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COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT - DIVISION TWO
APPEAL FROM THE SUPERIOR COURT OF RIVERSIDE COUNTY

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DENISE COLLINS, ET AL.,)
) DCA No. E080233
Plaintiffs/Respondents,)
) Riverside County
vs.) Case No. PSC1901096
)
DIAMOND GENERATING CORPORATION,) Volume 1 of 19
) Pages 1-24
Defendants/Appellants.) (25-200 Blocked)
)
 -)

REPORTER'S TRANSCRIPT ON APPEAL
BEFORE THE HONORABLE MANUEL BUSTAMANTE - DEPARTMENT 2
April 18, 2022

APPEARANCES:

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REPORTED BY: JENNIFER SEBRING, CSR NO. 13749

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SUPERIOR COURT - STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

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DENISE COLLINS, Et Al.,)
)
 Plaintiffs,)
)
 vs.) CASE NO. PSC1901096
)
 MOTT MACDONALD, LLC, ET AL.,)
)
 Defendants.)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE MANUEL BUSTAMANTE - DEPARTMENT 2

April 18, 2022

APPEARANCES

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Morning Session

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1 APRIL 18, 2022; MORNING SESSION

2 BEFORE THE HONORABLE MANUEL BUSTAMANTE

3 ---000---

4 THE COURT: Collins versus Mott McDonalds.

5 MR. SULLIVAN: David Sullivan appearing on behalf
6 of the plaintiff, Denise Collins, your Honor.

7 THE COURT: Yes, thank you. And you wanted to
8 talk about the Court's tentative?

9 MR. BASILE: Excuse me, your Honor. Jude Basile
10 on behalf of Christopher Collins.

11 I don't know if you have me on video also,
12 but I'm here to speak.

13 THE COURT: Thank you.

14 MR. REID: And good morning, your Honor. David
15 Reid on behalf of moving party Diamond Generating
16 Corporation. And we also have a court reporter,
17 your Honor.

18 THE COURT: Yes.

19 MR. CUNNINGHAM: Good morning, your Honor. Jeff
20 Cunningham also for Diamond Generating Corporation.

21 THE COURT: Any other appearances?

22 All right. Very well.

23 THE CLERK: Your Honor, I apologize. We did not
24 get a check-in for the court reporter. I don't know if
25 they are on the line or not.

26 THE COURT: Do we have a court reporter?

27 THE COURT REPORTER: Your Honor, this is Jennifer
28 Sebring.

1 THE COURT: Thank you. It's a lot of fun doing
2 it on the phone. All right.

3 And would you like to address the Court
4 regarding the Court's tentative?

5 MR. BASILE: Yes, your Honor. This is Jude
6 Basile. First, just a logistic thing, am I on video also
7 there for your Honor?

8 THE COURT: You are not.

9 MR. BASILE: Well, let me proceed, then.

10 Thank you, your Honor. First of all, the
11 only defendant remaining in this case is Diamond
12 Generating Corporation. The caption should be "Collins
13 versus Diamond Generating Corporation." The reason for
14 that is it was a complicated case that we fortunately
15 have been able to make very simple.

16 It's a very important case about safety at a
17 nearby power plant in Palm Springs. An explosion at the
18 plant killed Daniel Collins, a 44-year-old man, leaving a
19 wife and son.

20 The case is based on a simple negligence
21 cause of action based on negligent undertaking.

22 This defendant, Diamond Generating
23 Corporation, is the parent corporation of a wholly owned
24 subsidiary called "Diamond Generating Operations." This
25 defendant has fourteen high pressured gas power plants,
26 twelve in the United States, two in Mexico.

27 This plant here in Palm Springs is the
28 largest, high pressured gas plant of its kind in the

1 world.

2 Now, in a nutshell, your Honor, it's a
3 classic case of negligent undertaking. The defendant
4 here provided safety policies for operating the plant,
5 hired the plant manager, directing him to implement the
6 policies they provided, reviewed his safety performance,
7 and the actual safety procedure sheet that was used by
8 the worker killed that day was the defendant's document.

9 And an expert has filed a declaration on how
10 the defendant failed in their undertaking to provide
11 safety at its wholly owned subsidiary.

12 The defendant, in filing this motion, is
13 asking the Court to rubber stamp their business model in
14 receiving the benefit from their wholly owned subsidiary
15 but ignoring the responsibility for safety at the plant.

16 Our negligence action is based on a
17 negligent undertaking, and I want to go through those
18 elements with the Court to show numerous triable issues.

19 It's based on CACI instruction 450(C) that
20 outlines those elements. And I believe Mr. Sullivan has
21 a copy of that there, and we've also e-mailed it to
22 opposing counsel.

23 Does the Court have that?

24 MR. SULLIVAN: There's two of them, your Honor.
25 One is filled out how it would be filled out if this
26 matter were to proceed in trial and the other one is the
27 original from the copy itself.

28 THE COURT: Very well.

1 MR. BASILE: May I proceed, your Honor?

2 THE COURT: Please.

3 MR. BASILE: Now, CACI 450 outlines those
4 elements, and I'm also going to be addressing the Peredia
5 Case Versus H.R. Mobile Services, as it's clearly on
6 point here. And Mr. Sullivan will have a copy of that
7 for you later.

8 First, I want to go through these elements.
9 Then I'll cite the similarities to the Peredia case and
10 some others.

11 THE COURT: I can read -- counsel, I can read the
12 elements. I've got the elements in front of me.

13 MR. BASILE: Great.

14 THE COURT: And tell me how they apply.

15 MR. BASILE: Thank you, your Honor. The first
16 element is defendant voluntarily referred charge rendered
17 the services. Here, the defendant provided safety
18 policies for use at the plant. That's in Defendant's
19 disputed fact Number 10.

20 The lockout procedure, being used by Collins
21 the day he was killed, was the defendant's document.
22 That's disputed fact 20, Exhibit 7.

23 The current plant manager has testified that
24 if a party's name appears on the document, that's who
25 created it. That was Dennis Johnson and its opposing
26 party, disputed fact 22.

27 So the actual document that Collins was
28 working with that day was the defendant's document.

1 The defendant recommended safety
2 presentations to be used at the plant for safety
3 training. Again, moving party, undisputed fact 18.

4 The defendant provided safety orientation
5 that was used to instruct workers and outside contractors
6 who were working that day -- the day of the explosion.

7 Specifically, the orientation instructed all
8 outside contractors they must follow the lockout
9 procedure that was in use at the facility. That lockout
10 procedure, again, was on a document of the defendant's.
11 That's moving party's disputed fact number 24.

12 Then, just months before this explosion, in
13 2016, the defendant recommended safety presentations to
14 be used at the plant for safety training. This is moving
15 party, undisputed fact 18.

16 In 2016, they recommended updates to safety
17 policies at the plant. Moving party, undisputed fact 19.

18 In January, just six weeks before the
19 explosion at the plant, Walker, the manager of the plant,
20 attended a meeting at the defendant's headquarters
21 attended by the defendant's executives, where the topics
22 of how changes in the safety procedures were going to be
23 communicated to plant workers at the plant. That's
24 moving party, undisputed fact Number 2.

25 The defendant hired the plant manager,
26 undisputed fact Number 9. The defendant provided the
27 plant manager's job description, which included safety.
28 The defendant's executives were the supervisors of the

1 plant manager, disputed fact 10.

2 The defendant did perform its reviews
3 annually, including the safety performance of the plant
4 manager. Moving party, undisputed fact 11.

5 So clearly, there's evidence presented for a
6 triable issue on Element Number 1 of the negligent
7 undertaking. Did they provide services? Numerous
8 services. There's even more than what's presented in the
9 motion, your Honor, but that's sufficient to make a
10 triable issue.

11 Second element there. Diamond Generating
12 Corporation, this defendant, should have recognized it's
13 needed for the protection of workers. Well, this is a
14 high pressure natural gas power plant. That's their
15 business, that they provide these policies. They are all
16 safety at the plants, specifically safety for the
17 operation that Collins was doing the day he was killed.

18 The third element, that he failed to use
19 reasonable care. Glen Stevick, an expert in high
20 pressure gas submitted a declaration. In the policies
21 that the defendant provided, there was to be an annual
22 review of the safety procedures at the plant. An annual
23 review was never done. Never done.

24 And the defendants, in their annual review
25 of -- their plant manager failed to see that he was
26 complying with their own procedures, and that was the
27 annual review.

28 Fourth is a substantial factor. Certainly,

1 it was a substantial factor, but that's not -- for
2 purposes of this motion, that's not relevant. But
3 nonetheless, it was a substantial factor because these
4 policies were not followed. They were not followed-up
5 on.

6 Now, the fifth one, only one of the three
7 needs to be established. Failure to use reasonable care
8 added to the risk of harm. That's what Stevick, our
9 expert's declaration. Stevick, I might add, your Honor,
10 has impeccable credentials. He investigated the
11 Deepwater Horizon explosion in the gulf some years ago
12 that polluted the whole gulf, among a lot of other work
13 he's done.

14 These services providing all the policies
15 and directions that I just outlined, to perform a duty
16 that they owed to Daniel Collins. Well, that was a
17 safety procedure. Safety -- the simplest way to deny
18 this motion, I believe, your Honor, is if you just look
19 at Exhibit 7. That's the actual sheet he was following
20 that Stevick criticizes that is the defendant's document.

21 So I understand there might have been
22 confusion on how defendant's moving papers just relied on
23 ownership, but the Court can't lose sight of the
24 defendant's action. It clearly shows they engaged in an
25 undertaking to provide safety. Negligent undertaking
26 does not require ownership or control of the facilities,
27 which brings us to the Peredia case versus H.R. Mobile
28 Services. I think Mr. Sullivan has a copy of that for

1 the Court. It's at 25 Cal.App.5th 680. I commend the
2 Court to take a look at that case.

3 The case involved a negligent undertaking by
4 an outside entity that provided safety policies to a
5 working dairy. Here, in Peredia, the outside entity
6 wasn't a parent corporation. It was an independent
7 outside company. There was no written contract. There
8 was just an agreement.

9 And in our case, this is a wholly owned
10 subsidiary of the defendant. The trial Court in the
11 Peredia case granted summary judgment, but the Court of
12 appeals reversed.

13 H.R. Mobile provided safety policies, like
14 the defendant did here. H.R. Mobile provided training
15 materials in that case, like the defendant did here.
16 H.R. Mobile reviewed training materials, like the
17 defendant did here.

18 And interesting to note, in the Peredia
19 case, at 689, it stated that negligent claims are pursued
20 against entities performing safety-related services for
21 the injured worker's employer involve at least five types
22 of defendants, including parent corporations. That's in
23 Footnote 2.

24 The other case I'm just going to touch on
25 briefly, your Honor, is the Lichtman case. It's
26 15 Cal.App.5th 914. That's where a company was providing
27 a backup battery for traffic signals. The power went
28 out, and the backup battery failed to operate. And the

1 Court, again, denied summary judgment motion saying that
2 a company that provides a backup battery is providing an
3 undertaking.

4 The O'Malley versus Hospitality Staffing
5 Solutions is a very interesting case, and I believe our
6 case here is much stronger than that. In that case, a
7 woman checked into a hotel, and her husband tried to
8 reach her by phone and couldn't reach her, called the
9 hotel and said would you check on my wife. The hotel
10 sent an independent maintenance worker that was there to
11 check on her. He opened the door, didn't see anything
12 and left. And the Court found that that was an
13 undertaking, simply going to look. If he would have
14 stepped in the room, he would have seen her passed out on
15 the floor. That was an independent outside party simply
16 going to look at the room.

17 In our case, we have all this connection and
18 all the procedures and training that were provided by the
19 defendant.

20 Now, the last case was the Luebke versus
21 Auto Club, where Luebke's car broke down. They called
22 the Auto Club, which dispatched a tow truck driver to
23 help them. The tow truck driver abandoned the search for
24 the broken down car. And a drunk driver came by and hit
25 the Luebke's car.

26 The Court, again, overruled the summary
27 judgment motion because the truck driver undertook to
28 provide them tow services and then abandoned it.

1 Our case is -- has a plethora of evidence
2 that the defendants, Diamond Generating, undertook the
3 safety at the plant and failed to do it properly, and it
4 caused the death.

5 Now, the defendant wants this Court,
6 basically in their motion, to set a dangerous precedent
7 where a parent corporation that provides safety policies,
8 safety oversight, daily reports, daily reviews of their
9 manager that they hired for safety reasons, they don't
10 want this Court to set a precedent that they can receive
11 the benefit without the responsibility of safety that
12 they've undertaken.

13 So summary judgment is a drastic measure,
14 your Honor. And the 7th amendment is a -- the 7th
15 amendment is a tremendous civil right. All we ask is an
16 opportunity for a jury to decide if they lived up to that
17 duty.

18 The Collins family has waited -- this
19 happened in 2017, and granted, there were COVID delays
20 and other things. There was thousands of documents we
21 had to sort through to discover this business model that
22 they had set up, and they've waited now for more than
23 five years. There's a trial date set in June, and we
24 humbly and plead with the Court to deny this motion and
25 let this widow and son have their day in Court.

26 Thank you, your Honor.

27 THE COURT: Thank you. Let me hear from opposing
28 counsel, please.

1 MR. REID: Good morning, your Honor. David Reid
2 on behalf of the moving party, Diamond Generating
3 Corporation. A couple preliminary things.

4 First, with regard to the Court's tentative
5 ruling, the second paragraph, the Court finds that moving
6 defendant, Diamond Generating Corporation, had and has no
7 liability under the first and third cause of action,
8 which are based on negligence. I believe that should be
9 the first cause of action based on negligence, and the
10 third cause of action, which is actually a strict
11 liability cause of action. So I just wanted to note that
12 for the Court.

13 THE COURT: I will note that. And that should be
14 corrected, that the third cause of action is strict
15 liability. Thank you.

16 MR. REID: Thank you, your Honor.

17 The second thing I'd like to note is
18 Mr. Basile has not addressed the strict liability cause
19 of action at all in his argument. I would suggest that
20 they, therefore, submit on that issue as far as the
21 tentative ruling.

22 Your Honor, the basic problem here is the
23 first cause of action for negligence, the only theory of
24 liability that's pled in that cause of action, as the
25 Court is aware, is an ownership issue. Negligent
26 undertaking is something that was only raised in the
27 opposition and argued here today. It's a totally new
28 theory of liability. And plaintiffs are precluded by the

1 law from raising new theories of liability when they
2 haven't even requested it for leave to amend.

3 As the Court is aware and as is cited in our
4 reply, a moving party seeking summary judgment or
5 adjudication is not required to go beyond the allegations
6 of the pleading with respect to new theories that could
7 have been pled for which no motion to amend or supplement
8 the pleading was brought prior to the hearing on the
9 dispositive motion.

10 Your Honor, that's the crux of the issue
11 here. Negligent undertaking was not found anywhere in
12 the first amended complaint. Mr. Basile has ignored that
13 issue here this morning before the Court and has not
14 tried to respond to it because there is no response.

15 THE COURT: All right. Mr. Basile, do you want
16 to respond?

17 MR. BASILE: Yes.

18 THE COURT: Briefly.

19 MR. SULLIVAN: May I, your Honor, I was the one
20 prepared to address this --

21 THE COURT: Mr. Sullivan, do you want to respond
22 briefly, please?

23 MR. SULLIVAN: Certainly, your Honor.

24 There is no cause of action for negligent
25 undertaking. All the negligent undertaking is that the
26 doctrine that is used to establish one of the fundamental
27 elements of a negligence cause of action, and that is
28 whether or not there was a duty. Ordinarily a duty is

1 created in a situation where somebody's driving a car,
2 there's been a contractual relationship, something along
3 those lines.

4 The situations where there is no privity
5 between the injured person and the person who allegedly
6 did something wrong, as in this case, where Daniel
7 Collins was a worker who was deeply injured by the
8 negligence, that's where the negligent
9 undertaking doctrine comes into play, to see whether or
10 not there was a duty --

11 MR. REID: David --

12 THE COURT: Let him complete, please.

13 MR. SULLIVAN: What the Court is empowered to
14 look at in that kind of a situation is all of the facts,
15 to see whether or not the actions of the defendant gave
16 rise to a duty. And in doing so, the Court is supposed
17 to follow the rules of liberal construction.

18 The cause of action against negligence is
19 pled in the cause of action. They knew about it. And
20 the other thing that the Court can look at is, if the
21 Court looks at the defendant's own separate statement,
22 they'll see that they have numerous facts that were put
23 in there for no other purpose than to try to defeat the
24 argument that there was a negligent undertaking that took
25 place.

26 If the Court looks at -- an example would be
27 their undisputed fact Number 7, that CPV Sentinel entered
28 into asset management agreement with CPV Sentinel

1 Management, pursuant to which CPV was supposed to oversee
2 operations at the plant including safety. Why is that
3 there? Well, that's there because they want them to know
4 that they weren't part of a contract as it relates to
5 that. If we look at one of the elements of the negligent
6 undertaking cause -- or the negligent undertaking jury
7 instruction, it says that the rendering of the services
8 can be either voluntarily or pursuant to a contract. So
9 they've entered that to show the Court that they didn't
10 have a contract there.

11 The problem is that they clearly have
12 voluntarily engaged in the course of action to oversee
13 and provide oversight to safety of the plant because they
14 had an interest in the plant. Their interest in the
15 plant was the fact that they owned 50 percent of the
16 company that owns it. When that company makes money,
17 they make money. They own 100 percent of the people that
18 operate the plant. When they make money, they're making
19 money. They certainly had an interest in wanting to make
20 sure that that's why they did it. And that's why they
21 volunteered it. Sure, we'll concede there were no
22 contracts for them to do it, but the evidence clearly
23 shows that they undertook to assume that duty.

24 If we go even further and we look at fact
25 Number 11, they talk about -- excuse me -- fact
26 Number 11, they talk about the fact that they did nothing
27 as it relates to providing oversight for DGC [sic]
28 operations, including nothing about drafting policies or

1 providing policies or procedures prior to or at the time
2 of the subject accident. Well, we disputed that fact,
3 and we submitted ample evidence that shows that they did.
4 Why would they assert that in their separate statement?
5 Well, they wanted to defeat what they knew to be an
6 argument that would establish a duty that they owed to
7 the workers of the plant because they engaged in that
8 particular type of conduct.

9 They also went on in separate -- in separate
10 fact Number 19, there was another instance where they
11 wanted to try to insulate themselves from a duty that was
12 created by their actions, where they state that DGC
13 personnel, prior to this incident, regarding the
14 operations or maintenance of the facility, that they
15 never involved themselves with that. Well, that's not
16 true. All of the evidence from the plant manager, that's
17 been submitted, that's part of our moving papers, shows
18 that these people had their hands all over what was going
19 on at the plant.

20 One of the causes of action -- or one of the
21 allegations in the complaint is that they managed this
22 place. That was included in the premises liability cause
23 of action. And we've conceded that there was no
24 ownership, so that's not necessarily going to apply as
25 far as the ownership. But the managed allegations, which
26 still relate to the negligence cause of action because
27 the Courts are obligated to look at the pleadings as a
28 whole, and if there's an allegation in one portion of the

1 complaint that's included with other irrelevant ones,
2 which those other allegations are irrelevant now based
3 upon upon our discussion, that still means that it
4 applies to this.

5 And these folks, by their own admission with
6 the secretary of state of the state of California
7 admitted that they were managing this plant because they
8 were listed. That's included in the facts that we've
9 introduced. The manager has admitted that he answered to
10 the vice president of operations for Diamond Generating
11 Corporation. He's admitted that his performance reviews,
12 including a review of safety, were done by Diamond
13 Generating Corporation. The safety procedures and
14 policies that were in place were clearly not being
15 followed.

16 And Mr. Stevick, in the declaration that we
17 submitted, indicates that any type of reasonable review
18 of the plant manager's performance as it relates to
19 safety would have discovered that these problems were
20 there. And there --

21 THE COURT: All of the these arguments go to the
22 first cause of action, though, as I understand your
23 argument; is that correct?

24 MR. SULLIVAN: Yes, your Honor.

25 THE COURT: But not the strict liability?

26 MR. SULLIVAN: Correct. We're going to concede
27 that the strict liability cause of action --

28 THE COURT: All of the arguments, as indicated,

1 really go to whether or not there's sufficient facts
2 alleged to allow the cause for negligence, the first
3 cause of action, to go forward?

