live with this. You're going to have to live with
15 it because of the wreck -- careless conduct that we engaged
16 in."

17 "And to get that job, you're also going to have to
18 spend four-and-a-half years fighting us in Court because we
19 are not going to admit it was our fault."

20 Put all of those things together, and what we ask that
21 this jury consider, as fair compensation for what Luke and Eric
22 Armstrong have been through, is somewhere between Ten to Twenty
23 Dollars an hour for the lifetime and now the job that they
24 didn't want to sign up for, but they're stuck with.

25 In this case, in this context, one hundred percent

1 fair value. Express Ranches doesn't get a discount because
2 Mr. Rockenfield is nice. They don't get a discount because
3 Mr. Rimmer is nice. Fair compensation is what we ask that this
4 jury have the courage to return in this case.

5 Be proud of your service. Be proud of what you've
6 had the opportunity to do. And we thank you for being here.
7 We thank you for being willing to show up. And what we ask is
8 for full, hundred percent justice in this case.

9 I'll have one brief opportunity to speak with you
10 again after Mr. Rimmer. But we very sincerely thank you for
11 the attention you've given us the last three days, and the
12 attention that you'll give us this afternoon. We know it's
13 not an easy job. But we also know that this jury is up to the
14 task.

15 Thank you.

16 THE COURT: Mr. Rimmer?

17 MR. RIMMER: Good morning, everybody.

18 THE JURY: Good morning.

19 MR. RIMMER: So, why are we here? You've heard the
20 testimony of the witnesses. You're going to receive a notebook
21 with exhibits that have been admitted into evidence. You're
22 going to have an opportunity to review the testimony and the
23 exhibits presented to you, and you are going to be ready to
24 render a verdict.

25 And I think you would agree with me that for the most

1 part, the parties agree on most of the facts of the case. What
2 we -- what we disagree about is what those facts mean. And
3 when it -- when I say facts, I'm talking about testimony and
4 exhibits -- the ones you will be receiving in the notebook.
5 That's what the verdict should be based on.

6 I'm also talking about an exhibit in the notebook
7 which you have seen. Mr. Hunt used it. He used it in his
8 opening and he used it in his closing.

9 Consider the information being shown on this exhibit.
10 That this dotted line is purported to be the bullet trajectory.
11 I think it's been very clear from both Plaintiffs' testimony,
12 the testimony of Dr. Marin who we saw in the video-tape
13 yesterday, and the exhibits you will review in the exhibit
14 notebook, that the Plaintiffs were injured by bullet fragments
15 or shrapnel.

16 What does this mean for the case? It means that
17 somewhere along that dotted line, the quote, bullet
18 trajectory -- that bullet was transformed into bullet
19 fragments. Think about what this means.

20 Do you all recall the testimony of Mr. Gallegos
21 yesterday, the hunting guide, who stated that it was his expert
22 opinion that my client, Mr. Rockenfield, was negligent. When
23 he testified about his opinion, he was relying on those
24 diagrams to form a part of his opinion. Granted, just part.
25 And yet you also heard how he was relying on the incorrect time

1 to accuse Mr. Rockenfield and the hunting party of hunting
2 without enough light. When he was told the correct time of
3 six-twenty p.m., he admitted that knowing the correct time
4 would have changed his opinion.

5 But do we really know if it was safe to be hunting at
6 that time? And I would suggest we do, because Eric and Luke
7 Armstrong have testified that they were out guiding their
8 brother on a hunt at that exact moment, on the Ute Creek
9 Ranch.

10 This same expert, Mr. Gallegos, testified that he
11 had -- he hasn't visited the location. He hasn't visited the
12 ranch, and that he was relying on the information provided to
13 him to develop his opinion and his experience as a guide.

14 Now, my client, Mr. Rockenfield, admitted that he
15 accepts full responsibility for his part in what happened. You
16 heard that yesterday. It's also clear from his testimony that
17 he took the time to direct Mr. Norman and Mr. Wilson to take
18 a safe shot. He believed he had an adequate backstop. He
19 believed that he had provided the correct distance. And he
20 believed that the shot would not injure anybody on any other
21 property.