4 MR. SULLIVAN: Right. And the case that the
5 defendant cites about not being able to raise new issues
6 that aren't set about in the proceedings is clearly taken
7 out of context. And the reason for it is, those cases
8 all came into play in a situation where there was a
9 completely different cause of action. One of the cases
10 they pled negligence, but the only way that they could
11 prevail is if they had pled recklessness. They hadn't
12 pled recklessness, so the Court found that wasn't the
13 case.

14 And the whole premise behind that line of
15 cases has to do with whether or not, prior to the time
16 that the defendants filed their motion, they had noticed
17 that those things were being asserted so that they could
18 address them in their original moving papers, which
19 clearly, when you look at the facts that they've asserted
20 in here, they recognize the potential for a duty being
21 created, and they addressed those issues. There is no
22 prejudice that occurred here as it relates to them.
23 There was no surprise, even though they feint surprise,
24 and they artfully avoided using the word "undertaking" at
25 all in their first opening papers of this case. They
26 certainly use it, the undertaking was out there. And
27 they certainly tried to address it because the only way
28 they could prevail on a summary judgment motion is if

1 they show and introduce facts that show that there's no
2 evidence that could be admitted that would establish that
3 there was a duty on part of the defendants, which is the
4 whole argument that they've made in this case.

5 THE COURT: All right. Thank you. I'm going to
6 hear from the defendant one more time regarding whether
7 or not the Court should -- recognizing that summary
8 judgment is a rather drastic determination and whether or
9 not, given the arguments made this morning, it would be
10 more appropriate for the Court to allow the first cause
11 of action regarding negligence to go forward and any
12 issues regarding whether or not there's triable issue of
13 fact could be or should be addressed by the trial Court
14 rather than on a motion for summary judgment.

15 I'm going to let the defense respond --
16 excuse me, the -- yes, the defense respond to that
17 argument, please.

18 MR. REID: Again, we're not required to
19 respond what we might be on notice for. We're required
20 to respond as to what is in the pleadings.

21 This negligence undertaking theory and the
22 other theories that were raised in the opposition are not
23 found in the first amended complaint.

24 Plaintiff is arguing that we bring out these
25 contractual obligations solely for the basis of
26 demonstrating that somehow our client didn't have a duty.
27 That's not the issue, your Honor.

28 We were addressing whether we owned the

1 facility or not. And the fact that all of these
2 contracts are with the owner of the facility is why those
3 contractual obligations were included.

4 Your Honor, the case law is clear here. We
5 don't have to hit a moving target; we don't have to hit
6 an invisible target. We just have to respond to what's
7 in the pleading. That's what the case law reflects.
8 They do not cite any case law that is anything different
9 than what's cited in the reply papers.

10 With that, your Honor, thank you for your
11 time.

12 THE COURT: All right. Thank you.

13 All right. The Court is prepared to make
14 its final ruling at this time, then.

15 The tentative ruling will be amended as
16 follows: The Court finds that the moving defendant, DCG,
17 may in fact bear liability under the first cause of
18 action for negligence and, therefore, the motion for
19 summary is denied.

20 The Court finds as to the third cause of
21 action for strict liability that there is no liability
22 and, therefore, the motion for summary judgment is
23 granted as to that third cause of action only. And the
24 defense will --

25 MR. REID: Your Honor, with that --
26 (Simultaneously speaking.)

27 THE COURT: -- complete an order to that effect.

28 MR. REID: Is the Court going to post a minute

1 order so I have that exact language?

2 THE COURT: Yes. I will change the minute order
3 to reflect the Court's modified decision.

4 Thank you, gentlemen.

5 MR. SULLIVAN: Thank you, your Honor.

6 MR. REID: Your Honor, if I can address one more
7 thing. Since the Court is going to allow -- yes -- just
8 briefly, your Honor. Will the Court entertain an
9 ex parte to continue the trial to where we can address
10 these new theories on another motion for summary
11 judgment?

12 THE COURT: You can certainly just file it, and
13 we'll take a look at it.

14 MR. REID: Thank you, your Honor.

15 THE COURT: I'll give you no prior ruling on it,
16 but I'll take a look at it if you determine it's
17 appropriate.

18 MR. REID: Thank you, your Honor.

19 (Whereupon the proceedings adjourned
20 at 9:28 a.m.)

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22 (Next volume and page number is
23 Volume 2, page 201)

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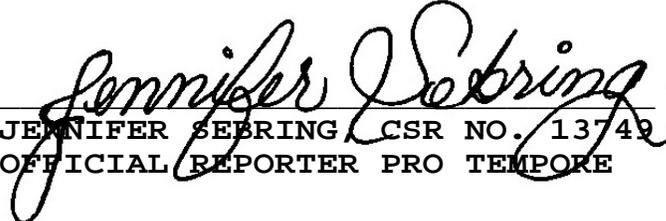
REPORTER'S CERTIFICATE

DENISE COLLINS, ET AL.,)	
)	
Plaintiffs,)	
)	
vs.)	Case No. E080233
)	
MOTT MACDONALD, ET AL.,)	
)	
Defendants.)	
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I, Jennifer Sebring, No. 13749, Certified Shorthand Reporter Pro Tem for the Riverside County Superior Court, do hereby certify that on Monday, April 18, 2022, in the above-entitled case, I took in stenotype a true and accurate record of the proceedings had in said case.

I further certify that the foregoing transcript, pages 1-24, is a true and accurate record of my stenotype notes thereof, as taken by me in stenotype.

DATED: Riverside, California; 23rd of December, 2022.



 JENNIFER SEBRING, CSR NO. 13749
 OFFICIAL REPORTER PRO TEMPORE

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COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT - DIVISION TWO
APPEAL FROM THE SUPERIOR COURT OF RIVERSIDE COUNTY

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DENISE COLLINS and CHRISTOPHER)
COLLINS,)
) DCA No. E080233
Plaintiffs/Respondents,)
) Riverside County
vs.) Case No. PSC1901096
)
DIAMOND GENERATING CORPORATION,)
) Volume 2 of 19
) Pages 201-356
Defendant/Appellant.) (357-400 Blocked)
)

REPORTER'S TRANSCRIPT OF APPEAL
BEFORE THE HONORABLE MANUEL BUSTAMANTE, DEPARTMENT PS2
JUNE 27, 2022

APPEARANCES:

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SUPERIOR COURT - STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

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DENISE COLLINS and CHRISTOPHER)
COLLINS,)
)
Plaintiffs,)
)
vs.) CASE NO. PSC1901096
)
DIAMOND GENERATING CORPORATION,)
)
Defendant.)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE MANUEL BUSTAMANTE - DEPARTMENT PS2

MONDAY, JUNE 27, 2022

APPEARANCES:

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(Appearances continued on next page.)

REPORTED BY: David A. Salyer, CSR 4410

1 APPEARANCES OF COUNSEL: (CONTINUED)

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JUNE 27, 2022 - MORNING SESSION
BEFORE THE HONORABLE MANUEL BUSTAMANTE

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THE COURT: Okay. Let's go on the record. Collins versus DG Corp.

MR. BASILE: Good morning, your Honor. Jude Basile on behalf of Denise and Christopher Collins, who are present in court.

MR. SULLIVAN: David Sullivan also appearing on behalf of Denise and Christopher Collins, your Honor.

THE COURT: Good morning.

MR. SCHUMANN: Kim Schumann for DGC. And we have Jane Cubos, who is in court as DGC's representative.

THE COURT: Good morning. Welcome back.

The Court went ahead -- and I apologize for the late start. I know we were supposed to start at ten. We did -- the Court did go through and review the hardship forms that the jury room provided to prospective jurors this morning.

So there were a few that were granted. Everyone else checked the box saying they were not claiming a hardship. Then some of them went ahead and listed a hardship. So I guess we'll see, but it is one filter so we should have less hardship requests.

So they'll be coming in here in just a few minutes.

I believe they are lining up outside now.

THE CLERK: Yes, your Honor. I told the jury room 10:20.

THE COURT: The reason I asked -- we could start a couple minutes before the jurors come in -- the Court did review not

1 all of the motions while the Court was gone, but did want to
2 address the one first regarding -- this is because it's related
3 to the statement of the case that we're going to read to the
4 jurors, or the Court will. There were two.

5 There is a proposed mutual statement of the case by
6 plaintiff and by defense.

7 So as to the motion on defendant, Diamond Generating
8 Corp., or -- Mr. Reid.

9 MR. REID: Mr. Reid.

10 THE COURT: I believe the Court asked last week and you
11 wanted to be referred to as DG Corp., correct?

12 MR. REID: Correct, your Honor.

13 THE COURT: So I'm just reading from your motions.
14 Diamond Generating Corporation supplemental.

15 The Court is going to go ahead and deny that motion.

16 Plaintiff -- while the Court has some questions in terms
17 of the election of that instruction, they did allege negligence,
18 and this does fall under the purview of a negligence -- it's
19 just a different type of negligence theory.

20 The Court carefully reviewed the instruction because when
21 looking at the bench notes in the CACI instruction 450C, at
22 least to this Court it's trying to figure out how the Good
23 Samaritan rule applies to this type of factual situation.

24 Ultimately, that's plaintiff's election.

25 So the Court is going to deny that motion.

26 That was going to be motion in limine number 12, which
27 the Court had reserved ruling on when we were here last Monday.

28 The Court's tentative was to deny and the final will now

1 be denied.

2 We're still left with two tentatives on the 13 and 16,
3 which we can address maybe this afternoon, or if not another
4 time.

5 That being said, the neutral statement of the case --
6 this is what the Court will read to the prospective jurors this
7 morning.

8 We're going to go with defense's mutual statement of the
9 case. However it's going to be more general. So beginning with
10 the middle of the paragraph, it says, "The Collinses allege" --
11 and again it says Diamond Generating Corporation here, but I'm
12 going to refer to as DG Corp. per your request -- "undertook a
13 specific task."

14 Then I'm not going to say anything where you have the
15 portion to fill in.

16 Undertook a specific task, and then cross out "of," and
17 then it will read, "The Collinses allege Diamond Generating
18 Corporation undertook a specific task and it performed that task
19 in a negligent manner, causing the death of Daniel Collins."

20 The rest will remain as proposed.

21 Then once we get to that instruction, unless I'm missing
22 something, I didn't see in the CACI instruction where you're
23 supposed to fill in the specific task.

24 MR. BASILE: There isn't, your Honor.

25 THE COURT: So maybe that is what was confusing the
26 Court, but we'll leave it there. I'm sure that will be a
27 discussion for another day.

28 MR. REID: Thank you, your Honor.

1 THE COURT: That being said, get comfortable. Unless
2 there is anything else, we'll go ahead and bring in the
3 prospective jurors.

4 Ultimately we have a -- that's Wednesday's calendar. The
5 random sheet. Have you received the alphabetical and the
6 random?

7 The Court just has a general -- I'm not sure if you
8 received a copy of it -- general questions for the prospective
9 jurors. We will provide you with a copy in a moment.

10 It's about ten. The Court will do its voir dire and then
11 it will turn it over to plaintiff and then to defense.

12 MR. BASILE: Your Honor, when will I have my one-minute
13 mini opening? Before I begin my voir dire?

14 THE COURT: In the beginning, when I ask the parties to
15 introduce themselves. Then you can do your mini opening at that
16 time as well.

17 MR. BASILE: After we introduce ourselves.

18 THE COURT: Yes.

19 MR. BASILE: That will be after you read a statement of
20 the case?

21 THE COURT: Correct.

22 Would you like the statement of the case to come
23 afterwards?

24 MR. BASILE: No, before.

25 And I want to tell the Court, I know you're giving me one
26 minute. I've done it several times. It might be 92 seconds,
27 your Honor.

28 THE COURT: That's a minute and a half.

1 MR. BASILE: I just wanted to tell you that. It will be
2 short. It's just that I like to pause a bit when I'm talking,
3 not just rattle stuff off. That's why it stretches the 30
4 seconds.

5 THE COURT: As I mentioned before, the Court has deep
6 appreciation for what each of you do and the Court wants to
7 stand back and not be involved in anything that's your -- how
8 you want to present your case is up to you. That being said
9 there is a reason we go through and do the motions in limine.
10 So I'll ask that you stay relatively close to that. Of course I
11 won't cut you off at 65 seconds, but don't push it.

12 MR. BASILE: I guarantee I won't, your Honor. Just give
13 me a nod when you want me to begin.

14 THE COURT: Well --

15 MR. BASILE: I just mean when it's my turn to stand up
16 and do it.

17 THE COURT: As I remember last week, I remember some --
18 I'll give counsel a subtle reminder. I never thought that was
19 very subtle. Okay.

20 We'll go ahead and bring in the jurors.

21 Is there anything else before we bring in the jurors?

22 MR. REID: No, your Honor.

23 THE COURT: I hope you enjoy your stay this week. It's
24 going to get warmer beginning tomorrow.

25 (Recess.)

26 (Proceedings in the presence of the
27 prospective jurors as follows:)

28 (Prospective jurors sworn.)

1 THE COURT: Good morning. I can tell everyone is excited
2 to be here.

3 Welcome to Department PS2 of the Palm Springs Courthouse.
4 This is the 60th anniversary of this particular courthouse. It
5 opened in 1962.

6 We are here for a civil trial today. We thank you all
7 for being here. My understanding is you've been here since very
8 early this morning. You were downstairs in the jury waiting
9 room. Some of you have filled out the jury hardship
10 questionnaires.

11 For most of you, you have elected that you do not believe
12 you have a hardship. We'll discuss that more here in a couple
13 moments.

14 But when we do, if you are fortunate enough to either be
15 retired or have an employer that pays for jury duty, I do hope
16 that you can sit with us in this trial.

17 We'll talk about the length of the case here in just a
18 few minutes, but before we do, I'm going to go ahead and have
19 the parties introduce themselves on this case.

20 I'll add, again, that I hope you're able to sit with us
21 on this case if circumstances permit your individual situation.

22 We have excellent attorneys on both sides here, so I'm
23 going to have them introduce themselves and then also tell you
24 briefly a little bit about their case.

25 We will begin first with plaintiff's counsel.

26 MR. BASILE: Thank you, your Honor.

27 Good morning, ladies and gentlemen.

28 This is Denise Collins. This is Christopher Collins.

1 My name is Jude Basile and I'm their lawyer to bring this
2 case on their behalf.

3 THE COURT: Thank you.

4 MR. REID: Good morning. Our client is Diamond
5 Generating Corporation. We'll be referring to them as DG Corp
6 during the trial. The representative of DG Corp is Ms. Jayne
7 Cubos. And this is Mr. Kim Schumann.

8 THE COURT: All right. Thank you, counsel.

9 As I mentioned, this is a civil case. You have been
10 asked to come here today because there is a dispute in this
11 matter. And when we have disputes in cases, whether criminal or
12 civil, both sides are entitled to a right to a trial by jury.

13 And so that being said, we understand we cannot do this
14 without you. We need each of you here and I know on behalf of
15 the parties we appreciate your attendance today.

16 That being said, the length of this trial -- and please
17 let me finish before hearing anything. We'll explain the
18 schedule. Hopefully it will be something we can work with. So
19 because of scheduling, this matter is estimated to be concluded
20 on or before July 29th. So it is approximately one month.

21 I know that brings some concern to prospective jurors
22 here, but there is a reason for that. It's not because of the
23 parties. The parties are going to move very efficiently. We've
24 already been working on several issues prior to this morning,
25 but a good part of that is because we're only going to be in
26 session Monday through Wednesday.

27 We'll begin at 10:00 a.m. We'll go through noon and then
28 we'll come back after the lunch hour beginning at 1:30 and then

1 going through about 3:30, maybe a little after. If there is a
2 resting point we can stop with one of the witnesses.

3 The reason for that is that we being the Court -- we have
4 other cases. In the morning Ms. Youngberg here is checking in
5 other attorneys on other cases over the phone, those wishing to
6 appear in person beginning about 8:10 a.m. Then we call the
7 morning calendar at 8:30.

8 Then the Court calls the morning calendar starting at
9 8:30 and, fingers crossed, hopefully like this morning we can
10 finish it by 10:00 a.m. That is when we would bring you in
11 promptly, at 9:59.

12 We will be on schedule. We will we move along 10:00 to
13 12:00, 1:30 to 3:30 or a little bit after.

14 So we will stay on schedule, but that only gives us a
15 certain amount of hours per day, about four hours.

16 Then it also -- we can only do that Monday through
17 Wednesday because then we have other cases that are waiting to
18 go to trial that come in on Fridays. So Friday is not a day
19 where we can do trials because we have to coordinate and tell
20 everyone else, we're sorry, we're in trial so we have to
21 continue your case for a little bit.

22 Then that leaves us Thursdays where the Court basically
23 tries to figure out everything else it's going to do Monday,
24 Tuesday and Friday. And then there are other hearings, unlawful
25 detainers. Those are trials that happen without the jury and we
26 try to do those on Thursday.

27 So you get the majority of our time, but we do still need
28 a little bit of time.

1 What I want to impress upon you is that it's not counsel.
2 If it was up to counsel, they would be here 8:00 a.m. as long as
3 they needed each day, Monday through Friday, but it's because of
4 the Court's own schedule that we have to move along at that
5 pace.

6 But I hope that allows some of you, if you have
7 arrangements with your work, perhaps, you can plan to be in on
8 Thursday and Fridays, and that way you're not out entirely
9 from -- starting tomorrow -- well, starting today until
10 July 29th.

11 So that deals with the time estimation in this case.

12 Are there any questions?

13 No. Okay.

14 So what we're going to go ahead and do now, Madam Clerk,
15 Ms. Youngberg -- Madam Clerk is going to go ahead. We have a
16 randomized sheet. You won't be called in order.

17 We'll have the first 18 individuals sit up here and then
18 we'll talk in a moment about how we're going to proceed.

19 THE CLERK: William Layman, L-E-H-M-A-N.

20 Sandra Castaneda, C-A-S-T-A-N-E-D-A.

21 Donald Reising, R-E-I-S-I-N-G.

22 Diana Kitagawa, K-I-T-A-G-A-W-A.

23 Barbara Mason, M-A-S-O-N.

24 Randyn Seymon, S-E-Y-M-O-N.

25 Ana Santos, S-A-N-T-O-S.

26 Anna Hernandez, H-E-R-N-A-N-D-E-Z.

27 Yaneth Chavez, C-H-A-V-E-Z.

28 Marisa Aguilar, A-G-U-I-L-A-R.

1 David Dry, D-R-Y.

2 Janice Russ, R-U-S-S.

3 Kristine Kodani, K-O-D-A-N-I.

4 Jose Alvarez, A-L-V-A-R-E-Z.

5 Matthew Gaipa, G-A-I-P-A.

6 Carl Lepiane, L-E-P-I-A-N-E.

7 Susan Andrews, A-N-D-R-E-W-S.

8 Dayana Aguilera, A-G-U-I-L-E-R-A.

9 THE COURT: That should be 18. Let me see. Six, 12, 18.

10 Okay.

11 So in a few minutes here we're going to begin. The Court
12 will conduct questions for the prospective jurors. Of the 18 I
13 just mentioned, you each should have this form. The Court will
14 in few minutes start with question number 1 and go through
15 question number 10, ask a few questions, even follow-up
16 questions. I'll go in the order one through six, seven through
17 12, and then 13 through 18.

18 But while that is going on, members of the panel, you'll
19 see that maybe -- I've never seen it happen before, but maybe
20 the first 12 will make it on the jury and you won't be called
21 up, but as I mentioned, I've never seen that happen. So it's
22 very likely you'll be called up.

23 So if you can follow along, that way you know how to
24 answer the questions, or if there are any follow-up questions
25 that the Court may ask you'll be aware of that and we can move
26 this along a little more efficiently.

27 Before I do that, there is a statement of the case
28 prepared by the parties just to follow up on the brief

1 introductions. I would like to read now before beginning jury
2 selection just something to have in the back of your mind as
3 you're answering some of these questions.

4 This is in the matter of Collins versus DG Corporation.

5 This is a wrongful death case. On March 6th, 2017 an
6 accident at the Sentinel Energy Center caused the death of
7 Daniel Collins.

8 His wife, Denise Collins, and son, Christopher Collins,
9 filed this lawsuit.

10 The Collinses allege DG Corporation undertook a specific
11 task and performed that task in a negligent manner, causing the
12 death of Daniel Collins.

13 DG Corporation denies it was negligent and claims other
14 persons and entities were responsible for Daniel Collins' death.

15 The Collinses seek monetary damages for the death of
16 Daniel Collins.

17 Okay. We will begin with Juror Number 1. It's just the
18 luck of the draw.

19 Mr. Lehman.

20 PROSPECTIVE JUROR LEHMAN: Yes.

21 THE COURT: Good morning. How are you?

22 PROSPECTIVE JUROR LEHMAN: Fine, thanks.

23 THE COURT: Thank you for your time this morning.

24 So we have your full name obviously since we were able to
25 call you into the box, and that would be William Richard Lehman.

26 PROSPECTIVE JUROR LEHMAN: Yes.

27 THE COURT: You don't have to tell us what neighborhood,
28 community. It's just broadly what city or unincorporated area

1 of the county do you live in?

2 PROSPECTIVE JUROR LEHMAN: Palm Springs.

3 THE COURT: And since we all have -- with you I will read
4 the questions, but then with the subsequent prospective jurors
5 I'm just going to ask question number 1, question number 2,
6 question number 3 so we can move along. For the benefit of
7 those still on the panel, I'll read what the questions are, but
8 then by the time I get to the fourth person you'll be tired of
9 me reading the questions over and over.

10 Okay. You get the full benefit of me reading them.

11 Number 3, what is your current occupation. And if you're
12 retired or unemployed, what was your occupation when you were
13 last employed?

14 PROSPECTIVE JUROR LEHMAN: I was employed as a sales
15 manager.

16 THE COURT: Okay. Where?

17 PROSPECTIVE JUROR LEHMAN: The company is based in New
18 York. I work remotely.

19 THE COURT: And generally what type of work is it?

20 PROSPECTIVE JUROR LEHMAN: It is home fragrance and skin
21 care.

22 THE COURT: Thank you.

23 Do you live with any other adult?

24 PROSPECTIVE JUROR LEHMAN: Yes.

25 THE COURT: And what is their occupation?

26 PROSPECTIVE JUROR LEHMAN: IT.

27 THE COURT: They also work remotely?

28 PROSPECTIVE JUROR LEHMAN: Yes.

1 THE COURT: Okay. Anyone else?
2 PROSPECTIVE JUROR LEHMAN: That's it.
3 THE COURT: Thank you.
4 Do you have any children?
5 PROSPECTIVE JUROR LEHMAN: No.
6 THE COURT: And have you previously served on a jury?
7 PROSPECTIVE JUROR LEHMAN: Yes.
8 THE COURT: And where was that?
9 PROSPECTIVE JUROR LEHMAN: In Dallas, Texas.
10 THE COURT: And when was that?
11 PROSPECTIVE JUROR LEHMAN: Probably seven years ago.
12 THE COURT: What type of case?
13 PROSPECTIVE JUROR LEHMAN: It was a case about a homeless
14 person who had been locked up in jail and stayed over the
15 weekend without proper attention, medication.
16 THE COURT: So it was civil in nature?
17 PROSPECTIVE JUROR LEHMAN: Yes.
18 THE COURT: Okay. And then was it a jury trial?
19 PROSPECTIVE JUROR LEHMAN: Yes.
20 THE COURT: Okay. And without telling us what the result
21 was, were you able to reach a verdict?
22 PROSPECTIVE JUROR LEHMAN: Yes.
23 THE COURT: Any other prior jury experience?
24 PROSPECTIVE JUROR LEHMAN: Yes.
25 THE COURT: And when was that?
26 PROSPECTIVE JUROR LEHMAN: That was in the early
27 eighties.
28 THE COURT: So more than seven years ago?

1 PROSPECTIVE JUROR LEHMAN: Yes.
2 THE COURT: Okay. And where was that?
3 PROSPECTIVE JUROR LEHMAN: It was in Biloxi, Mississippi.
4 THE COURT: And was it civil or criminal?
5 PROSPECTIVE JUROR LEHMAN: It was criminal.
6 THE COURT: And were you able to reach a verdict on that
7 case?
8 PROSPECTIVE JUROR LEHMAN: Yes.
9 THE COURT: Thank you.
10 Anything prior?
11 PROSPECTIVE JUROR LEHMAN: No.
12 THE COURT: So you've been on two juries in your
13 lifetime?
14 PROSPECTIVE JUROR LEHMAN: Yes.
15 THE COURT: Okay. Question number 7, what is your
16 highest level of formal education?
17 PROSPECTIVE JUROR LEHMAN: Master's degree.
18 THE COURT: And your degree was in --
19 PROSPECTIVE JUROR LEHMAN: Education.
20 THE COURT: Question number 8, do you or any close
21 friends -- do you or any close friends or relatives have any
22 close connections with the Court or with the legal system?
23 PROSPECTIVE JUROR LEHMAN: No.
24 THE COURT: Question number 9, have you or to your
25 knowledge any close friend, family member ever been sued? Have
26 they ever sued anyone, presented a claim against anyone in
27 connection with a matter similar to this case? In other words,
28 some type of civil claim.

1 Or are you, to your knowledge -- boy, this is a compound
2 question. To your knowledge, is any close friend or family
3 member presently involved in a lawsuit of any kind? If so --
4 well, let's answer the first part and then we'll get to -- the
5 question should be in four parts.

6 PROSPECTIVE JUROR LEHMAN: No.

7 THE COURT: No. Never known anyone to be involved in a
8 lawsuit or make any type of civil claim?

9 PROSPECTIVE JUROR LEHMAN: No.

10 THE COURT: And never been alternatively sued yourself?

11 PROSPECTIVE JUROR LEHMAN: Correct.

12 THE COURT: So we don't have to ask the last part, which
13 was if so how did the matter end and were you satisfied with the
14 outcome.

15 So question number 10, do you think you could be a fair
16 judge of the facts in this case? I know that's an odd question
17 since you only know a little snippet of what the facts are.

18 PROSPECTIVE JUROR LEHMAN: Yes.

19 THE COURT: You feel you could be fair?

20 PROSPECTIVE JUROR LEHMAN: Yes.

21 THE COURT: And then do you have any follow-up questions
22 in terms of the Court's schedule?

23 PROSPECTIVE JUROR LEHMAN: No.

24 THE COURT: Monday through Wednesday, ten to about 3:30.
25 Then we will done by July 29th if not sooner.

26 PROSPECTIVE JUROR LEHMAN: No problem.

27 THE COURT: Thank you, Mr. Lehman.

28 Next we have Sandra Castaneda.

1 PROSPECTIVE JUROR CASTANEDA: Yes.

2 THE COURT: Good morning.

3 So question number 1, which we already know, Sandra
4 Castaneda.

5 PROSPECTIVE JUROR CASTANEDA: Yes.

6 THE COURT: And question number 2?

7 PROSPECTIVE JUROR CASTANEDA: I live in Cathedral City.

8 THE COURT: Thank you.

9 Question number 3?

10 PROSPECTIVE JUROR CASTANEDA: I just started working at
11 California Desert Association of Realtors as their marketing
12 assistant.

13 THE COURT: How are you liking it so far?

14 PROSPECTIVE JUROR CASTANEDA: It's fine. I just started
15 less than two months ago. It's been good.

16 THE COURT: Good.

17 Were you employed prior to that?

18 PROSPECTIVE JUROR CASTANEDA: Yes. I worked at Target.

19 THE COURT: In Cathedral City?

20 PROSPECTIVE JUROR CASTANEDA: Yes.

21 THE COURT: And how long were you employed there?

22 PROSPECTIVE JUROR CASTANEDA: About a year. It was about
23 a year.

24 THE COURT: Thank you for that.

25 Question number 4?

26 PROSPECTIVE JUROR CASTANEDA: I live with my older sister
27 and her husband and her husband's mother.

28 My sister works at Kings Garden. That's a cannabis

1 company. I'm not sure what she does there.

2 Her husband works at Best Buy as one of the people who
3 goes to set up TV's. His mother is unemployed. She's retired.

4 THE COURT: Thank you.

5 Question number 5?

6 PROSPECTIVE JUROR CASTANEDA: I don't have children.

7 THE COURT: Question number 6?

8 PROSPECTIVE JUROR CASTANEDA: No. I've never served.

9 THE COURT: Okay. Question number 7?

10 PROSPECTIVE JUROR CASTANEDA: I'm currently attending
11 COD. I have a high school degree.

12 THE COURT: If I heard you correctly -- I apologize, we
13 do have a court reporter. I should have mentioned that at the
14 beginning.

15 You're going to COD and so you finished high school?

16 PROSPECTIVE JUROR CASTANEDA: Yes. I'm on my second year
17 at College of the Desert.

18 THE COURT: What are you studying?

19 PROSPECTIVE JUROR CASTANEDA: Marketing and digital
20 design production.

21 THE COURT: Question number 8?

22 PROSPECTIVE JUROR CASTANEDA: No, no.

23 THE COURT: Question number 9?

24 PROSPECTIVE JUROR CASTANEDA: No.

25 THE COURT: Never have any family members involved in a
26 lawsuit, make any type of civil claims or been involved in a
27 lawsuit yourself?

28 PROSPECTIVE JUROR CASTANEDA: No, not that I know of.

1 No.

2 THE COURT: Okay. And then finally question number 10,
3 with the little bit that you know about this case -- this is not
4 a criminal case. It's a civil case. There are different
5 instructions to follow which we will let you know about later,
6 but aside from that, is there any reason you think you could not
7 be fair in this case?

8 PROSPECTIVE JUROR CASTANEDA: No.

9 THE COURT: All right. Thank you, Ms. Castaneda.
10 Good morning. Donald Reising?

11 PROSPECTIVE JUROR REISING: Yes.

12 THE COURT: Good morning.

13 PROSPECTIVE JUROR REISING: Hello.

14 THE COURT: Was it Reising or Riesing?

15 PROSPECTIVE JUROR REISING: It's pronounced Reising.

16 THE COURT: So ignore the E.

17 PROSPECTIVE JUROR REISING: Yes.

18 THE COURT: Okay. So we know your full name.
19 Question number 2?

20 PROSPECTIVE JUROR REISING: I live in Palm Springs.

21 THE COURT: Question number 3?

22 PROSPECTIVE JUROR REISING: I'm a retired lawyer.

23 THE COURT: The Court will ask a couple follow-up
24 questions, and I'm sure then these attorneys might ask some
25 questions.

26 How long have you been retired?

27 PROSPECTIVE JUROR REISING: Pardon me?

28 THE COURT: How long have you been retired?

1 PROSPECTIVE JUROR REISING: Eight years.

2 THE COURT: Prior to retiring eight years ago, what type
3 of law did you practice?

4 PROSPECTIVE JUROR REISING: Mostly elder law,
5 guardianship.

6 THE COURT: Where have you practiced before?

7 PROSPECTIVE JUROR REISING: Only in Washington State, in
8 Seattle.

9 THE COURT: Were you ever a member of the bar in
10 California?

11 PROSPECTIVE JUROR REISING: No.

12 THE COURT: Never made any pro hoc vice or special
13 appearances in California?

14 PROSPECTIVE JUROR REISING: No.

15 THE COURT: Okay. Thank you.

16 Question number 4.

17 PROSPECTIVE JUROR REISING: I live with my spouse, who is
18 also retired.

19 THE COURT: Okay. And are they retired as well?

20 PROSPECTIVE JUROR REISING: Yes.

21 THE COURT: Another attorney?

22 PROSPECTIVE JUROR REISING: No.

23 THE COURT: No. What was their profession?

24 PROSPECTIVE JUROR REISING: They worked for a third-party
25 insurance administrator.

26 THE COURT: Do you recall the name of that entity?

27 PROSPECTIVE JUROR REISING: Zenith Administrators.

28 THE COURT: Okay. Thank you.

1 Question number 5?
2 PROSPECTIVE JUROR REISING: No children.
3 THE COURT: Question number 6?
4 PROSPECTIVE JUROR REISING: No.
5 THE COURT: Question number 7?
6 PROSPECTIVE JUROR REISING: Have degree.
7 THE COURT: Question number 8?
8 PROSPECTIVE JUROR REISING: No.
9 THE COURT: And I guess I suppose that would be at least
10 here in California?
11 PROSPECTIVE JUROR REISING: Yes.
12 THE COURT: During your time in practice, I imagine you
13 do have some contacts, friends or relatives up in Washington?
14 PROSPECTIVE JUROR REISING: I do.
15 THE COURT: Okay. The guardianships are civil in nature,
16 but anything in terms of civil unlimited?
17 PROSPECTIVE JUROR REISING: No.
18 THE COURT: No. Question number 9?
19 PROSPECTIVE JUROR REISING: No.
20 THE COURT: Years in practice, never knew any close
21 friend or family member who ever presented with a civil lawsuit?
22 PROSPECTIVE JUROR REISING: No.
23 THE COURT: No.
24 And, final, question number 10, and this would include
25 based on your prior education and experience as an attorney. Do
26 you feel you could be a fair judge of the facts in this
27 particular type of case?
28 PROSPECTIVE JUROR REISING: Yes.

1 THE COURT: Okay. Thank you, Mr. Reising.

2 Juror Number 4, which would be Diana Kitagawa?

3 PROSPECTIVE JUROR KITAGAWA: Yes.

4 THE COURT: Good morning.

5 PROSPECTIVE JUROR KITAGAWA: I had a knee procedure. I
6 have an appointment on Wednesday and I'm leaving July 17th.

7 THE COURT: Okay. So June 29th you cannot be here at
8 10:00 a.m.?

9 PROSPECTIVE JUROR KITAGAWA: And tomorrow, Wednesday, I
10 have it for my knee.

11 THE COURT: You have a doctor's appointment?

12 PROSPECTIVE JUROR KITAGAWA: Yes.

13 THE COURT: And you're leaving on July 17th?

14 PROSPECTIVE JUROR KITAGAWA: Yes.

15 THE COURT: How long are you going to be gone for?

16 PROSPECTIVE JUROR KITAGAWA: Two weeks, three weeks.

17 THE COURT: Would a shorter trial be obviously more
18 accommodating to your schedule?

19 PROSPECTIVE JUROR KITAGAWA: No, because then I have
20 another appointment for my back. That is on the 4th.

21 Then I have an appointment for my leg. I have that
22 appointment today.

23 THE COURT: In the interest of time, we'll go ahead and
24 excuse Ms. Kitagawa.

25 The question is -- one moment.

26 Ms. Kitagawa, one moment. The jury room sometimes tells
27 us if there are other jurors looking for jurors. There are a
28 limited number of individuals in this county that come out for

1 jury duty, so everyone counts.

2 Ms. Kitagawa, with your schedule, if you could look at
3 the calendar, although I have to squint looking from here, but
4 if you can pick a Monday in the next coming month and you'll be
5 asked to -- the Court will make an order right now for you to
6 report to the Larson Justice Center, which is the courthouse in
7 Indio. We have two jury trial departments here. Indio has
8 several and there are criminal trials.

9 PROSPECTIVE JUROR KITAGAWA: When did you say?

10 THE COURT: When you tell me. You just pick a Monday and
11 you will be ordered to be there at 7:30.

12 PROSPECTIVE JUROR KITAGAWA: Yes, your Honor.

13 THE COURT: Eight a.m.

14 PROSPECTIVE JUROR KITAGAWA: Okay. Thank you.

15 THE COURT: Do you have a date and then we can go ahead
16 and let the jury room know you've been ordered to appear.

17 PROSPECTIVE JUROR KITAGAWA: Okay.

18 THE COURT: Just let us know.

19 PROSPECTIVE JUROR KITAGAWA: The 11th.

20 THE COURT: Of?

21 PROSPECTIVE JUROR KITAGAWA: Of July. That is before I
22 go.

23 THE COURT: You're kind of pushing it, right? Aren't you
24 leaving on July 17th?

25 PROSPECTIVE JUROR KITAGAWA: Yes. But I have
26 appointments all next week.

27 THE COURT: You can go months out further if you still
28 need additional time, if you're still doing rehabilitation for

1 you knee.

2 If you want to go into September, October, we just need
3 to -- these run on a calendar year with jury service.

4 PROSPECTIVE JUROR KITAGAWA: I can't do August because
5 August I'm gone, too. I'm going to leave on 2 and I'll come
6 back 22.

7 THE COURT: Do you want to set it August 22nd?

8 PROSPECTIVE JUROR KITAGAWA: Yes.

9 THE COURT: Okay. Eight a.m. report to the second floor
10 at the Larson Justice Center.

11 Thank you, Ms. Kitagawa.

12 One moment. We will fill seat number four.

13 THE CLERK: Leonard Woods, W-O-O-D-S.

14 THE COURT: Yes, please. Thank you, Mr. Woods.

15 So we just heard your full name so let's go to question
16 number 2.

17 PROSPECTIVE JUROR WOODS: I live in Cathedral City.

18 THE COURT: Thank you.

19 Yes. Number 3?

20 PROSPECTIVE JUROR WOODS: Director of food and beverage
21 at Motorcoach Country Club in Indio.

22 THE COURT: That's about a mile and a half away from the
23 Indio courthouse, correct?

24 PROSPECTIVE JUROR WOODS: Correct.

25 THE COURT: Question number 4?

26 PROSPECTIVE JUROR WOODS: Yes. Live with my wife. She
27 is a clinical laboratory scientist at Desert Regional Medical
28 Center.

1 THE COURT: I suppose Cathedral City is kind of the
2 midway point between both of your jobs.

3 PROSPECTIVE JUROR WOODS: Yeah, pretty much.

4 THE COURT: Anything any other adults?

5 PROSPECTIVE JUROR WOODS: No.

6 THE COURT: Question number 5?

7 PROSPECTIVE JUROR WOODS: I don't have any children, but
8 my wife has three adult children, none of whom live with us.

9 THE COURT: Okay. And just briefly if you know their
10 general occupations.

11 PROSPECTIVE JUROR WOODS: Her oldest is a pharmacist in
12 Yuma, Arizona.

13 Her middle is a software engineer in San Diego.

14 And the youngest is junior at UCSD.

15 THE COURT: The last one, if I heard correctly, is a
16 junior at UCSD?

17 PROSPECTIVE JUROR WOODS: Studying chemistry.

18 THE COURT: Also at UCSD going into the sciences like
19 mom?

20 PROSPECTIVE JUROR WOODS: Yes.

21 THE COURT: Question Number 6.

22 PROSPECTIVE JUROR WOODS: No, I've not served on any
23 jury.

24 THE COURT: Question number 7?

25 PROSPECTIVE JUROR WOODS: Bachelor's degree in elementary
26 education.

27 THE COURT: Question number 8?

28 PROSPECTIVE JUROR WOODS: No, not at all.

1 THE COURT: Okay. And question number 9?
2 PROSPECTIVE JUROR WOODS: No.
3 THE COURT: And question number 10.
4 PROSPECTIVE JUROR WOODS: Yes.
5 THE COURT: Thank you, Mr. Woods.
6 PROSPECTIVE JUROR WOODS: Uh-huh.
7 THE COURT: Then we have Barbara Mason?
8 PROSPECTIVE JUROR MASON: Yes.
9 THE COURT: Good morning.
10 So that answers question number 1. Question number 2?
11 PROSPECTIVE JUROR MASON: Do.
12 THE COURT: Question number 3?
13 PROSPECTIVE JUROR MASON: I'm a retired nurse.
14 THE COURT: At one of the local hospitals.
15 PROSPECTIVE JUROR MASON: St. Jude in Fullerton.
16 THE COURT: So did you have -- was there a specialty then
17 since you were at St. Jude?
18 PROSPECTIVE JUROR MASON: Critical care primarily. The
19 last few years I did project management with infection
20 protection and risk management.
21 THE COURT: And how long were you doing that?
22 PROSPECTIVE JUROR MASON: Thirty-four years.
23 THE COURT: Thank you.
24 Question number 4?
25 PROSPECTIVE JUROR MASON: Yeah. My husband who is also
26 retired.
27 THE COURT: And his occupation prior to retirement?
28 PROSPECTIVE JUROR MASON: He was in computer sales

1 management and he did some real estate.

2 THE COURT: Was that time split evenly or was the real
3 estate kind of the --

4 PROSPECTIVE JUROR MASON: The real estate was after he
5 retired from the computer management. Then he did home
6 flipping, basically.