22 I would suggest that this -- what happened was
23 unforeseeable.

24 As you deliberate, consider his testimony regarding
25 the process he went through to line up the shot.

1 And as I said yesterday, all civil cases have two
2 parts: what caused the accident, and what the accident
3 caused. You are called to judge both in this case. And I'll
4 ask you again, why are we here?

5 I would suggest that it is your job as a jury to tell
6 us what Mr. Rockenfield's and the hunters' part was in all
7 this. That's the hard question you have been called upon to
8 decide.

9 As a jury, it is your duty to render a verdict. All
10 that I ask is you don't take my word for it. Review the
11 exhibits, discuss the testimony, and reach a fair verdict in
12 this case.

13 I appreciate you all's time. Thank you.

14 THE COURT: Mr. Hunt?

15 MR. HUNT: Thank you, Judge.

16 Mr. Rimmer asked why are we here. And then he told
17 you Mr. Rockenfield accepts his part of responsibility in this
18 case. And then he asked you to return a verdict in favor of
19 Express Ranches.

20 We're here because Express Ranches hasn't shown up.
21 Express Ranches -- Mr. Rockenfield, when he testified, said,
22 all right, if you accept your responsibility, why are we
23 here?

24 And he told you, "I'm not the one that gets to make
25 those decisions. Those are made by somebody in Oklahoma.

1 Those are made by some corporate person somewhere else, coming
2 here saying, 'We're not taking responsibility.'"

3 Taking responsibility means we're providing full
4 compensation to those who are injured by your action. Express
5 Ranches has never done that, and doesn't do it today.

6 The fact that the men were hit by bullet fragments,
7 we've always acknowledged that. Mr. Rockenfield acknowledged
8 not only that yes, he took some steps to try and make sure
9 things were okay, but he was wrong. He was wrong about the
10 backstop. He was negligent in not getting the range finder.
11 He was negligent in all the reasons he told you. He didn't
12 just say, "I take my responsibility." He said, "Yes, I was
13 negligent." That's the only proof in this case.

14 Accepting responsibility means accepting a hundred
15 percent of the responsibility and making up that difference.
16 The only way Express Ranches can be held accountable in this
17 case is by this jury returning a jury for one hundred percent
18 of the harm to the Armstrong family, and the harm that they'll
19 continue to suffer.

20 And what I ask again is you consider that. Consider
21 that your verdict stands for thirty years. 2040 -- twenty-one
22 years from now. They don't get to come back. And the figures
23 that you give today have to compensate them for the rest of
24 their lives. So, yes, when those numbers are added together,
25 they're added together and they become a large number today.

1 They're only large because the harm was large. And there has
2 been no proof from the Defendants to counter -- counter any of
3 that harm. They didn't propose any figures to you because they
4 know what we're asking is not unreasonable. Not once did they
5 say it was.

6 We live in a world where there are Seventy-, Eighty-
7 Million Dollar horses that go racing. If one of those horses
8 got a broken leg and they had to present a claim to the
9 insurance company, asking for Seventy Million Dollars wouldn't
10 be unreasonable.

11 If the fire that went through Cimarron went through
12 Express Ranches a few years back, burned to the ground, and
13 they had Thirty Million Dollars in insurance, you can guarantee
14 they would be asking for every penny of it.

15 In this case, when we ask you for Ten Dollars an hour
16 for the rest of their lives, we believe that's fair and
17 reasonable. But again, what we said was, you may think it
18 should be more. You may think it's Fifteen or Twenty Dollars
19 an hour. And we trust you in that.

20 And what the Jury Instructions say is that ten of you
21 have to agree. We hope it's all twelve, but if it can't be,
22 that's okay. The jury allows for ten on any given question.
23 We hope it's unanimous, and we hope you send a signal so loud
24 that they hear it all the way in Oklahoma, so that this
25 empty chair then has to know that the voice of a jury in New

1 Mexico can ring loud and ring true when human beings are
2 damaged.

3 We thank you for your time, and we wish you luck in
4 your deliberations.

5 Thank you.

6 THE COURT: All right. Ladies and gentlemen, some
7 final Instructions for you all before you begin your final
8 deliberations.