7 THE COURT: And question number 5?

8 PROSPECTIVE JUROR MASON: We have three children, all
9 adults. They are in Orange County and Arizona.

10 THE COURT: And just generally their field, their
11 occupations?

12 PROSPECTIVE JUROR MASON: My daughter is an accountant.
13 My son is an AV technician and my stepson is in construction.

14 THE COURT: Thank you.

15 Question number 6?

16 PROSPECTIVE JUROR MASON: I have not.

17 THE COURT: Question number 7?

18 PROSPECTIVE JUROR MASON: I have a bachelor's in nursing.

19 THE COURT: Question number 8?

20 PROSPECTIVE JUROR MASON: My sister retired from the
21 Public Defender's Office.

22 THE COURT: Okay. Anyone else?

23 PROSPECTIVE JUROR MASON: Pardon?

24 THE COURT: Anyone else?

25 PROSPECTIVE JUROR MASON: No.

26 THE COURT: Where did she retire from geographically?

27 PROSPECTIVE JUROR MASON: Norwalk Superior Court.

28 THE COURT: So Los Angeles?

1 PROSPECTIVE JUROR MASON: Uh-huh.
2 THE COURT: So she probably worked at a couple different
3 courthouses there.
4 PROSPECTIVE JUROR MASON: She did.
5 THE COURT: Los Angeles tends to move their district
6 attorneys and the public defenders around.
7 PROSPECTIVE JUROR MASON: Uh-huh.
8 THE COURT: It's a big county.
9 PROSPECTIVE JUROR MASON: Yeah.
10 THE COURT: Question number 9.
11 PROSPECTIVE JUROR MASON: No.
12 THE COURT: This is a very fortuitous group so far.
13 And the final question, number 10?
14 PROSPECTIVE JUROR MASON: Yes.
15 THE COURT: And you do think you could be a fair judge of
16 the facts in this case?
17 PROSPECTIVE JUROR MASON: Sure.
18 THE COURT: Thank you for your time.
19 PROSPECTIVE JUROR MASON: Uh-huh.
20 THE COURT: Next we have is it Randy Seymon.
21 PROSPECTIVE JUROR SEYMON: Randyn.
22 THE COURT: Sometimes they don't have spaces.
23 PROSPECTIVE JUROR SEYMON: Seyman is the last name.
24 THE COURT: Hi, Good morning.
25 PROSPECTIVE JUROR SEYMON: Good morning.
26 THE COURT: So we now know the question to answer
27 number 1.
28 So question number 2?

1 PROSPECTIVE JUROR SEYMON: Cathedral City.

2 THE COURT: Question number 3?

3 PROSPECTIVE JUROR SEYMON: I work as an entertainer.

4 THE COURT: Okay. Entertainer? A little more specific.

5 PROSPECTIVE JUROR SEYMON: And ex on the particular -- I
6 sing at Sammy G's Tuscan Grill in Palm Springs during the
7 season.

8 THE COURT: It is season right now?

9 PROSPECTIVE JUROR SEYMON: I just finished.

10 THE COURT: Okay.

11 And question number 4?

12 PROSPECTIVE JUROR SEYMON: No.

13 THE COURT: Question number 5?

14 PROSPECTIVE JUROR SEYMON: Three. I have three children,
15 two daughters and a son. My daughters are both in network
16 marketing in the health industry. My son is in management in
17 laser removal.

18 THE COURT: I'm sorry, what was that last part?

19 PROSPECTIVE JUROR SEYMON: Laser removal. It was some
20 company.

21 THE COURT: Okay. Question number 6?

22 PROSPECTIVE JUROR SEYMON: Nobody. No, sir.

23 THE COURT: Welcome, then.

24 Question number 7?

25 PROSPECTIVE JUROR SEYMON: Barely 12th grade.

26 THE COURT: Question number 8?

27 PROSPECTIVE JUROR SEYMON: No.

28 THE COURT: Question number 9?

1 PROSPECTIVE JUROR SEYMON: Does divorce count?

2 THE COURT: That's a civil suit. This is more just if
3 there is any potential bias that would keep you from being fair
4 in the case.

5 PROSPECTIVE JUROR SEYMON: No.

6 THE COURT: So you were part of a divorce proceeding.
7 Anything else?

8 PROSPECTIVE JUROR SEYMON: No.

9 THE COURT: Thank you.
10 And then question number 10?

11 PROSPECTIVE JUROR SEYMON: I would hope so.

12 THE COURT: The attorneys might have follow up on that.

13 PROSPECTIVE JUROR SEYMON: Let me say yes.

14 THE COURT: And they're asking for your honest opinion,
15 so sometimes with something like that just give it thought.

16 Thank you for your time.

17 PROSPECTIVE JUROR SEYMON: Sure.

18 THE COURT: When does season start, by the way?

19 PROSPECTIVE JUROR SEYMON: October. When it cools off.

20 THE COURT: That's when you'll be back?

21 PROSPECTIVE JUROR SEYMON: Yeah.

22 THE COURT: Okay.

23 PROSPECTIVE JUROR SEYMON: Although I have to qualify. I
24 do have a family reunion situation I'm supposed to be at up in
25 Northern California up on the 17th.

26 THE COURT: Is that on the weekend?

27 PROSPECTIVE JUROR SEYMON: That is on Sunday.

28 THE COURT: Are you going to fly back on Sunday evening?

1 PROSPECTIVE JUROR SEYMON: No, I wasn't flying. I'm
2 driving.

3 THE COURT: You might have trouble being here at
4 10:00 a.m. on the 18th?

5 PROSPECTIVE JUROR SEYMON: I would think so, but I don't
6 know. I can cancel it. It's going to hurt their feelings.

7 THE COURT: Is it going to hurt your feelings?

8 PROSPECTIVE JUROR SEYMON: I don't know. Maybe. Let me
9 think about it.

10 THE COURT: Okay.

11 PROSPECTIVE JUROR SEYMON: Sorry, I shouldn't be messing
12 with you.

13 THE COURT: Thank you for letting us know. The attorneys
14 may bring that up. We'll cross that bridge when we get to it.

15 PROSPECTIVE JUROR SEYMON: Sure.

16 THE COURT: Hi, good morning. Then we have Ana Santos?

17 PROSPECTIVE JUROR SANTOS: That is me.

18 THE COURT: Good morning. So we've answered question
19 number 1.

20 Question number 2?

21 PROSPECTIVE JUROR SANTOS: Palm Desert.

22 THE COURT: Question number 3?

23 PROSPECTIVE JUROR SANTOS: I am a licensed insurance
24 broker.

25 THE COURT: Okay. Thank you.

26 Question number 4?

27 PROSPECTIVE JUROR SANTOS: Yes. I live with my brother.
28 He is disabled so he currently only works a little bit for the

1 Palm Springs School District as a music tutor.

2 Right now he's not working. He is on UI.

3 THE COURT: I'm sorry.

4 PROSPECTIVE JUROR SANTOS: Unemployment right now.

5 THE COURT: Is that because right now the school is not
6 in session?

7 PROSPECTIVE JUROR SANTOS: That is correct.

8 THE COURT: Question number 5?

9 PROSPECTIVE JUROR SANTOS: Yes. I have two children, one
10 adult child who lives with me, and he is working construction.

11 And one teenage daughter who works at Crumbl Cookies.

12 THE COURT: Question number 6?

13 PROSPECTIVE JUROR SANTOS: No, never served.

14 THE COURT: Question number 7?

15 PROSPECTIVE JUROR SANTOS: It's an associate degree and
16 English major.

17 THE COURT: And that would be some college, right?

18 PROSPECTIVE JUROR SANTOS: Yes.

19 THE COURT: Question number 8?

20 PROSPECTIVE JUROR SANTOS: My sister was an evidence
21 clerk at the Indio.

22 THE COURT: At Larson?

23 PROSPECTIVE JUROR SANTOS: Uh-huh, Larson. For the jail.
24 She would take stuff into evidence.

25 THE COURT: Oh, she worked for the Sheriff's Department?

26 PROSPECTIVE JUROR SANTOS: Sheriff's Department, yeah.

27 But she doesn't do that anymore.

28 THE COURT: Okay. Question number 9?

1 PROSPECTIVE JUROR SANTOS: No.

2 THE COURT: Was there anyone else in question number 8?

3 Sorry.

4 PROSPECTIVE JUROR SANTOS: No.

5 THE COURT: And then based on what you've heard about the
6 case and what you told us this morning, any reason you don't
7 think you could be fair in this case?

8 PROSPECTIVE JUROR SANTOS: I mean, I would hope so. My
9 heart goes out for the family, but I would hope I could be fair.

10 THE COURT: Just give that a little more thought and just
11 reflect. Then I'm sure the attorneys will have follow-up to
12 that.

13 Thanks, Ms. Santos.

14 PROSPECTIVE JUROR SANTOS: I do have also a medical
15 procedure coming up on July 15th. It is on a weekend.

16 THE COURT: That's on a Friday.

17 PROSPECTIVE JUROR SANTOS: Usually I'm flat on my back
18 for like four days.

19 THE COURT: Okay.

20 PROSPECTIVE JUROR SANTOS: So Monday might be kind of
21 tough.

22 THE COURT: We'll keep an eye on July 18th.

23 Next we have Ana Hernandez?

24 PROSPECTIVE JUROR HERNANDEZ: Yes.

25 THE COURT: Good morning.

26 PROSPECTIVE JUROR HERNANDEZ: Good morning.

27 THE COURT: Question number 2?

28 PROSPECTIVE JUROR HERNANDEZ: I live in Indio.

1 THE COURT: Question number 3?

2 PROSPECTIVE JUROR HERNANDEZ: I am a veterinary assistant
3 at Palm Springs animal shelter.

4 THE COURT: Question number 4.

5 PROSPECTIVE JUROR HERNANDEZ: I live with both of my
6 parents, who are both landscapers.

7 THE COURT: Question number 5.

8 PROSPECTIVE JUROR HERNANDEZ: I do not have children.

9 THE COURT: Question number 6?

10 PROSPECTIVE JUROR HERNANDEZ: No.

11 THE COURT: Question number 7?

12 PROSPECTIVE JUROR HERNANDEZ: I have a bachelor's degree
13 in biology from Sacramento State.

14 THE COURT: Question number 8?

15 PROSPECTIVE JUROR HERNANDEZ: I do not believe so, no.

16 THE COURT: Question number 9?

17 PROSPECTIVE JUROR HERNANDEZ: No.

18 THE COURT: And then based on what little we have told
19 you about the case -- it's civil in nature -- and your
20 background, is there any reason you could not be fair judge of
21 the facts in this case?

22 PROSPECTIVE JUROR HERNANDEZ: I don't believe so. Yes, I
23 can be fair.

24 THE COURT: Thank you so much.

25 Next we have Yaneth Chavez?

26 PROSPECTIVE JUROR CHAVEZ: Yes.

27 THE COURT: Good morning.

28 PROSPECTIVE JUROR CHAVEZ: Good morning.

1 THE COURT: Question number 2?
2 PROSPECTIVE JUROR CHAVEZ: Indio.
3 THE COURT: Question number 3?
4 PROSPECTIVE JUROR CHAVEZ: I'm a school counselor.
5 THE COURT: Which district?
6 PROSPECTIVE JUROR CHAVEZ: CV USD.
7 THE COURT: And what level?
8 PROSPECTIVE JUROR CHAVEZ: High school.
9 THE COURT: Thank you. Question number 4?
10 PROSPECTIVE JUROR CHAVEZ: That is no.
11 THE COURT: Question number 5?
12 PROSPECTIVE JUROR CHAVEZ: Two. Two children, middle
13 school.
14 THE COURT: Okay.
15 PROSPECTIVE JUROR CHAVEZ: Question six, I have been
16 on -- I have served as a juror in Riverside County a few years
17 ago. It was criminal.
18 THE COURT: You okay. And as it says on the
19 questionnaire -- without telling us what the verdict was, were
20 you able to arrive at a verdict?
21 PROSPECTIVE JUROR CHAVEZ: Yes.
22 THE COURT: Okay. And the attorneys will follow-up on
23 this, but just so you're aware, with having served on a criminal
24 case before, you under -- well, if you don't, you'll see that in
25 civil there are different standards.
26 For example, there is a different burden of proof, and
27 there are instructions on that the Court ultimately will give,
28 but the attorneys will follow-up on that, that there is a

1 different burden of proof for criminal than civil.

2 PROSPECTIVE JUROR CHAVEZ: Correct.

3 THE COURT: And question number 7?

4 PROSPECTIVE JUROR CHAVEZ: I have a master's degree.

5 THE COURT: Was that in education?

6 PROSPECTIVE JUROR CHAVEZ: Yes.

7 THE COURT: And question number 8?

8 PROSPECTIVE JUROR CHAVEZ: Yes. Indio courthouse.

9 THE COURT: Tell us a little bit more about that.

10 PROSPECTIVE JUROR CHAVEZ: A friend. I believe she's a
11 clerk for a judge.

12 THE COURT: Well, first, how close are you to this
13 friend?

14 PROSPECTIVE JUROR CHAVEZ: She is one of my best friends.

15 THE COURT: Do you know what type of law, what type of
16 department it is? Is it criminal, civil, family law?

17 PROSPECTIVE JUROR CHAVEZ: I'm not sure.

18 THE COURT: Okay. Larson, it would be criminal or family
19 law.

20 Do you ever have discussions with your friend about any
21 of the cases, anything -- any subject matter?

22 PROSPECTIVE JUROR CHAVEZ: No.

23 THE COURT: Okay. Anything about that relationship or
24 your discussions with that individual that would cause you to be
25 biased in either a criminal or civil case?

26 PROSPECTIVE JUROR CHAVEZ: No.

27 THE COURT: Thank you. Anyone else?

28 PROSPECTIVE JUROR CHAVEZ: Just her.

1 THE COURT: Okay. And then question number 9.
2 PROSPECTIVE JUROR CHAVEZ: No.
3 THE COURT: Okay. And then question number 10?
4 PROSPECTIVE JUROR CHAVEZ: Yes.
5 THE COURT: Do you feel you could be a fair judge of the
6 facts in this case?
7 PROSPECTIVE JUROR CHAVEZ: Yes.
8 THE COURT: Okay. Thank you for your time.
9 Next we have Marisa Aguilar.
10 PROSPECTIVE JUROR AGUILAR: Uh-huh.
11 THE COURT: Marisa Aguilar?
12 PROSPECTIVE JUROR AGUILAR: Yes.
13 THE COURT: Good morning.
14 PROSPECTIVE JUROR AGUILAR: Good morning.
15 THE COURT: Question number 2.
16 PROSPECTIVE JUROR AGUILAR: Live in Desert Hot Springs.
17 THE COURT: Three?
18 PROSPECTIVE JUROR AGUILAR: I am a school bus driver.
19 THE COURT: Is that for Palm Springs?
20 PROSPECTIVE JUROR AGUILAR: CV USD.
21 THE COURT: Question number 4?
22 PROSPECTIVE JUROR AGUILAR: I live with my domestic
23 partner and my mother-in-law.
24 My domestic partner is a bartender. My mother-in-law is
25 an employee.
26 THE COURT: Okay. Question number 5?
27 PROSPECTIVE JUROR AGUILAR: I do have one daughter. She
28 is turning 13 on July 6th.

1 THE COURT: Question number 6?

2 PROSPECTIVE JUROR AGUILAR: Yes. And it was in Los
3 Angeles County over 20 years ago. It was a criminal case and we
4 did arrive at a verdict.

5 THE COURT: Question number 7.

6 PROSPECTIVE JUROR AGUILAR: High school diploma.

7 THE COURT: Okay. Question number 8?

8 PROSPECTIVE JUROR AGUILAR: No.

9 THE COURT: Question number 9?

10 PROSPECTIVE JUROR AGUILAR: No.

11 THE COURT: And question number 10?

12 PROSPECTIVE JUROR AGUILAR: Yes.

13 THE COURT: You do feel you could be a fair judge of the
14 facts in this case?

15 PROSPECTIVE JUROR AGUILAR: Yes.

16 THE COURT: A great. Thank you for your time.

17 PROSPECTIVE JUROR AGUILAR: You're welcome.

18 THE COURT: Next we have David Dry?

19 PROSPECTIVE JUROR DRY: Yes.

20 THE COURT: Good morning.

21 PROSPECTIVE JUROR DRY: Good morning.

22 I have a problem with the number of days.

23 THE COURT: Okay.

24 PROSPECTIVE JUROR DRY: I have a vacation scheduled on
25 the 16th through the 21st of July and various medical
26 appointments.

27 My husband has Alzheimer's and doesn't drive, so I have
28 to drive as well.

1 THE COURT: Okay. Thank you for that.

2 Is that something you shared on your form?

3 PROSPECTIVE JUROR DRY: I'm not sure. I mean, I'm not --
4 no, I'm not sure if I did.

5 THE COURT: Okay. We'll go ahead and excuse you.

6 We'll do the same thing if you want to look at the
7 calendar for maybe a shorter trial. At this time of the year,
8 we're already more than halfway through. The departments are
9 struggling with jury trials as COVID and emergency orders end.
10 They come and go. But when they are not in effect, all the
11 trials start going at once.

12 So we've been told by our court coordinator that we need
13 as many juries as we can in the various departments, but it
14 sounds like something smaller might work for you outside of
15 those dates.

16 PROSPECTIVE JUROR DRY: So can I pick the week?

17 THE COURT: Absolutely as long as it's on a Monday
18 morning. We try not to call juries on Fridays. You can imagine
19 calling in Sunday through Thursday, your Friday morning jurors
20 are not happy group.

21 PROSPECTIVE JUROR DRY: What about the week of Labor Day.
22 That would be a Tuesday.

23 THE COURT: Smart.

24 PROSPECTIVE JUROR DRY: Always thinking.

25 THE COURT: Sure. We'll go ahead and we'll make an order
26 for that, but it will be in Indio. It will be at the Larson
27 Justice Center, second floor jury room. If you could just
28 report at 8:00 a.m. Hopefully they can find something short for

1 you, but we appreciate that.

2 PROSPECTIVE JUROR DRY: Will they send me a summons?

3 THE COURT: It's a court order so your name will be on a
4 list like this on that morning.

5 PROSPECTIVE JUROR DRY: Do I check out downstairs?

6 THE COURT: No. Just September 6th, 8:00 a.m., second
7 floor.

8 Thank you, Mr. Dry. Koko San, S-A-N.

9 PROSPECTIVE JUROR SAN: Hi.

10 THE COURT: Good morning.

11 The first name?

12 PROSPECTIVE JUROR SAN: Koko.

13 THE COURT: Okay. And then last name is San?

14 PROSPECTIVE JUROR SAN: Yes.

15 THE COURT: Welcome. Question number 2 when you're
16 ready.

17 PROSPECTIVE JUROR SAN: In La Quinta.

18 THE COURT: Question number 3?

19 PROSPECTIVE JUROR SAN: Sushi chef.

20 THE COURT: Okay. Question number 4?

21 PROSPECTIVE JUROR SAN: No.

22 THE COURT: Question number 5?

23 PROSPECTIVE JUROR SAN: I have two.

24 THE COURT: Any of those children adults?

25 PROSPECTIVE JUROR SAN: No.

26 THE COURT: All right. Question number 6?

27 PROSPECTIVE JUROR SAN: My first time.

28 THE COURT: This is your first time on a jury trial?

1 Welcome.

2 PROSPECTIVE JUROR SAN: Thank you.

3 THE COURT: After the first day things are -- it's more
4 interesting and it moves along quicker. This is always just the
5 first day of trying to get everyone selected.

6 Question number 7?

7 PROSPECTIVE JUROR SAN: Associate degree, not finish.

8 THE COURT: So you started your associate's degree but
9 you did not finish?

10 PROSPECTIVE JUROR SAN: Yeah.

11 THE COURT: What field was it in?

12 PROSPECTIVE JUROR SAN: Electronic technology.

13 THE COURT: Electronic technology. Thank you.

14 Question number 8?

15 PROSPECTIVE JUROR SAN: No.

16 THE COURT: Okay. Question number 9?

17 PROSPECTIVE JUROR SAN: Nope.

18 THE COURT: Never been a part of a lawsuit? Never been
19 had a civil suit against you or you've made one against anybody
20 else?

21 PROSPECTIVE JUROR SAN: No.

22 THE COURT: And then question number 10?

23 PROSPECTIVE JUROR SAN: Yes.

24 THE COURT: You can be fair?

25 PROSPECTIVE JUROR SAN: Yeah.

26 THE COURT: You can wait until the Court gives you
27 instructions and then follow the instructions that help the
28 parties here settle their dispute?

1 PROSPECTIVE JUROR SAN: Yes, sir.

2 THE COURT: Okay. Great. Thank you for your time.

3 Next we have, is it Janice Russ?

4 PROSPECTIVE JUROR RUSS: Russ.

5 THE COURT: Hi. Good morning.

6 Question number 2.

7 PROSPECTIVE JUROR RUSS: Palm Desert.

8 And number 3 is I'm retired.

9 THE COURT: And retired. What did you do prior to
10 retirement?

11 PROSPECTIVE JUROR RUSS: Dental office manager.

12 THE COURT: Thank you.

13 Question number 4?

14 PROSPECTIVE JUROR RUSS: My husband. And he was a
15 building contractor.

16 THE COURT: And he is now retired?

17 PROSPECTIVE JUROR RUSS: Yes.

18 THE COURT: Great. Question number 5?

19 PROSPECTIVE JUROR RUSS: No children.

20 THE COURT: Question number 6?

21 PROSPECTIVE JUROR RUSS: No.

22 THE COURT: Question number 7?

23 PROSPECTIVE JUROR RUSS: High school, trade school for
24 dental assisting and a couple classes at Orange Coast College
25 for accounting.

26 THE COURT: Question number 8?

27 PROSPECTIVE JUROR RUSS: No.

28 THE COURT: Question number 9?

1 PROSPECTIVE JUROR RUSS: No.

2 THE COURT: And question number 10?

3 PROSPECTIVE JUROR RUSS: Yes.

4 THE COURT: And based on what little we told you about
5 the case and your background, you feel you can be fair judge of
6 the facts in this case?

7 PROSPECTIVE JUROR RUSS: I think so.

8 THE COURT: Okay. That's kind of the catch-all question
9 there. Thank you for that.

10 Next we have Juror Number 13.

11 So what we're going to do -- it's 11:30. There are six
12 of you left. Let's see what time we finish and we'll probably
13 go ahead and we'll start lunch and then the attorneys can begin
14 their examination this afternoon.

15 Hopefully, fingers crossed, we will have 12 of you with
16 three alternates.

17 Maybe four. It might be you.

18 PROSPECTIVE JUROR KODANI: Okay.

19 THE COURT: Ms. Kristine Kodani?

20 PROSPECTIVE JUROR KODANI: Uh-huh.

21 THE COURT: Welcome.

22 PROSPECTIVE JUROR KODANI: Thanks.

23 THE COURT: Question number 2?

24 PROSPECTIVE JUROR KODANI: Palm Desert.

25 THE COURT: Question number 3?

26 PROSPECTIVE JUROR KODANI: I'm a registered veterinary at
27 Village Park Animal Hospital.

28 Four is no.

1 Five is no.

2 Six is no.

3 Seven is some college and trade school for veterinary
4 technician.

5 Eight is -- does that include people that have been
6 arrested?

7 THE COURT: Usually that's where it comes up, but it
8 would matter more -- well, the attorneys might be a little more
9 interested if this were a criminal case. They'll want to follow
10 up if that somehow influenced you to have a bias one way or
11 another, but let's just leave it at that.

12 So you know some individuals that have had contact with
13 the criminal justice system?

14 PROSPECTIVE JUROR KODANI: Uh-huh.

15 THE COURT: Anything about that experience that would
16 cause you to not be able to be fair in this case?

17 PROSPECTIVE JUROR KODANI: I don't think so.

18 THE COURT: Okay.

19 PROSPECTIVE JUROR KODANI: Nine is I've had a few family
20 members that have been in civil cases.

21 THE COURT: Lawsuits?

22 PROSPECTIVE JUROR KODANI: Lawsuits, yeah.

23 THE COURT: When you say family members, are we talking
24 about mom and dad, distant cousins?

25 PROSPECTIVE JUROR KODANI: Parents.

26 THE COURT: Without telling us the specifics, there were
27 civil lawsuits?

28 PROSPECTIVE JUROR KODANI: Uh-huh.

1 THE COURT: Were they being sued or they were suing
2 someone else?

3 PROSPECTIVE JUROR KODANI: They were suing.

4 THE COURT: So they were plaintiffs.

5 PROSPECTIVE JUROR KODANI: Uh-huh.

6 THE COURT: And not unheard of. So ultimately that
7 brings us to the second part of this long question for number 9.
8 So since your parents did have some familiarity with the
9 civil suit, did the way that matter end -- did it end
10 satisfactorily as far as you were concerned?

11 PROSPECTIVE JUROR KODANI: Not really.

12 THE COURT: And as you can imagine, the attorneys will
13 probably have follow-up on that, which brings us to number 10.

14 Based on your background, based on the little bit we've
15 told you about the case, this being a civil suit in nature, that
16 the parties are entitled, both of them, to have a right by jury
17 trial.

18 Do you think you could be a fair juror for them?

19 PROSPECTIVE JUROR KODANI: I will try my best. I think
20 this particular case, just because I just had a death in the
21 family a week ago, I think it might be a little tough, but I
22 will do my best.

23 THE COURT: Okay. We'll have the attorneys follow-up a
24 little bit more on that. Sorry to hear about that.

25 Just reflect on that a little bit more. Not to us. Just
26 reflect to that a little bit more. I'm sure the attorneys will
27 be respectful. They might have a brief follow-up on that.

28 After you've had some time to think about it, you can

1 tell us after thinking about it I do think I can put it aside
2 and listen to the case or, you know, this is not the right time
3 and a different case would be better for me.

4 Just think about it and there will be one or two
5 follow-ups.

6 PROSPECTIVE JUROR KODANI: Okay.

7 THE COURT: Thank you.

8 Next we have Jose Alvarez. Good morning.

9 PROSPECTIVE JUROR ALVAREZ: Good morning.

10 THE COURT: Question number 2.

11 PROSPECTIVE JUROR ALVAREZ: Live in Rancho Mirage.

12 THE COURT: Number 3.

13 PROSPECTIVE JUROR ALVAREZ: Department manager at
14 Walmart.

15 THE COURT: Question number 4?

16 PROSPECTIVE JUROR ALVAREZ: I live with three adults.
17 One is a logistics manager, one does sales from home and the
18 other one is a Starbucks barista.

19 THE COURT: A barista.

20 PROSPECTIVE JUROR ALVAREZ: Five, I don't have children.

21 THE COURT: Okay.

22 PROSPECTIVE JUROR ALVAREZ: Six, this is my first time.

23 THE COURT: Number 7?

24 PROSPECTIVE JUROR ALVAREZ: I'm currently attending COD
25 and I have my high school diploma.

26 THE COURT: Anything you're studying specifically at COD?

27 PROSPECTIVE JUROR ALVAREZ: Computer information systems.

28 THE COURT: Computer information systems.

1 Question number 8?
2 PROSPECTIVE JUROR ALVAREZ: No.
3 THE COURT: Question number 9?
4 PROSPECTIVE JUROR ALVAREZ: No.
5 THE COURT: And then question number 10?
6 PROSPECTIVE JUROR ALVAREZ: I can.
7 THE COURT: You feel you could be a fair judge of the
8 facts in this case?
9 PROSPECTIVE JUROR ALVAREZ: Yes.
10 THE COURT: Thank you for your time.
11 Next we have is it Matthew Gaipa.
12 Did I pronounce that correctly?
13 PROSPECTIVE JUROR GAIPA: Absolutely.
14 THE COURT: That answers question number 1.
15 Question number 2?
16 PROSPECTIVE JUROR GAIPA: I live in Indio.
17 THE COURT: Okay.
18 PROSPECTIVE JUROR GAIPA: I'm a male carrier.
19 I live with one retired adult. Office manager for Wells
20 Fargo Insurance Services.
21 THE COURT: When you say you're a mail carrier, you work
22 for the U.S. Post Office?
23 PROSPECTIVE JUROR GAIPA: Yes.
24 THE COURT: They pay in full so we can be here three
25 months.
26 PROSPECTIVE JUROR GAIPA: We can be here all year. You
27 have better AC.
28 THE COURT: The power was out in this building actually

1 from Friday until 7:00 or 8:00 last night, so it's working
2 overtime right now.

3 Thank you for that, though.

4 And you mentioned you did live with someone else.

5 PROSPECTIVE JUROR GAIPA: Yeah, they're retired from
6 Wells Fargo Insurance Services.

7 THE COURT: Okay.

8 PROSPECTIVE JUROR GAIPA: No children.

9 I served on a jury in 2019 in Indio. It was criminal and
10 we did arrive at a verdict.

11 I have an associate in computer sciences.

12 Eight is no.

13 Nine is no and ten is yes.

14 THE COURT: All right. Thank you.

15 Next we have Carl Lepiane?

16 PROSPECTIVE JUROR LEPIANE: Lepiane.

17 THE COURT: Good morning. Welcome.

18 PROSPECTIVE JUROR LEPIANE: Hi.

19 THE COURT: Mr. Lepiane, please answer question number 2.

20 PROSPECTIVE JUROR LEPIANE: La Quinta.

21 THE COURT: Three?

22 PROSPECTIVE JUROR LEPIANE: I am an antique dealer.

23 THE COURT: Is that also here in the Coachella Valley?

24 PROSPECTIVE JUROR LEPIANE: Pardon?

25 THE COURT: That is here in the Coachella Valley?

26 PROSPECTIVE JUROR LEPIANE: I'm sorry. Still didn't
27 hear.

28 THE COURT: Here in the Coachella Valley?

1 PROSPECTIVE JUROR LEPIANE: Here and I do shows.

2 THE COURT: Question number 4?

3 PROSPECTIVE JUROR LEPIANE: My wife, she's a retired
4 operating room nurse.

5 THE COURT: And she retired recently?

6 PROSPECTIVE JUROR LEPIANE: Three years ago.

7 THE COURT: Okay. Question number 5?

8 PROSPECTIVE JUROR LEPIANE: I have one daughter. She's
9 assistant to two doctors up in San Jose.

10 THE COURT: Number 6?

11 PROSPECTIVE JUROR LEPIANE: Never been on a jury, no.

12 THE COURT: Seven?

13 PROSPECTIVE JUROR LEPIANE: Bachelor degree in industrial
14 design.

15 THE COURT: Question number 8?

16 PROSPECTIVE JUROR LEPIANE: No.

17 THE COURT: Number 9?

18 PROSPECTIVE JUROR LEPIANE: Yes.

19 THE COURT: Can you tell us a little bit about that. Can
20 you tell as you little bit more about that, question number 9?

21 PROSPECTIVE JUROR LEPIANE: Wrongful death lawsuit. My
22 mother, brother and I from my father.

23 THE COURT: If I understood you correctly, your family,
24 including you, brought a wrongful death suit involving your
25 father?

26 PROSPECTIVE JUROR LEPIANE: Yes.

27 THE COURT: Okay. Sorry to hear that.

28 So that brings us to the final question. Without giving

1 us too much detail, based on that experience, do you feel the
2 matter, the way it ended, were you satisfied?

3 PROSPECTIVE JUROR LEPIANE: Yes.

4 THE COURT: Okay. And then ultimately question
5 number 10. Based on your own personal experiences, your
6 background and that we've told you, in this particular case that
7 is a civil suit in nature and it's eye a wrongful death suit, do
8 you feel that you could be a fair judge of the facts for both
9 sides in this case?

10 PROSPECTIVE JUROR LEPIANE: Yes.

11 THE COURT: Thank you, Mr. Lepiane.

12 Question number 9, you've mentioned the one family suit.
13 Were there any other lawsuits to disclose?

14 PROSPECTIVE JUROR LEPIANE: No. Just the one.

15 THE COURT: Okay. Thank you for your time.

16 Next we have Susan Andrews?

17 PROSPECTIVE JUROR ANDREWS: Correct.

18 THE COURT: Good morning.

19 PROSPECTIVE JUROR ANDREWS: Good morning.

20 I currently have a non-refundable airplane ticket
21 scheduled July 10th through the 21st. I would be happy to serve
22 if it can wrapped up by the 10th. If not --

23 THE COURT: I wish we could guarantee that, but it looks
24 like the only thing that is guaranteed is the non-refundable
25 status.

26 Let us know. Pick a Monday.

27 PROSPECTIVE JUROR ANDREWS: September 6th. It's going to
28 be good.

1 THE COURT: Everyone is a quick study here.
2 September 6th, 8:00 a.m., the Indio courthouse. They
3 have many more courtrooms there and hopefully something that can
4 work for both the Court and your schedule.
5 PROSPECTIVE JUROR ANDREWS: Okay.
6 THE COURT: So second floor, jury room. That is court
7 ordered. They will have your name. They'll call it in the
8 morning. If you're not there, they'll go ahead and issue a
9 bench warrant. I don't know if they follow up on them, but that
10 is the procedure, okay?
11 PROSPECTIVE JUROR ANDREWS: Okay.
12 THE COURT: Thank you very much for your time.
13 They will see you on September 6th.
14 PROSPECTIVE JUROR ANDREWS: Okay. Thank you.
15 THE COURT: Have safe travels.
16 PROSPECTIVE JUROR ANDREWS: Thank you.
17 THE COURT: This is Juror Number 17, Susan Andrews.
18 THE CLERK: Thank you.
19 Raul Espinoza, E-S-P-I-N-O-Z-A.
20 PROSPECTIVE JUROR ESPINOZA: I have to put my glasses on.
21 THE COURT: Take your time.
22 PROSPECTIVE JUROR ESPINOZA: Okay. Start with number 2.
23 THE COURT: Right. So Raul Espinoza?
24 PROSPECTIVE JUROR ESPINOZA: Right.
25 THE COURT: That's number 1.
26 Question number 2?
27 PROSPECTIVE JUROR ESPINOZA: I live in Cathedral City.
28 I just recently got hired a month ago at Eisenhower as an

1 admitting patient representative.

2 And I live with one adult who is retired from meat
3 manager at Albertsons.

4 And then I have two grown children. One is a bartender.
5 The other one works for -- he is a legal assistant, part time.

6 And then --

7 THE COURT: Let's talk about the second, the legal
8 assistant.

9 Where do they work?

10 PROSPECTIVE JUROR ESPINOZA: In Orange County, Santa Ana.
11 I really don't know too much about it.

12 THE COURT: Legal assistant in an attorney's office?

13 PROSPECTIVE JUROR ESPINOZA: Attorneys, I believe.

14 THE COURT: Do they do criminal, civil?

15 PROSPECTIVE JUROR ESPINOZA: I don't even know. It's
16 something he's been doing on the side. I don't ask too much
17 about it.

18 THE COURT: There will probably be follow-up on that.

19 PROSPECTIVE JUROR ESPINOZA: No idea. That is where he
20 lives.

21 THE COURT: Of course we want to avoid a situation where
22 a family member is working for one of the law firms involved in
23 this case.

24 PROSPECTIVE JUROR ESPINOZA: I would have to call and
25 ask.

26 THE COURT: Question number 6.

27 PROSPECTIVE JUROR ESPINOZA: Yes. It's been about eight
28 years -- eight or seven. It was criminal. It was in Indio.

1 I was an alternate, so I was not there for the outcome.
2 I have no idea what happened.

3 THE COURT: The clerk didn't call you afterwards?

4 PROSPECTIVE JUROR ESPINOZA: No, no one.

5 THE COURT: They're always focused on the call because
6 you're invested at that point.

7 PROSPECTIVE JUROR ESPINOZA: No. They said you don't
8 return for deliberations. I never heard anything.

9 THE COURT: They didn't call you and tell you what the
10 verdict was?

11 PROSPECTIVE JUROR ESPINOZA: No.

12 THE COURT: I'm sorry about that. That's not how your
13 experience should have been.

14 PROSPECTIVE JUROR ESPINOZA: So I have no idea what
15 happened.

16 THE COURT: Question number 7?

17 PROSPECTIVE JUROR ESPINOZA: I have an associates from
18 College of the Desert, liberal arts degree.

19 THE COURT: Okay. Number 8.

20 PROSPECTIVE JUROR ESPINOZA: No, other than my son
21 supposedly working for --

22 THE COURT: That would counseled, right?

23 Question number 9?

24 PROSPECTIVE JUROR ESPINOZA: No.

25 THE COURT: Okay. And then finally question number 10?

26 PROSPECTIVE JUROR ESPINOZA: Yeah.

27 THE COURT: So based on your personal experiences, your
28 background and the little we've told you about this case, you

1 feel you could be a fair judge of the facts for both sides?

2 PROSPECTIVE JUROR ESPINOZA: Yes.

3 THE COURT: Okay. Thank you, Mr. Espinoza.

4 PROSPECTIVE JUROR ESPINOZA: Uh-huh.

5 THE COURT: And, then, finally, Juror Number 18.

6 PROSPECTIVE JUROR AGUILAR: Yes.

7 THE COURT: I was going to say good morning, but we're
8 always here to the noon hour.

9 So we know, number 1.

10 Question number 2?

11 PROSPECTIVE JUROR AGUILAR: I live in Desert Hot Springs.
12 And number 3, I'm a veterinary receptionist.

13 THE COURT: We have quite a few individuals. Do any of
14 you work in the same office, by the way?

15 PROSPECTIVE JUROR AGUILERA: I think so. Yeah.

16 THE COURT: So that would be you and Ms. Kodani?

17 PROSPECTIVE JUROR AGUILERA: Yes. And then I live with
18 my father and my two school-aged siblings.

19 And my father is a painting and finishing laborer, yeah.

20 And then I've never served on a jury before. I don't
21 have kids myself.

22 I have two bachelor's degrees from UC Santa Barbara in
23 sociology and anthropology.

24 Then I don't have any relation to the Court or the legal
25 system.

26 Then not that I recall -- no one I know has been in a
27 civil suit.

28 And, yes, I think I can be a fair judge in this case.

1 THE COURT: Great. Based on your personal experiences
2 and the background and the little we've told you about the case,
3 it being a civil case in nature, you could be a fair judge for
4 both sides?

5 PROSPECTIVE JUROR AGUILERA: Yes.

6 THE COURT: Were you able to complete both of those
7 bachelor degrees in four years?

8 PROSPECTIVE JUROR AGUILERA: Yes.

9 THE COURT: Impressive. Much cooler in Santa Barbara
10 right now.

11 PROSPECTIVE JUROR AGUILERA: Oh, yeah.

12 THE COURT: Although, as I was telling the parties, San
13 Francisco was like 92 degrees last week.

14 Okay. It's 11:46. Ordinarily we should -- well, this is
15 the time I tell you the clock on the wall is ahead -- or sorry,
16 it's behind.

17 Ordinarily we use every minute, but I want counsel to
18 have their full time without having the break. So we'll just
19 start right at 1:30. So we'll bring you in at 1:29 and start
20 questioning of the first -- one moment.

21 We'll start questioning with the first 18 and then we'll
22 discuss a little bit more the procedure, but that's how we will
23 resume, at 1:30.

24 So that way you can stretch right now, get something to
25 eat, come back, just as excited as you are right now.

26 So I'm sorry. Ms. Castaneda?

27 PROSPECTIVE JUROR CASTANEDA: I just wanted since
28 everybody is saying the days I'm not available, but I would be

1 gone on the 11th, July 11th. It's a Monday. It's only -- I
2 would only be gone that day and I will be back by Tuesday
3 morning.

4 THE COURT: Thank you for letting us know.

5 PROSPECTIVE JUROR CASTANEDA: Yes.

6 THE COURT: As long as everyone doesn't come back and
7 starts requesting September 6th.

8 Ms. Hernandez and Ms. Aguilar.

9 PROSPECTIVE JUROR HERNANDEZ: I do have a prior
10 commitment for a wedding out of town from July 8th to 10th.

11 THE COURT: Perfect.

12 PROSPECTIVE JUROR HERNANDEZ: And I will be back here on
13 the 11th.

14 THE COURT: We're not in session on July 8th. That works
15 out perfectly. Ms. Aguilar?

16 PROSPECTIVE JUROR AGUILAR: My date would be July 6th.
17 And actually I do have a field trip -- what is today -- tomorrow
18 as well, but I'm willing to give that up, not the 6th.