9 Upon retiring to the jury room, and before commencing
10 your deliberations, you will select one of your members as the
11 foreperson. You will be given the Court's Instructions and
12 the Special Verdict Form. When as many as ten of you have
13 agreed upon a verdict, and your answers to the questions
14 presented on the Special Verdict Form, your Foreperson must
15 sign the appropriate form and you will all then return to the
16 open Courtroom.

17 And before I release the jury for final deliberations,
18 I need to identify Mercedes Velasquez and Leon Ortega. The
19 two of you are the alternate jurors, so you're going to remain
20 in the Courtroom after I release the jury for final
21 deliberations. I'll have some final instructions for you as
22 well.

23 All right. All rise for the jury.

24 [WHEREUPON, the jury retired from
25 the Courtroom to begin

1 deliberations, after which the
2 following proceedings were held in
3 Open Court.]

4 THE COURT: All right. Everyone may be seated. All
5 right. Ms. Velasquez and Mr. Ortega, as I stated, you're the
6 alternate jurors. First of all, let me just say, thank you
7 for your time. And I know I speak on behalf of the lawyers
8 and the parties when I say, thank you for your time. I know
9 how important your time is and how precious your time is. But
10 without your service in these proceedings, there is no way our
11 system of justice would ever work. So, thank you again.

12 Some final words to you. Moving forward, you can talk
13 to anyone you want about this case. If you get contacted by
14 someone and they want to speak to you, you're free to talk to
15 them. If you do not want to talk to anyone regarding this
16 case, you do not have to. You can politely tell them, "I'm
17 not interested in speaking to you about the case." If they
18 persist, just let me know and I'll try to resolve the problem
19 for you. Okay?

20 One last thing. Please check in with Jury Services
21 moving forward. Your commitment hasn't ended yet. It's my
22 understanding your commitment has just started, so you'll need
23 to continue to check in with Jury Services.

24 All right? And you'll turn in your juror badges. And
25 I appreciate your service.

1 Thank you very much.

2 All rise for the alternate jurors.

3 MR. HUNT: Thank you. Sorry. (Laughs.) Worst job
4 of it all.

5 [WHEREUPON, the alternate jurors
6 retired from the Courtroom, after
7 which the following proceedings
8 were held in Open Court.]

9 THE COURT: All right. You all may be seated. Before
10 I -- before I send off the Jury Instructions and the Special
11 Verdict form to the jury that's deliberating, I want you all
12 to take a final look at that to make sure everything is in
13 order.

14 And with regard to the exhibits --

15 MR. RIMMER: May I approach?

16 THE COURT: You may. Take a quick look at those.
17 (Pause.)

18 Yes. Okay. So, I'm going to have Andrew bring that
19 back to the jury room.

20 And then the exhibits, we can wait for them to ask,
21 or I can just send them back. What's your preference?

22 MR. RIMMER: Send them back, Judge.

23 THE COURT: Okay.

24 MR. RIMMER: Let's just get them back there.

25 THE COURT: Yeah. And so, I don't -- I want to

1 take -- well, let me -- do you have a clean notebook here, or
2 do -- I'm going to take out the -- I'm going to take this
3 out.

4 MR. HUNT: Oh, sure.

5 THE COURT: I'm going to take out the --. Also, I'm
6 going to take out Plaintiffs' Amended Trial Exhibits from the
7 front here in the notebook. And I'm going to try to take this
8 out as well. I don't think I'm going to be able to do that.
9 There we go.

10 So, take a look at the exhibits, make sure they're in
11 order.

12 MR. HUNT: That's going to be back with the jury?

13 MR. RIMMER: Here's -- so that was my [inaudible] --
14 I almost -- I don't want to be pedantic.

15 THE COURT: And the deposition? If they ask for that,
16 we'll have to play that. I don't intend to necessarily send
17 that back.

18 MR. HUNT: Yeah, I agree with that.

19 THE COURT: Is that -- I don't know what they'll do
20 with that, unless they ask to review it, and then we can have
21 them come out and we'll play it.

22 MR. HUNT: Good enough.

23 THE COURT: All right. So, my Bailiff is going to
24 take the exhibits, except for the deposition testimony, and
25 the Jury Instructions back to the jury for final deliberations.

1 All right. Some final instructions. I'm going to
2 ask that you stay close to the Courthouse. If you're going to
3 leave the near vicinity of the Courtroom, if you could give my
4 staff your cell phone number so if the jury has a question or
5 if they have a verdict, we can give you a quick call and you
6 can get over here rather quickly.

7 MR. HUNT: Okay.

8 THE COURT: All right. Is there anything else either
9 of you think we need to address before we go into recess?

10 MR. HUNT: Nothing from me.

11 MR. RIMMER: Nothing from me, Judge.

12 THE COURT: All right. All right. We'll be in recess
13 then.

14 [WHEREUPON, the proceedings stood
15 in recess during jury
16 deliberations.]

17 THE COURT: All right. You may be seated. We're back
18 on the record in the matter of D-117-CV-2017-89, Luke and Eric
19 Armstrong versus Express Ranches, LLC.

20 The attorneys and the parties are in the Courtroom.
21 And it is my understand the jury has reached a verdict.

22 Is there anything we need to address before we bring
23 the jury into the Courtroom?

24 MR. HUNT: Nothing from the Plaintiffs, your Honor.

25 MR. RIMMER: Nothing from me, Judge.

1 THE COURT: All right. So, let's all rise for the
2 jury.

3 [WHEREUPON, after deliberations,
4 the jury entered the Courtroom, and
5 the following proceedings were held
6 in Open Court.]

7 THE COURT: All right. So, the jury is in the
8 Courtroom.

9 Without telling me the results, would Madam
10 Foreperson state whether or not the jury has been able to reach
11 a verdict, --

12 MADAM FOREPERSON: Yes.

13 THE COURT: -- either yes or no.

14 MADAM FOREPERSON: Yes, we have.

15 THE COURT: Yes. All right. If you can hand the
16 forms to my Bailiff, please. And counsel and the parties may
17 be seated. (Pause.)

18 All right. I am going to read the Jury Verdict.

19 In the matter of Eric Armstrong and Luke Armstrong,
20 Plaintiffs, versus Express Ranches, LLC, a foreign
21 corporation, Defendant, on the questions submitted, the jury
22 finds as follows:

23 Question Number One. Were Express Ranches, LLC, James
24 Rockenfield, Michael Norman, James Wilson, negligent?

25 Answer: Yes.

1 Question Number Two: Was any negligence of Express
2 Ranches, LLC, James Rockenfield, Michael Norman, James Wilson,
3 a cause of Luke Armstrong's or Eric Armstrong's injuries and
4 damages?

5 Answer: Yes.

6 Question Number Three: In accordance with the Damage
7 Instructions given by the Court, we find the total damages
8 suffered by Luke Armstrong and Eric Armstrong to be as follows:

9 Luke Armstrong: Two Million Six Hundred and Twenty-
10 Eight Thousand Dollars.

11 Eric Armstrong: Two Million Six Hundred and Twenty-
12 Eight Thousand Dollars.

13 Signed by the Foreperson, Miss Delatorre-Garcia.

14 All right. Mr. Hunt, do you want me to poll the jury?

15 MR. HUNT: Was it a unanimous verdict?

16 THE COURT: All right. So, no, I'm sorry. Do you
17 want me to poll the jury?

18 MR. HUNT: Oh, sorry. No, your Honor. Thank you.

19 THE COURT: All right. Mr. Rimmer?

20 MR. RIMMER: Yes, please.

21 THE COURT: All right. So, I'm going to go ahead.
22 Members of the jury, I'm going to take a roll call as to each
23 of you, so I'm going to ask you individually.