19 THE COURT: So part of the jury room, you worked for
20 Coachella Valley Unified, right?

21 PROSPECTIVE JUROR AGUILAR: Yes.

22 THE COURT: As one of your fellow members here in the
23 front, your employer pays full boat?

24 PROSPECTIVE JUROR AGUILAR: Yes.

25 THE COURT: So you can stay here three months if we
26 needed you. I am not asking if you want to, but you wouldn't
27 suffer a financial hardship, right?

28 PROSPECTIVE JUROR AGUILAR: Yes, definitely.

1 THE COURT: We'll make a note of that.

2 I'm sorry. Ms. Chavez.

3 PROSPECTIVE JUROR CHAVEZ: I'm working summer school
4 right now. There are just one counselor for summer school. I'm
5 willing to come back and --

6 THE COURT: So when we do the hardships in the jury room,
7 we go through that sheet that tells us the legal reasons for it.
8 And there are legal hardships because, of course, being here we
9 understand you're all making a sacrifice. It's your time.
10 There are so many other things you could be doing right now.
11 But, again, this is the only way we can settle these types of
12 disputes.

13 You turn on the TV, pick up the newspaper, people settle
14 disputes. They don't have the benefit of this system in many
15 parts of the world. Disputes unfortunately are handled in much
16 different ways.

17 So this is the part where I tell you that there is a
18 hardship to you which the Court can consider and there is a
19 checklist and I can check it off, and then there is a hardship
20 to your employer, which is not the same thing.

21 PROSPECTIVE JUROR CHAVEZ: I have a vacation with my kids
22 the week of the July the -- I can't see -- 15th through the
23 22nd.

24 I didn't write that down. I wrote down that I was going
25 to summer school. I don't have a license for driving.

26 THE COURT: Where are you going to vacation?

27 PROSPECTIVE JUROR CHAVEZ: San Luis Obispo or Santa
28 Barbara.

1 THE COURT: You've already made travel arrangements?

2 PROSPECTIVE JUROR CHAVEZ: Yes.

3 THE COURT: Non-refundable arrangements?

4 PROSPECTIVE JUROR CHAVEZ: Partially. That's why I'm not
5 sure how to answer it, but, no, I have not.

6 THE COURT: So are you requesting excusal based on a
7 legally defined hardship? No. That's why you're here.

8 And then it says if you answered yes, how many days does
9 your employer pay for? You said TBD, to be determined. They
10 pay the whole -- you also work for the school district, right?

11 PROSPECTIVE JUROR CHAVEZ: But summer school is
12 voluntary. I guess I'll be letting the summer school --

13 THE COURT: Do you have a contract with them or do you
14 work during the school year?

15 PROSPECTIVE JUROR CHAVEZ: They said if I miss more than
16 two days, I can't continue because they need people. So I came.

17 THE COURT: Okay. Well, in terms of if you're going to
18 get paid to be here, that's a separate question.

19 You didn't mark your vacation on the form so we will see
20 you after lunch.

21 Okay.

22 You find out more, you can certainly let the attorneys
23 know.

24 Okay. Thank you, everyone, for you time this morning.
25 We will try to conclude by this afternoon so we can find out who
26 the lucky 15 are.

27 Again, I can't stress this enough. The attorneys will
28 tell you this. I can tell you this from prior practice. At the

1 end of the jury trial, with jurors, 99 percent of the time speak
2 to the attorneys. The Court doesn't have the benefit of
3 listening to that, but they always tell the attorneys what an
4 interesting experience it was and that they feel glad that they
5 had an opportunity to sit on it, whether it's civil -- not all
6 civil cases.

7 I don't want to lie to you. Not all civil cases, but
8 certainly cases like this, where there is a serious dispute in
9 criminal cases that they appreciated the opportunity.

10 So we would appreciate having 15 of you serve on this if
11 you end up being the right juror.

12 That being said, we will see you at 1:29.

13 (Proceedings out of the presence of the
14 prospective jurors as follows:)

15 THE COURT: We're still on the record.

16 Mr. Basile just left. We have seven minutes. So just I
17 thought, Mr. Sullivan, that it would be better as opposed to
18 having a break in your voir dire.

19 MR. SULLIVAN: Yeah. And it was getting hot. I think
20 it's a good time for a break.

21 THE COURT: So you have 18. You know a little bit about
22 them and you can start at 1:30.

23 MR. BASILE: I'm sorry. I stepped out.

24 THE COURT: You're hungry as well.

25 MR. BASILE: My client stepped out so I wanted to make
26 sure they were okay.

27 THE COURT: Any questions before we resume at 1:30?

28 MR. BASILE: Are we going to start off with the mini

1 opening, I take it?

2 THE COURT: Yes.

3 MR. BASILE: Okay.

4 THE COURT: Well --

5 MR. REID: No questions. Thank you, your Honor.

6 THE COURT: Okay.

7 (Noon Recess.)

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1 JUNE 27, 2022 - AFTERNOON SESSION

2 THE COURT: Let's recall the matter of Collins versus DG

3 Corp.

4 Sorry, counsel. Before we present in the jurors,

5 anything that came up during the lunch hour?

6 MR. REID: No, your Honor.

7 THE COURT: Other than the humidity.

8 MR. BASILE: You're going to let me lead off with the

9 opening?

10 THE COURT: I'll let them know that they'll get a brief

11 introduction of the case and then the attorneys will have

12 questions for them.

13 MR. BASILE: Should I go right into my questions?

14 THE COURT: Yes.

15 Mr. Schumann?

16 MR. SCHUMANN: I was going to ask if we should talk about

17 any of the potential cause.

18 THE COURT: Let's see if they have any time to reflect on

19 it.

20 If we have any other hardships come up, we'll address

21 them individually, but we'll try to nip them in the bud if

22 anybody is trying to follow suit.

23 MR. BASILE: I just want to be clear, your Honor.

24 I give the mini opening and I go right into my questions?

25 THE COURT: Yes.

26 MR. BASILE: Perfect. Thank you.

27 THE COURT: The intent was when you introduced yourself

28 this morning to do the mini options at that time, but I

1 apologize if I wasn't clear in this that respect.

2 MR. SCHUMANN: Can I at least do my mini opening after
3 his instead of waiting until it's my turn?

4 THE COURT: Sure. Let's do it.

5 MR. SCHUMANN: Let's hear both sides before we question
6 them.

7 THE COURT: That's fine, Mr. Schumann.

8 It was the Court's intent when you introduced yourselves
9 to give a brief statement, a mini opening.

10 Let's let them know you're going to do a mini opening.
11 You'll do yourself. Mr. Schumann will do defense's and then we
12 will go into questioning.

13 Sorry, Deputy Lee.

14 (Recess.)

15 THE COURT: Recalling the matter of Collins versus DG
16 Corp. Incorporated.

17 Welcome back.

18 It's 1:29 by the Court's clock, but that's probably not
19 what is on your phone.

20 I may have spoken a little too soon regarding the air
21 conditioning.

22 So if you're wondering if it's just you, if perhaps it's
23 a little humid, the Court has done an informal poll before
24 everyone walked in. It is humid in here, so if we go back to
25 the very beginning of the morning, 1962, probably a lot of the
26 original HVAC system is still in place. So we are aware. We'll
27 let facilities know obviously if it gets worse.

28 It's one of those things if we make a request to bring it

1 down a little bit it will go to the opposite extreme, where it
2 will get very cold in here.

3 We ask them to turn it up and it will get very warm. So
4 we can't exactly finesse it, but we are aware of it. If you're
5 wondering, it's not just you.

6 What we're going to do now, we're going to turn it over
7 to the attorneys.

8 Yes, Mr. Espinoza?

9 PROSPECTIVE JUROR ESPINOZA: Yes. On the lunch break I
10 called, since I just started at Eisenhower, to see what kind of
11 compensation I can get.

12 THE COURT: Five days.

13 PROSPECTIVE JUROR ESPINOZA: None. I'm not past my
14 90-day probation because I just started and I was in shock.
15 That would be 15 days without pay. These a lot.

16 THE COURT: It is.

17 When did you start?

18 PROSPECTIVE JUROR ESPINOZA: May 16th. So 35 days ago,
19 something like that.

20 THE COURT: Okay.

21 PROSPECTIVE JUROR ESPINOZA: And they sent me their
22 policy text. I'm like, whoa, okay.

23 THE COURT: What we will do is let's see how voir dire
24 goes this morning. The attorneys are waiting so we'll see once
25 we get to you and maybe we'll have you reseated with someone
26 else.

27 Again, that is the reason we try to do the hardships in
28 the jury room. A lot of courtrooms don't do that. We used to

1 do it all. We would still be talking to you about hardships if
2 we did it that way, so it's really a way to make the process
3 more efficient out of respect for your time, most importantly.

4 We're going to do -- yes, Ms. Castaneda.

5 PROSPECTIVE JUROR CASTANEDA: I have the same problem.
6 Since I just started, I emailed, and because I haven't passed
7 probation, I wouldn't be getting paid at all until I passed it.
8 It would only be for five days after that.

9 THE COURT: Okay. We'll address it when it comes up.

10 Thank you, Ms. Castaneda.

11 What we will do is the parties will now have an
12 opportunity to do what is referred to as a mini opening. It's
13 their opportunity to tell you very briefly, usually about a
14 minute, around there, just what they anticipate the evidence to
15 show in their opinion.

16 Again, keep in mind that what they're telling you now is
17 the same as opening or closing argument. It's not evidence.
18 The evidence will ultimately be presented through witness
19 testimony during the course of the case.

20 Having said this, it will help at least in their voir
21 dire as they're discussing certain issues to see if there are
22 any biases that you may be aware of or not aware of that could
23 maybe lead to you not being a fair and impartial juror in this
24 case.

25 That being said, I'll turn it over to plaintiff's
26 counsel, Mr. Basile.

27 MR. BASILE: Good afternoon. Thanks very much.

28 The jury in this case is going to be making very

1 important decisions about safety in a high-pressure natural gas
2 plant that is located right outside of town here. It's called
3 the Sentinel Energy Center. It's one of the plants that these
4 defendants -- of many that they operate and manage throughout
5 the United States and Mexico.

6 His Honor already told you that in March of 2017 an
7 explosion happened there, killing Daniel Collins. The first
8 thing that the jury will do in this case is evaluate whether or
9 not Diamond Generating Corporation was negligent in the
10 oversight and management of the safety system at that plant.
11 This is about the safety system.

12 This is about corporate responsibility, worker
13 responsibility and the safety system at the plant.

14 You're going to learn about their safety policies, about
15 how workers were trained and about how they reviewed -- the
16 defendants reviewed the safety system from when the plant opened
17 in 2012 up until this explosion in 2017.

18 Those are the three important things, how they reviewed
19 it over those years.

20 If you find that they were negligent, the next task that
21 the jury will have is to put a price on two valuable
22 relationships, the relationship between a husband and wife that
23 had 32 years taken away because of that explosion.

24 A separate evaluation will be the value of the
25 relationship between a father and his son because of the 32
26 years of that relationship that was taken away.

27 Now, I'm telling you this to help you think about this
28 because we're going to have a conversation about if you feel

1 this is appropriate. This is for all of us to decide. Not just
2 us, but for you to decide if this is the right case for you.

3 I might add that the defendant, the reason we're here is
4 they're denying all responsibility and claiming it was
5 everybody's fault but theirs.

6 So I ask you to be brutally honest with me when I ask you
7 questions. Don't hold back anything. I'm really looking
8 forward after all of these years to presenting this case to
9 members of the community.

10 Thank you, your Honor.

11 THE COURT: Thank you.

12 Mr. Schumann, you were allotted the same amount of time.
13 Please take your time. And you have permission to use the well.

14 MR. SCHUMANN: Thank you.

15 THE COURT: Thank you, Mr. Schumann.

16 MR. SCHUMANN: Members of the jury, thank you so much.
17 This is going to be a lot of work for you all, so we appreciate
18 your time here.

19 PROSPECTIVE JUROR LEPIANE: I can't hear you.

20 MR. SCHUMANN: I'm sorry. It will be a lot of time and
21 commitment for you all, being that it might be 30 days, and we
22 appreciate it.

23 This case is really about human error. What happened
24 here, and you will hear evidence about it, is that the decedent
25 unfortunately made several human errors. Several of his
26 co-workers made additional compounding human errors. His boss
27 made human errors. And those human errors led to the death of
28 Mr. Collins.

1 Our client was not present on the day of the incident,
2 had no employees there, did not tell Mr. Collins or his
3 co-workers what to do, didn't tell them when to do it.

4 Mr. Collins had done this particular procedure since
5 2014. He had done it many times. He knew exactly what to do
6 and he knew how to do it and when to do it.

7 It was a cold day. And one serious fact that led to this
8 incident was that one of his co-workers had to go get a jacket
9 and ear plugs. That was the gentleman who was venting the
10 900 pounds of pressure from the entire system.

11 He didn't come back. It was shut off before he could
12 finish his venting. That left 700 pounds of pressure in the
13 system. That is what killed Mr. Collins.

14 Thank you very much.

15 THE COURT: Thank you, Mr. Schumann.

16 Now, Mr. Basile, you have permission to use the well.

17 You may proceed.

18 MR. BASILE: Thank you.

19 So, folks, I tried to give you a thumbnail to talk.

20 The first thing I want to talk about is who here among
21 you guys have had some sort of safety training in your work?

22 Well, I'm glad to hear that. I know the mail delivery
23 certainly has had a lot.

24 So you guys remember, I want to come to you, all right?
25 Make sure we get back to you. Thank you.

26 So can you tell me a little bit about the safety training
27 you had?

28 I'm sorry. I should have my sheet here.

1 Is it Mr. Gaipa?

2 PROSPECTIVE JUROR GAIPA: Gaipa.

3 MR. BASILE: Thank you, Mr. Gaipa.

4 Can you tell me a little bit about the safety training
5 you've had?

6 PROSPECTIVE JUROR GAIPA: Sure. We have several policies
7 and procedures on how we operate every day and what we do on
8 outside the office, inside the office during our delivery and
9 our routes and everything like that.

10 We have continuous stand-up talks amongst the office at
11 least a couple of times a week.

12 MR. BASILE: How long have you been a postal carrier?

13 PROSPECTIVE JUROR GAIPA: A little over 15 years.

14 MR. BASILE: What was the initial safety training like
15 that you had?

16 PROSPECTIVE JUROR GAIPA: The initial safety training?
17 Oh, a long time ago.

18 MR. BASILE: It's not a memory test. I just want to know
19 how it all started.

20 PROSPECTIVE JUROR GAIPA: Mostly going through a book.

21 MR. BASILE: Did you have any hands-on, where you had to
22 work hands-on?

23 PROSPECTIVE JUROR GAIPA: There are a few things that are
24 hands-on, like driving.

25 THE COURT: You gave me a lot of information there about
26 the training and the follow-up training.

27 Can you tell me a little bit more about that?

28 PROSPECTIVE JUROR GAIPA: Like how do you mean?

1 I mean, basic things are highly important things will be
2 repetition, whether we've heard it before or not, continuously
3 go over the same procedures, you know.

4 MR. BASILE: Can you give me an example of one of the
5 procedures?

6 PROSPECTIVE JUROR GAIPA: Sure. Like we're not supposed
7 to back up our vehicles over 50 feet. So every single day we
8 will get an alert from our supervisors to remember not to back
9 up our vehicles over 50 feet.

10 MR. BASILE: How do you feel about this concept?

11 PROSPECTIVE JUROR GAIPA: Very annoying.

12 MR. BASILE: Would you rather they not do it?

13 PROSPECTIVE JUROR GAIPA: No, no.

14 MR. BASILE: Say a little bit more about it.

15 PROSPECTIVE JUROR GAIPA: Because in the event of an
16 accident, I'd rather have heard the repetition rather than
17 possibly backing up over someone accidentally, you know? I
18 wouldn't want to live with that. I can live with a little
19 annoyance.

20 MR. BASILE: I understand.

21 Now, we're going to be talking about policies, but more
22 importantly, training in here.

23 Also the view of procedures is also going to be done in
24 this case. Did you guys have reviews of safety procedures?

25 PROSPECTIVE JUROR GAIPA: Sure.

26 MR. BASILE: How often would they be done?

27 PROSPECTIVE JUROR GAIPA: Not everything is reviewed
28 daily, but we'd have topics probably three to four times a week.

1 They would bring up different stuff just as a reminder.

2 MR. BASILE: You're giving me a lot of information. I
3 appreciate that.

4 Hearing in this case -- it's going to be about -- a
5 safety system is a big part of it. And your experience, we
6 don't leave it outside the courtroom. It's just that you have
7 to follow the law and the evidence as it applies in this case.

8 You can do that, right?

9 PROSPECTIVE JUROR GAIPA: Sure.

10 MR. BASILE: Thanks a lot.

11 Who else has had safety training or worked in safety? I
12 saw a bunch of hands.

13 Yes, back there, Ms. Mason?

14 PROSPECTIVE JUROR MASON: Yes.

15 MR. BASILE: Is the nurse at St. Jude.

16 PROSPECTIVE JUROR MASON: A lot of patient safety.

17 MR. BASILE: You were in risk management, right, did you
18 say?

19 PROSPECTIVE JUROR MASON: I did critical care and risk
20 management. My focus was on preventing hospital-acquired
21 infections or surgical site infections.

22 MR. BASILE: Like MERS?

23 PROSPECTIVE JUROR MASON: Like MRSA.

24 MR. BASILE: Tell me a little bit about the training you
25 had.

26 PROSPECTIVE JUROR MASON: I did a lot of the training
27 because I did the investigating when it was an infection or some
28 sort of event that we didn't want to have happen.

1 I would coordinate with a lot of the physicians, nurses,
2 technicians, and we would investigate and find out why the
3 infection occurred, or at least try to determine that.

4 Then we would review protocols, maybe change protocols
5 and do a lot of education, try to prevent infections.

6 MR. BASILE: You said something I want to ask more about.

7 When something, for lack of a better word, went wrong and
8 someone got an infection, would you follow-up and see how that
9 could be prevented again? What would you do?

10 PROSPECTIVE JUROR MASON: Absolutely.

11 We would start by investigating, trying to determine what
12 caused the infection. So we'd get the type of organism, were
13 all of the correct procedures followed.

14 Then if we could determine why or at least have any idea
15 why, we would try to figure out why it occurred, was there a
16 break in protocol, was there a poor education, was there
17 shortcuts taken, what was the cause.

18 MR. BASILE: Uh-huh.

19 PROSPECTIVE JUROR MASON: Then we would address those
20 issues and make corrections.

21 MR. BASILE: So how did you feel overall about how that
22 safety system operated there at the hospital?

23 PROSPECTIVE JUROR MASON: It worked really well. We went
24 from having many infections per year to zero for many years.

25 MR. BASILE: You must be very proud of it.

26 PROSPECTIVE JUROR MASON: Hard work though, but yeah.

27 MR. BASILE: Safety is sometimes hard work.

28 While I'm talking, if you guys have any questions of me,

1 if the judge lets me I will answer them about anything in this
2 case.

3 It can go two ways here. Like if you have a question,
4 what do you mean? Why are you going there? What about this?
5 What about that?

6 If he lets me, I'll answer it for all of you folks.

7 Who else worked in a safety system here?

8 PROSPECTIVE JUROR CASTANEDA: In my last job two months
9 ago, I worked at Target and they did lot a training modules
10 since I worked with machinery.

11 I worked with electric power jacks and a baler used to
12 crush cardboard and other -- something called a wave that -- you
13 would go on it and it would go all the way up to the very top of
14 the roof so that you could reach stuff on higher shelves.

15 MR. BASILE: So would you consider that a dangerous
16 workplace?

17 PROSPECTIVE JUROR CASTANEDA: Sometimes when there are
18 things in the way, it was dangerous. Sometimes it would be
19 messy in the back room and it would be a challenge to get the
20 wave and go all the way up because there could be something
21 hanging off a shelf that could potentially fall down, but
22 otherwise it was relatively safe because they would give us a
23 lot of training.

24 MR. BASILE: Let's talk about that for a minute.

25 What was the training like? Tell me a little bit more
26 about the safety training and operating the baler and the other
27 equipment to go up high.

28 PROSPECTIVE JUROR CASTANEDA: We would do modules. When

1 I first started, because I worked there for a year, I started
2 doing training for like full days and training every other week
3 or so. A module is just how to operate the baler, what not to
4 do and operate the electric pallet jack.

5 They would also have managers go in with you like
6 hands-on and teach you how to use it in person.

7 MR. BASILE: So they actually practiced the safety
8 procedures hands-on with the equipment with you?

9 PROSPECTIVE JUROR CASTANEDA: Yes.

10 MR. BASILE: Was that an important part of it for you?

11 PROSPECTIVE JUROR CASTANEDA: Yeah, because I wouldn't
12 have known how to do it.

13 MR. BASILE: That's a dumb lawyer question.

14 Okay. Thank you for sharing that.

15 Who else worked on a safety system?

16 Yes, Mr. Woods.

17 PROSPECTIVE JUROR WOODS: So I had to take a food
18 management course, pretty comprehensive course, for the
19 restaurant I was in charge of.

20 That covered everything from employee safety for the
21 front of the house, food safety for the food we were serving,
22 preparation, and then of course back of the house, kitchen, the
23 guidelines for the county that we have to -- the laws and
24 guidelines we have to adhere to for county and state, and then
25 also for the FDA.

26 It was pretty comprehensive training on that one.

27 MR. BASILE: Was that training in person or was it like
28 an online thing to you?

1 PROSPECTIVE JUROR WOODS: It was online. There was no
2 way to skip anything, though. So when -- sometimes when there
3 is a food handler certificate for somebody who is a server, they
4 can skip a little bit.

5 In management there has to be at least one food
6 management card holder per restaurant, per facility. There is
7 no holds to get by, no shortcuts.

8 It is all online and the final test is proctored.

9 MR. BASILE: You said something there about there is
10 management and you said like the food handlers can skip a little
11 bit.

12 PROSPECTIVE JUROR WOODS: Correct. They could get a
13 certificate. They can find the answers online. I found later
14 on. When I found out about it -- so I did a lot of supplemental
15 training for my crew because I'm concerned about their safety as
16 well as curbing the liability of the company I work for as well.

17 MR. BASILE: So you're a food and beverage director out
18 in Indio, correct?

19 PROSPECTIVE JUROR WOODS: Correct.

20 MR. BASILE: So do you have any feelings or beliefs in
21 safety training where the responsibility is heavier on the
22 management or on the workers?

23 PROSPECTIVE JUROR WOODS: Well, I believe management has
24 to set up all of the training necessary for safety. However,
25 there is also a notice on the individual in order to understand
26 what they need to do to safeguard themselves and other
27 situations, protect themselves.

28 MR. BASILE: So what I hear you saying, correct me if I'm

1 wrong, is the safety has to start at the top?

2 PROSPECTIVE JUROR WOODS: Well, yeah. Whoever's
3 establishment it is or company understand more of the risks of
4 the workplace and they put that out.

5 In our situation most of that is already taken care of by
6 Riverside County and California telling you what the food safety
7 issues are, but there are other liabilities and far as machinery
8 and so forth that is really -- it comes from me and my employer.

9 MR. BASILE: Thank you. Good information.

10 Mr. Entertainer, Mr. Seymon?

11 PROSPECTIVE JUROR SEYMON: My previous employment I was a
12 billboard artist so I worked on billboard. Many times we went
13 out on location, climb up on the billboard and set up
14 scaffolding, so we had safety instruction. It wasn't any
15 extensive training, but it was making sure you shut down the
16 electricity before you touched that billboard because you would
17 get fried, and also making sure as far as clicking your line
18 onto the cable there at the top.

19 You got that and about setting up scaffolding up on a
20 catwalk, making sure everything is secure so it doesn't collapse
21 while you're 70 feet in the air.

22 MR. BASILE: You said something that is important there
23 that I want to talk about.

24 You said that you received training to shut down the
25 electricity so you wouldn't get electrocuted obviously before
26 you go up there.

27 Did you ever hear the term lockout/tagout in that
28 process?

1 PROSPECTIVE JUROR SEYMON: No.

2 MR. BASILE: Did you receive any sort of training that
3 said when you are shutting off the electricity you have to throw
4 the switch and put a lock on it so nobody else can accidentally
5 throw --

6 PROSPECTIVE JUROR SEYMON: Nothing about that, just
7 throwing the switch.

8 MR. BASILE: While I have that, is anybody here familiar
9 with that term, lockout/tagout?

10 PROSPECTIVE JUROR CASTANEDA: Yes.

11 MR. BASILE: Ms. Castaneda, from your Target training?

12 PROSPECTIVE JUROR CASTANEDA: I remember doing a module
13 on it. I remember doing training on it.

14 MR. BASILE: What do you remember about lockout/tagout?

15 PROSPECTIVE JUROR CASTANEDA: Just the term was very
16 familiar to me. I worked at two different grocery stores and
17 both of those had that module, lockout/tagout.

18 I think it was because of the balers, and when you switch
19 it off you have to make sure you lock it in case it switches
20 itself back on.

21 MR. BASILE: Did you receive any specific training on how
22 that is done, like one person locks it off and then there is a
23 verifier that verifies it was locked?

24 PROSPECTIVE JUROR CASTANEDA: Not that I remember.

25 I never had to physically do it myself.

26 MR. BASILE: Thank you.

27 I see the fans are going here so I want to keep moving.

28 Anyone else who knows that term, lockout/tagout?

1 Yes, Ms. Santos.

2 PROSPECTIVE JUROR AGUILERA: I only know.

3 PROSPECTIVE JUROR SANTOS: I only know it because I sell
4 Workers' Comp insurance. I have to advise them of all the
5 safety and security measures so they follow the rules so they
6 don't void their policies.

7 MR. BASILE: Are you familiar with that process of how to
8 lock out dangerous equipment and tag it?

9 PROSPECTIVE JUROR SANTOS: I'm familiar with the
10 terminology and all enough to explain it, but I never had to
11 actually.

12 MR. BASILE: You haven't actually done it or watched
13 someone do it?

14 PROSPECTIVE JUROR SANTOS: Correct.

15 MR. BASILE: Thanks for bringing it up.

16 Anyone else on that? Who else haven't I spoken to about
17 training in a safety system that had their hand up? Did I get
18 everybody on that?

19 Okay. I mentioned here a few minute ago that, you know,
20 you're going to be judging corporate responsibility for safety
21 systems. Some people feel that big corporations are just a
22 target for lawsuits, like people think they're a deep pocket.

23 Other people feel, well, corporations sometimes mess up
24 too. They should be held accountable.

25 So is there anybody here that leans one way or the other
26 on that?

27 Yes, sir. Mr. Seyman.

28 PROSPECTIVE JUROR SEYMON: I was thinking about this.

1 You know, to err is human, as they say. When you're
2 dealing with human beings, especially working in dangerous
3 environments, things happen. And my own personal experiences
4 are if you have a large corporation that you're working for or
5 someone you love the working for them and something as
6 horrendous as a death occurs while on the job as a result of an
7 explosion, personally I think that a compassionate corporation
8 would care about compensating them, the family, for their loss
9 because that's quite a loss.

10 You know, I can't think of a situation specifically, but
11 Mr. Collins didn't go in wanting to die in an explosion, so I
12 think there would be some voluntary compensation to the family
13 for something like that, especially by a large corporation.

14 MR. BASILE: Does anyone else feel that way?

15 I'll come back to you in a second.

16 Yes, Ms. Santos?

17 PROSPECTIVE JUROR SANTOS: Yeah. Well, from a corporate
18 perspective, also big corporations should have plenty of
19 insurance in place to be able to compensate and show -- I mean,
20 the onus is on them. They should be able to show that and take
21 accountability.

22 And big insurance companies have paid out larger
23 claims -- I know this -- on less.

24 So, yeah, they should step up and take accountability,
25 pay their retention and move on.

26 MR. BASILE: Thank you for sharing that. Thank you.

27 Anyone else have any comments on that?

28 Yes, Ms. Aguilar.

1 PROSPECTIVE JUROR AGUILERA: Accountability is a big one.
2 It just rubbed me the wrong way how they said just
3 because nobody -- the owners weren't there that they weren't
4 responsible, kind of like hands off, not our interest. No
5 compassion whatsoever. I didn't like that.

6 MR. BASILE: Thank you for sharing that. You'll still be
7 able to -- all three of you guys, listen, the burden is on us
8 for us to prove our case. We're not here looking -- I
9 appreciate the compassion, but the law says we have to prove the
10 case, and I'm ready to prove it, believe me.

11 So can you give me that opportunity to prove the case?

12 I appreciate the empathy. It's all right to feel it, but
13 I want you to judge this case on the facts that we present and
14 the law that his Honor is going to instruct you.

15 You three guys that mentioned -- I should say you two
16 ladies and the guy who mentioned this -- you'll be able to do
17 that, won't you, listen to the facts and judge it on the
18 evidence you hear?

19 What do you think?

20 PROSPECTIVE JUROR SEYMON: I would hope so.

21 But you still have your personal feelings about just the
22 basic information that we've gotten right here.

23 I mean the law is law, whatever. But there is the human
24 aspect to all of this. I kind of developed an opinion on it. I
25 understand.

26 I would like to be here.

27 MR. BASILE: You're going to be learning and I'm going to
28 be talking a lot about it at the end of this case, about the

1 powers of majority and your humanity. We are all human beings
2 here. And we don't leave our humanity outside the courtroom
3 when we're listening to the case, so I appreciate your saying
4 that. That is what I mean.

5 It's all right. Everyone is going to have feelings in
6 this case. It's all right to have those feelings. The thing is
7 that you have to instill -- and you can do it. Jurors do it
8 every day in this country -- base your decision on the evidence
9 and the law. That is all we ask.

10 Can you do that, sir?

11 PROSPECTIVE JUROR SEYMON: I think I can.

12 MR. BASILE: All right. Ms. Aguilar?

13 PROSPECTIVE JUROR AGUILERA: I can try.

14 MR. BASILE: Your best.

15 And Ms. Santos?

16 PROSPECTIVE JUROR SANTOS: I'll make every attempt.

17 MR. BASILE: Thank you.

18 This is Mr. Platkin. He is helping me. I don't keep
19 good notes.

20 Along the lines we were just talking, do any of you feel
21 that employers have a responsibility to reduce -- you know, try
22 to minimize worker error? What do you think about that?

23 If, for example, minimize the ability to make an error or
24 minimize what they're responsible for?

25 PROSPECTIVE JUROR SANTOS: No.

26 MR. BASILE: But can they make an effort -- like if they
27 thought they might be making human error here, should an
28 employer make an effort to say, wait a minute, here's an area

1 where they might mess up, make it safer?

2 PROSPECTIVE JUROR SANTOS: Yes. It's called quality
3 control.

4 MR. BASILE: Quality control. Okay.

5 I won't take so many more notes from Mr. Plotkin.

6 I want to talk a little bit about corporate structure.

7 And I guess I should ask first, this Diamond Generating
8 Corporation, they are a wholly-owned subsidiary of Mitsubishi
9 corporation.

10 MR. SCHUMANN: Objection, your Honor. Improper voir
11 dire.

12 MR. BASILE: I'm seeing if anybody has stock in that
13 corporation.

14 THE COURT: Briefly.

15 Overruled.

16 MR. BASILE: Thank you, your Honor.

17 Does anybody own stock in Mitsubishi Corporation?

18 Anybody drive a Mitsubishi car?

19 I just wanted to make sure.

20 A long the lines of corporate structures, who is familiar
21 with the term much subsidiary corporation? Has anybody heard of
22 subsidiary corporation?

23 Mr. Woods, Mr. Gaipa. I haven't heard from you two
24 people. Tell me what you know about a subsidiary corporation?

25 PROSPECTIVE JUROR WOODS: From what I understand it,
26 it's a self -- it's a company that is under the umbrella of a
27 parent company, but it runs its own, it has its own books,
28 right?

1 MR. BASILE: Okay. How about a limited liability
2 company? Has anybody heard of a limited liability corporation?

3 Ms. Santos is nodding her head.

4 Ms. Chavez, have you heard of that?

5 PROSPECTIVE JUROR CHAVEZ: No.

6 MR. BASILE: Yes, sir, Mr. Woods.

7 PROSPECTIVE JUROR WOODS: Again, I believe limited
8 liability is the owners of the company don't have any financial
9 stake with the company. They can't go after their personal
10 wealth.

11 MR. BASILE: Okay. But how many feel that sometimes
12 corporations set up corporations with subsidiaries and limited
13 liability companies to avoid their responsibilities? Does
14 anybody feel that way?

15 I got Mr. Reising thinking about that one.

16 PROSPECTIVE JUROR REISING: I guess I'd be surprised if
17 they didn't if they could.

18 MR. BASILE: Good point.

19 And while I have you, you were a Washington lawyer for
20 many years, right?

21 PROSPECTIVE JUROR REISING: Yes.

22 MR. BASILE: In the Seattle area?

23 PROSPECTIVE JUROR REISING: Yes.

24 MR. BASILE: Mainly conservator work you did?

25 PROSPECTIVE JUROR REISING: Guardianship, elder law.

26 MR. BASILE: Did you ever do any work -- are you familiar
27 with the Palo Vera (phon.) firm up there? You've heard of
28 Mr. Vera?

1 He is a mentor of mine. I thought I would mention.

2 You know, have you ever done trials?

3 PROSPECTIVE JUROR REISING: Very seldom. Most of my work
4 was in the elder law, so we had bench trials almost always.

5 MR. BASILE: So you know in jury trials us trial lawyers
6 out here always scratch their head, do you leave a lawyer on the
7 jury, you know.

8 If you were up here picking you, deciding on you, would
9 you be comfortable with you as a juror in this case if you were
10 in my shoes?

11 PROSPECTIVE JUROR REISING: I might be because I'm not
12 familiar with the kind of things you're talking about. It's
13 just not within my work experience.

14 I guess I approach it more as a lay person in that
15 regard.

16 MR. BASILE: That is the feeling I got too.
17 What about burden of proof, the burden of proof.

18 PROSPECTIVE JUROR REISING: You got it.

19 MR. BASILE: Yeah, we got it but there are different
20 levels of burden of proof.

21 I'll touch on that very briefly right now.

22 How many of you have been on criminal cases?

23 Okay. And you know in criminal cases that the burden on
24 the prosecutor is beyond a reasonable doubt, which is kind of up
25 here, which we have that high burden because someone is going to
26 be incarcerated.

27 In these cases -- how many have been jurors in civil
28 cases? I know there were a few of you.

1 So, Mr. Lehman, you know where I'm going to go. You can
2 probably take it from here.

3 In these civil cases, all you need to do is listen to the
4 evidence of what the issue is and you go what's more likely true
5 than not.

6 If it's more likely true than not, you answer the
7 question that way and move on.

8 His Honor will need you -- you'll need nine of the 12 to
9 say more likely true than not and you'll move on.

10 But are you folks okay with that burden in this or do you
11 think it should be higher?

12 This is a serious case. I'm going to talk about some of
13 the damages here in a bit.

14 Do you guys have any problem with that burden in this
15 case? How about Ms. Kodani?

16 PROSPECTIVE JUROR KODANI: No problem.

17 MR. BASILE: I want to talk to you, Ms. Kodani and
18 Mr. Lepiane.

19 Is that Italian, sir?

20 PROSPECTIVE JUROR LEPIANE: Yes.

21 MR. BASILE: You both have suffered a great loss of a
22 loved one. Yours is most recent, right?

23 PROSPECTIVE JUROR KODANI: Uh-huh.

24 MR. BASILE: Is it all right if I talk to you a little
25 bit about that?

26 PROSPECTIVE JUROR KODANI: Yes.

27 MR. BASILE: If you get uncomfortable at any time, you
28 can say that's enough.

1 PROSPECTIVE JUROR KODANI: Okay.

2 MR. BASILE: When did this happen?

3 PROSPECTIVE JUROR KODANI: On the 17th.

4 MR. BASILE: And who was it?

5 PROSPECTIVE JUROR KODANI: My dad.

6 MR. BASILE: You lost your dad on the 17th. Oh, boy.

7 Well, I don't know what to say.

8 PROSPECTIVE JUROR KODANI: I mean, it wasn't anything
9 like --

10 MR. BASILE: Was it a result of someone else's
11 negligence?

12 PROSPECTIVE JUROR KODANI: No, no.

13 MR. BASILE: Okay. One of the things you're going to be
14 evaluating, all of you folks, is putting a price on the loss of
15 a father.

16 I mean, that's a great loss. Can I ask how old your
17 father was?

18 PROSPECTIVE JUROR KODANI: Sixty-four.

19 MR. BASILE: Sixty-four.

20 What you guys are going to be told is what Daniel
21 Collins' life expectancy was generally. He was 47.

22 You're going to be asked if you find them negligent, if
23 you find them responsible, the next job is to hold them fully
24 accountable for all the harm they caused. It's 32 years of a
25 loss of a husband and loss of a father.

26 So I mean, that is going to be kind of close to home for
27 you, isn't it?

28 PROSPECTIVE JUROR KODANI: Yeah. I think I can do it,

1 though.

2 MR. BASILE: You do?

3 PROSPECTIVE JUROR KODANI: Yeah.

4 MR. BASILE: I appreciate that. Okay. Thank you.

5 PROSPECTIVE JUROR KODANI: Uh-huh.

6 MR. BASILE: Mr. Lepaine, I'm very sorry about your
7 situation.

8 Was it someone else's fault that took your father, I
9 believe it was?

10 PROSPECTIVE JUROR LEPIANE: Yes. It was an employee at
11 the hospital where my wife worked for many, many years. So it
12 was kind of a difficult situation because my wife worked at that
13 hospital that we were --

14 MR. BASILE: Suing.

15 PROSPECTIVE JUROR LEPIANE: Yeah. But the loss was for
16 some satisfaction because somebody screwed up.

17 The nurse was supposed to restrain my father and she
18 didn't restrain him.

19 After my daughter left her visit, went to the nurses'
20 station and told the nurse that she was leaving so -- you know,
21 otherwise, please restrain him. She didn't.

22 And he fell and came a paraplegic and suffered for the
23 next two years and then passed from the fall.

24 So, you know, it was -- it was difficult to do, but my
25 wife is 100 percent behind the suit.

26 She planned on saying at the hospital, too. It was more
27 for my mom and to get a little bit of satisfaction, I felt, for
28 me, my mom, my brother.

1 MR. BASILE: So it must still be hard.

2 PROSPECTIVE JUROR LEPIANE: Yeah. Yeah.

3 I mean, it was a very tough situation. He was left in
4 really bad shape.

5 Anyway, just many, many things. He suffered for the next
6 two years because of that terrible fall where he hit the
7 concrete floor and fractured his vertebrae and became a
8 paraplegic from that point on.

9 Of course, he wasn't -- we wanted to keep him alive, but
10 all the elements that were fighting his life, you know, because
11 of the fall, it just slowly took him out over a period of two
12 years.

13 So we had two years' worth of suffering. And, you know,
14 all you can think of is keeping him alive when he didn't even
15 want to be alive anymore. He knew he was in bad shape and was
16 never going home.

17 It's all this -- the satisfaction of doing the lawsuit.
18 It was very satisfying to my wife and I in particular. And my
19 mom, the whole thing was kind of over her head. She didn't know
20 what to think of the whole thing.

21 The class action -- not class action. The lawsuit she
22 kind of went along with the two of us, my wife and myself. And
23 my brother was also on the fence over the lawsuit part. And I
24 said, you know, this is right. This is the right thing to do.

25 So that is kind of the whole story there. I don't know
26 if I went too far in explaining things.

27 MR. BASILE: No. It rings true to what we're doing in
28 this case. Let's look at it this way. It's true of what's

1 happening here.

2 PROSPECTIVE JUROR LEPIANE: I don't understand the 32
3 years part. This didn't happen 32 years ago.

4 MR. BASILE: No, no.

5 When the jury is deciding the damages on what the price
6 of the life that was taken away is, an instruction the Court is
7 going to give you, well, how long would have Daniel lived had it
8 not been taken away.