24 The question I have for each of you is: Is the verdict
25 I read your verdict?

1 And I'm going to start with Gloria Montoya-Rivera. Is
2 the verdict I read your verdict?

3 JUROR MONTOYA-RIVERA: Yes.

4 THE COURT: Conway Martinez, is the verdict I read
5 your verdict?

6 JUROR MARTINEZ: Yes.

7 THE COURT: Hernando Trujillo, is the verdict I read
8 your verdict?

9 JUROR TRUJILLO: Yes.

10 THE COURT: Melanie Fornum, is the verdict I read your
11 verdict?

12 JUROR FORNUM: Yes.

13 THE COURT: Robert Tapia, is the verdict I read your
14 verdict?

15 JUROR TAPIA: Yes.

16 THE COURT: Steven Baca, is the verdict I read your
17 verdict?

18 JUROR BACA: Yes.

19 THE COURT: David Agunio, is the verdict I read your
20 verdict?

21 JUROR AGUNIO: Yes.

22 THE COURT: Ernest Brito, is the verdict I read your
23 verdict?

24 JUROR BRITO: Yes.

25 THE COURT: Amos Ulibarri, is the verdict I read your

1 verdict?

2 JUROR ULIBARRI: Yes.

3 THE COURT: Rudy Montoya, is the verdict I read your
4 verdict?

5 JUROR MONTOYA: Yes.

6 THE COURT: Maria Delatorre-Garcia, the Foreperson,
7 is the verdict I read your verdict?

8 MADAM FOREPERSON: Yes.

9 THE COURT: And Steven Cachuca, is the verdict I read
10 your verdict?

11 JUROR CACHUCA: Yes.

12 THE COURT: Did I miss anyone? I don't believe I did.
13 All right.

14 Members of the jury, first of all, I want to thank
15 you for your time. I know I'm speaking on behalf of the
16 attorneys and the parties when I tell you, thank you for your
17 time. Without your participation in these proceedings, our
18 system of justice would not work. And -- and for two hundred
19 years, we've relied on citizens such as yourself to make sure
20 that justice is done in any given case.

21 At this point, you can talk to anyone you wish to
22 regarding this case. If someone approaches you and wants to
23 speak to you regarding the case, you're free to do that. If
24 you do not want to talk to anyone regarding the case, and
25 someone contacts you and they want to speak to you regarding

1 the case, tell them politely, no. And if they persist in
2 wanting to speak to you regarding the case, contact my office
3 and I'll take care of the problem.

4 Please remember to continue to check in with Jury
5 Services. Your commitment here has just started. You may be
6 called up for another jury panel in -- during your term of
7 service.

8 Thank you for your participation, your attention, and
9 your commitment to this case.

10 And we will be -- well, I'm going to release the jury.
11 All rise for the jury.

12 [WHEREUPON, the jury retired from
13 the Courtroom, after which the
14 following proceedings were held in
15 Open Court.]

16 THE COURT: All right. The parties may be seated.

17 There's a few matters we need to attend to.
18 Obviously, I'm going to file the Jury Instructions and the
19 Special Verdict Form.

20 Mr. Hunt, you're going to need to prepare the Judgment
21 from today's proceeding.

22 MR. HUNT: Yes, sir.

23 THE COURT: And the Bill of Costs. And if there are
24 no objection to the Bill of Costs, then that will be final.
25 If there are, we'll have to have a hearing on that, I believe.

1 MR. HUNT: Sure.

2 THE COURT: And one other minor thing in this case
3 that I need to remind the attorneys about. If you have the
4 Jury Questionnaires, under the Rule, you need to destroy them
5 so that they are not floating around out there.

6 All right. Is there anything else we need to address
7 before we go into recess?

8 MR. HUNT: Nothing from Plaintiff, Judge. Thank you
9 for presiding over this case.

10 THE COURT: Absolutely. And thank you to the two of
11 you. I appreciate your professionalism.

12 Anything else, Mr. Rimmer?

13 MR. RIMMER: Nothing for me, Judge. I appreciate it.
14 Thank you.

15 THE COURT: Okay. All right. Good luck to everyone.

16 MR. RIMMER: Thanks.

17 THE COURT: We are in recess.

18 [WHEREUPON, the proceedings stood
19 in recess.]

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