9 For someone -- it seems kind of short to me since I'm
10 almost 70, but someone 47 years old, which is what he was --

11 PROSPECTIVE JUROR LEPIANE: Has 32 years.

12 MR. BASILE: On the tables it's 32. You have to put a
13 price on each year.

14 PROSPECTIVE JUROR LEPIANE: And the attorneys had
15 explained this to us because of my dad's age, you know, the
16 lawsuit -- we're not going to get very much, but --

17 MR. BASILE: Sometimes those later years are more
18 valuable than any others.

19 PROSPECTIVE JUROR LEPIANE: He was still going to work
20 every day before the accident happened.

21 MR. BASILE: I can tell that you were very close to your
22 dad.

23 PROSPECTIVE JUROR LEPIANE: Yeah.

24 MR. BASILE: How do you feel about, you know -- you were
25 in a lawsuit with almost the identical losses other than the
26 period of time that's involved in this case. That is what your
27 mother lost was a loss of a husband and your loss was a loss of
28 a father. That is what Denise and Chris are here about.

1 Do you think you can still -- it's all right to have
2 these feelings. We're all human.

3 Do you still think you could be a fair juror in this
4 case?

5 PROSPECTIVE JUROR LEPIANE: I hope so.

6 MR. BASILE: Yeah, I do too.

7 You can follow the law as the judge instructs you and
8 just base it on the evidence here?

9 And sympathy is not one of the elements of damages in
10 this case. They've got a lot of sympathy. They had sympathy
11 cards. We're here for justice.

12 Okay. I'm glad you said that, so I hope so.

13 Thank you.

14 Who else has lost a loved one here? I guess we all have
15 at one point.

16 You know, I haven't heard from Mr. Alvarez here. What do
17 you think of everything we've been talking about from safety to
18 the value of life?

19 PROSPECTIVE JUROR ALVAREZ: Well, come to think of it, I
20 don't know if it counts. I did -- I guess I did lose a loved
21 one but I never met him because I wasn't born.

22 When my mom was pregnant she kept going to the
23 ultrasound. She noted the baby wasn't moving. The doctor was,
24 it's fine.

25 Then the day when the baby was due he had already been
26 dead for two weeks. Of course, it wasn't her part. The doctor
27 was saying it's fine. The doctor was saying that the baby was
28 alive until last minute, when the baby came out blue, purple.

1 MR. BASILE: This is would have been your older sister?

2 PROSPECTIVE JUROR ALVAREZ: Older brother.

3 MR. BASILE: How do you feel about putting a price on
4 life of those two relationships, 32 years of a husband and wife
5 and 32 years of a father and son?

6 PROSPECTIVE JUROR ALVAREZ: Putting emotions and feelings
7 aside, like you said, we're all human.

8 I'm sure everybody in this room has come to imagine, oh,
9 what would it be like if I lost my dad, if I lost my husband,
10 you know?

11 And time is something that is priceless. I just hope
12 that they --

13 MR. BASILE: Okay. Thank you for that.

14 You said it's priceless and I'll come back to that in a
15 minute.

16 Mr. San, I haven't heard from you. How has this been
17 going over with you?

18 I know you're a sushi chef, right?

19 PROSPECTIVE JUROR SAN: Yes.

20 MR. BASILE: Do you enjoy that job?

21 PROSPECTIVE JUROR SAN: Yes, I do.

22 MR. BASILE: I enjoy sushi.

23 How do you feel about safety on the job and all these
24 conversations we've been having?

25 PROSPECTIVE JUROR SANTOS: Safety is important for
26 everyone, yes. Because I -- especially as a sushi chef, we use
27 a knife.

28 MR. BASILE: Do you get training?

1 PROSPECTIVE JUROR SAN: Yeah, I been in training for too
2 many years.

3 MR. BASILE: Too many years.

4 PROSPECTIVE JUROR SAN: From the cashier, from me to
5 other people too. Trainer.

6 MR. BASILE: And you feel that's important?

7 PROSPECTIVE JUROR SAN: Very important.

8 MR. BASILE: How about placing a value on life?

9 PROSPECTIVE JUROR SAN: Very important. If you don't
10 have life, there is nothing you can do. What are you going to
11 do if you I don't have life?

12 MR. BASILE: I will talk about the instruction on how a
13 jury comes about putting a price on that in just a minute, but I
14 haven't spoke with Ms. Aguilera.

15 The first thing I want to ask Ms. Aguilera and Ms.
16 Kodani, how is the vet business going to run with two people
17 gone?

18 PROSPECTIVE JUROR AGUILAR: They are probably struggling.

19 MR. BASILE: A busy practice, huh?

20 PROSPECTIVE JUROR KODANI: Uh-huh.

21 MR. BASILE: Dogs, cats?

22 PROSPECTIVE JUROR AGUILAR: Exotics.

23 PROSPECTIVE JUROR KODANI: Yeah.

24 MR. BASILE: Both of you asked to be excused. It would
25 be a problem if both of you were on the jury?

26 PROSPECTIVE JUROR AGUILAR: I just wouldn't know if I'm
27 being compensated for that time because I haven't been working
28 there for 90 days. So I wouldn't know.

1 MR. BASILE: Can you find out tonight?

2 PROSPECTIVE JUROR AGUILAR: I can find out tonight. I
3 was actually doing that at lunch but nobody got back to me in
4 time.

5 MR. BASILE: Would you want to be a juror in this a case
6 like this?

7 PROSPECTIVE JUROR AGUILAR: I wouldn't mind.

8 MR. BASILE: Do you have the 90 days in?

9 PROSPECTIVE JUROR KODANI: Oh, yeah.

10 MR. BASILE: You could make it here?

11 PROSPECTIVE JUROR KODANI: Yeah.

12 MR. BASILE: All right. Thanks.

13 Ms. Russ, right?

14 Mr. Plotnick is giving me notes. All of his notes are
15 good. He helps me do this and I appreciate that.

16 I apologize for not introducing my co-counsel. This is
17 Mr. Sullivan. He is a lawyer who is also representing Chris and
18 Denise.

19 MR. SULLIVAN: Hi, folks.

20 MR. BASILE: Ms. Russ, you said your husband is a retired
21 building contractor, right?

22 So he probably had a lot of safety rules and procedures
23 and things.

24 Did he oversee other people in doing that?

25 PROSPECTIVE JUROR RUSS: I would assume so. He mainly
26 worked with other -- for another contractor.

27 MR. BASILE: So he was like a subcontractor that would
28 come in.

1 PROSPECTIVE JUROR RUSS: He had his own license but he
2 worked with a supervisor.

3 MR. BASILE: Hue long has he been retired now?

4 PROSPECTIVE JUROR RUSS: Since 2012.

5 MR. BASILE: Were there any -- ever any injuries or
6 things that you know of during the course of his career that he
7 may have discussed with you and talked to you about that?

8 PROSPECTIVE JUROR RUSS: I'm sure there were injuries but
9 no lawsuits. He himself --

10 MR. BASILE: Just so we get that last part, you said
11 maybe someone hurt their foot or something?

12 PROSPECTIVE JUROR RUSS: I mean, my husband hurt his foot
13 at one time, but there was no lawsuit. It was just an accident.

14 MR. BASILE: So how do you feel about what we've been
15 discussing about putting a price on these two, which someone
16 said were priceless relationships? Do you think people should
17 or shouldn't or can or can't? What do you think?

18 PROSPECTIVE JUROR RUSS: Well, I guess I would have to
19 hear more about this situation. Yeah, it's definitely a loss.
20 And I don't know how OSHA plays into this.

21 MR. BASILE: It doesn't. They're not going to be a part
22 of this case at all. That's just what the rules are.

23 PROSPECTIVE JUROR RUSS: In my field we had CPR training,
24 but we didn't have training working on machines.

25 MR. BASILE: In the dental office?

26 THE COURT: I'm sorry --

27 MR. BASILE: I will. And Ms. Russ, I apologize. It
28 could just be me in this position. If you could please speak

1 up.

2 If we can't hear you, then there are members of the panel
3 who won't be able to hear you either.

4 We're getting toward the middle of the afternoon and our
5 energy levels are down, but we want to hear what you have to
6 say.

7 Maybe if I stand over here I'll make you shout at me.

8 PROSPECTIVE JUROR RUSS: I'm just generally not a loud
9 speaker.

10 MR. BASILE: That's fine. It's just that he's taking
11 this down.

12 You said -- do you have questions or hesitancy in coming
13 up if the instructions are you have to come up with a price on
14 these two relationships?

15 PROSPECTIVE JUROR RUSS: So far I think I feel a little
16 bit confused by what I've heard, to be truthful.

17 MR. BASILE: Tell me a little bit about what's confusing
18 you.

19 PROSPECTIVE JUROR RUSS: I'm not real familiar with some
20 of the terminology you've been using.

21 MR. BASILE: Such as?

22 PROSPECTIVE JUROR RUSS: Legal terminology.

23 MR. BASILE: Like burden of proof and things like that?

24 PROSPECTIVE JUROR RUSS: Uh-huh.

25 MR. BASILE: By the time this is over, the 12 people on
26 this case will know more about safety systems and high-pressure
27 gas plants than most of the people in California. So we're all
28 going to be knowledgeable. It's taken a long time. We're going

1 to be short, believe it or not.

2 I want to get back to the second part of the job for all
3 of you guys.

4 If the evidence shows that Diamond Generating Corporation
5 is negligent and you come to the jury room and you're deciding
6 how much on what someone said are priceless relationships, his
7 Honor will instruct you on the law.

8 The law actually says what the elements are that you have
9 to put a price on each of these things.

10 You have to put a price on what they are.

11 May I say it -- or would the Court prefer that the Court
12 reads 3921?

13 THE COURT: Maybe explain it in general, briefly.

14 MR. BASILE: Thank you.

15 So it's what is called non-economic damages. And in this
16 case you've been asked to put a price on love for 32 years.
17 Thirty-two years for each of these. What was the price of
18 Daniel Collins' love of his wife for the 32 years? What was the
19 price of Daniel Collins' love for his son that was 32 years
20 taken?

21 But there is a laundry list of other items. And the law
22 is -- this is not me speaking. The law says that you must put a
23 value on each of these items of damage.

24 Love is one. Comfort, protection, society, the value of
25 how people enjoyed society together that was taken away.

26 There is a list that each one of those items you must put
27 a price on.

28 I want you to hear who this man was before you make that

1 decision. I want you to hear from people that knew him growing
2 up. I want you to hear from friends of friends that just knew
3 him.

4 You're going to hear even his manager at the plant is
5 going to talk about what kind of guy he was.

6 I want you to hear all that first before you decide on a
7 number.

8 One of the things I have to ask you now is if you're in
9 the jury room and you're deciding that and you look and you add
10 all these things up and you go, oh, my god, that's a lot of
11 money -- because that's all we can ask you for. We can't ask
12 you for anything else. We can't ask you to change their ways or
13 do anything. We only ask for money.

14 So you're in the jury room and you read the law and you
15 look at the evidence and you go, that's a lot of money.

16 Is there an amount that you folks feel that no matter
17 what the evidence is, like, there is no way? Just that number
18 alone puts it out of the ballpark? For example, tens of
19 millions of dollars.

20 If you're in there and -- it doesn't make sense. It
21 could be tens of millions of dollars for each of them. Would
22 any of you hesitate and just say, no, no, just because of that
23 number I'm not going to do it?

24 In other words, there is a number that when you get there
25 there is no way I would ever give that, no matter what it is or
26 who it is. Does anybody have a number like that in mind?

27 PROSPECTIVE JUROR SANTOS: Can I ask a question? Could
28 we be told the corporate salary evaluation before we get the

1 number?

2 MR. BASILE: The answer is no.

3 But I'd like to know why would that be important to you.

4 PROSPECTIVE JUROR SANTOS: It weighs into it.

5 I mean, obviously if they are not worth a big valuation,
6 how can they ever begin to repay the number that the jury comes
7 back with?

8 MR. BASILE: That is very good you brought that up
9 because when you folks are deciding the number, one of the
10 things that his Honor will instruct you is what you can
11 consider. But one of the things you cannot consider is the
12 wealth of the defendant. You just look at what is the number.
13 What's the value of these two relationships.

14 You're not to consider the wealth of them. Nor are you
15 to consider the wealth of Chris and Denise either.

16 It's just looking at what was this relationship. What
17 does the law require me to put numbers on and then do that.

18 That's what you are to do.

19 That's what I mean. Once you hear it, it will be in the
20 tens of millions, but I don't want you to take my word for it
21 now. I've known these people for years and worked with this
22 case for years.

23 Last week was my fortieth anniversary of me being a
24 lawyer in California. I've been around the block sometimes too
25 many times in cases like this.

26 PROSPECTIVE JUROR REISING: In that regard I'm not going
27 to be told if the company had insurance?

28 MR. BASILE: That's correct. You are not to consider

1 that either.

2 In a way, it's good. You just look at the evidence and
3 the law and you come up with a number. Can everybody do that?

4 If you're in there and it's tens of millions of dollars,
5 can everybody do that?

6 Do I have an agreement? No.

7 PROSPECTIVE JUROR RUSS: I don't know. The amount, I'm a
8 little bit concerned about that.

9 MR. BASILE: Tell me, please.

10 PROSPECTIVE JUROR RUSS: If I lost my husband, I guess I
11 would be looking at it a little bit differently.

12 He's not going to be replaced with money, but I would
13 lose a lifestyle. There are things that -- but tens of millions
14 of dollars, I don't know.

15 MR. BASILE: We're kind of bound by what the law is. And
16 the law is in a wrongful death case that those are the items
17 that we can come in and ask for. That is love, comfort, society
18 over that period of time.

19 PROSPECTIVE JUROR RUSS: I guess until I hear what the
20 law is --

21 MR. BASILE: Yeah. And we're not here to replace Daniel
22 Collins. We're here to find justice through the law by holding
23 them fully, fully accountable for all the harm this caused.
24 That's what we're here for.

25 Is that okay with you, Ms. Mason?

26 PROSPECTIVE JUROR MASON: Sure.

27 MR. BASILE: Mr. Woods?

28 PROSPECTIVE JUROR WOODS: Uh-huh.

1 MR. BASILE: Mr. Reising?

2 PROSPECTIVE JUROR REISING: Yes.

3 MR. BASILE: Sorry I got a little loud there.

4 Okay. One last question along these same lines.

5 How many of you think lawyers come into court and ask a
6 jury for much more than what they really want? How many think
7 lawyers do that sometimes?

8 I know the case is really worth X, but I'm going to go in
9 there and ask these people for three X and maybe they'll give me
10 the X. How many people think they might do it that way?

11 PROSPECTIVE JUROR AGUILAR: I'm saying it was just funny.

12 MR. BASILE: But some people feel that way.

13 I want to leave you with would you all leave room for the
14 possibility that after you hear all the evidence about the
15 safety system and their review of the safety system, about the
16 life and the relationship of Daniel Collins between him and his
17 wife and his son, that I'll look each of you in the eye and tell
18 you exactly what I believe this case is worth. Will you leave
19 room for that possibility?

20 I'm not going to exaggerate. I'll tell you the amount.

21 Can you all do that? Can you do that, ma'am?

22 Sir?

23 PROSPECTIVE JUROR ESPINOZA: Yes.

24 MR. BASILE: Thank you, your Honor. We pass for cause.

25 THE COURT: Mr. Schumann, it is 2:35. We will break at
26 3:00 o'clock. Please don't feel rushed.

27 You may use the well.

28 Mr. Basile, you pass for cause?

1 MR. BASILE: Yes, your Honor.

2 THE COURT: Okay. Thank you.

3 Please go ahead.

4 MR. SCHUMANN: Should we do cause now or later?

5 THE COURT: No. I will inquire later if there is
6 anything else you discover in your voir dire.

7 MR. SCHUMANN: Thank you.

8 Who thinks my client is the employer. Anyone?

9 PROSPECTIVE JUROR SEYMON: Yes.

10 MR. SCHUMANN: Tell me why you think my client was the
11 employer. Was that something we said or your client said?

12 PROSPECTIVE JUROR SEYMON: Your client is the company
13 that Mr. Collins worked for.

14 MR. SCHUMANN: No. My client is not the company that
15 Mr. Collins worked for.

16 PROSPECTIVE JUROR SEYMON: Who is your client?

17 MR. SCHUMANN: My client is a company that owns an
18 interest in the company that hired the company that Mr. Collins
19 worked for.

20 PROSPECTIVE JUROR RUSS: You lost me.

21 MR. SCHUMANN: This is part of that corporate structure
22 where companies own percentages in other companies or invest in
23 the third company that owns another company, right? That's what
24 big companies do. That's what 401-K plans might do.

25 So my client is a company that did not hire Mr. Collins.

26 I would just like to clarify that for you.

27 PROSPECTIVE JUROR SEYMON: So why are you representing
28 whoever you're representing against Mr. Collins?

1 MR. SCHUMANN: May I explain, your Honor?

2 THE COURT: Yes. If you would like, the position of the
3 parties and who brings the suit.

4 Please, Mr. Schumann.

5 MR. SCHUMANN: Yes. So this case, the incident occurred
6 at Mr. Collins' employer's site.

7 My client owns a portion of the facility that
8 Mr. Collins's employer runs, all right?

9 So Mr. Collins' employer runs the power plant. The power
10 plant is owned by a different company.

11 My client has an ownership interest in the company that
12 owns the plant.

13 Does that make sense?

14 PROSPECTIVE JUROR SEYMON: But aren't you in effect
15 representing everybody, all the interests?

16 MR. SCHUMANN: I am not. I am not.

17 I only represent the last standing party.

18 Does that clear it up for anyone? Does anyone else have
19 any questions about the ownership interest?

20 PROSPECTIVE JUROR REISING: Can you define last standing
21 party?

22 MR. SULLIVAN: Objection, your Honor.

23 THE COURT: Sustained.

24 MR. SCHUMANN: I can't answer that question yet, sir.

25 Being that my client is not the employer, who feels that
26 my client already did it -- my client already caused this
27 incident? Does anyone have that feeling already?

28 Ma'am?

1 PROSPECTIVE JUROR AGUILAR: Yeah, I do.

2 MR. SCHUMANN: Okay. And what makes you say that you
3 feel that way or that it caused the incident?

4 PROSPECTIVE JUROR AGUILAR: It's the fact of not taking
5 accountability. We weren't there. We didn't do it. It was
6 human error.

7 MR. SCHUMANN: Okay. And what makes you believe that my
8 client had the responsibility to be there or to make sure it
9 didn't happen?

10 PROSPECTIVE JUROR AGUILAR: If we go into safety, safety
11 could have been something. Obviously it was something that
12 wasn't planned. It was an accident.

13 MR. SCHUMANN: So if I were to prove that my client had
14 nothing to do with the safety -- with the running of the safety
15 of this employer and of this plant, do you still feel that maybe
16 we had some fault?

17 PROSPECTIVE JUROR AGUILAR: I just don't understand how
18 your client now is involved in everything if you're saying
19 they're not directly involved.

20 Whatever term you used that you couldn't explain.

21 MR. SCHUMANN: Do you understand that in lawsuits
22 sometimes people might sue multiple parties, and then they might
23 dismiss or resolve cases with other parties, and then that might
24 be someone standing at the end?

25 MR. BASILE: Excuse me, your Honor. There is no evidence
26 in this case of any prior settlements. It's been referred to
27 twice. There is no evidence of that.

28 THE COURT: There will be a subsequent jury instruction

1 if you're on this matter on how to treat evidence that there
2 have been other parties, why they may or may not be involved in
3 the suit any longer. You are to follow that instruction.

4 Thank you. You may proceed, Mr. Schumann.

5 MR. BASILE: Thank you, your Honor.

6 MR. SCHUMANN: Thank you, your Honor.

7 I'll pick you on, Mr. Seyman, the lead singer. See,
8 you're going to make me sing in court.

9 MR. SCHUMANN:

10 PROSPECTIVE JUROR SEYMON: I would love to.

11 MR. SCHUMANN: Now that you know we were not the
12 employer, do you still have a feeling that my client had some
13 doing in this, even though you haven't heard the facts?

14 PROSPECTIVE JUROR SEYMON: Well, yes.

15 Honestly to me it feels a little bit of a shell game to
16 find a way to absolve yourselves of responsibility, because why
17 are the Collins and their lawsuit? Why is it that you are
18 representing the situation when supposedly your client had
19 nothing to do with it?

20 It feels like it's just a corporate setup to find a way
21 to keep from being liable in this situation or having to have
22 any responsibility at all. That's what it seems to me.

23 MR. SCHUMANN: Is there any possibility in your mind that
24 my client could be here because they had nothing to do with it
25 at all?

26 PROSPECTIVE JUROR SEYMON: I don't necessarily accept
27 that because I think obviously there is a financial connection
28 here with the whole thing. I don't know. It just sounds kind

1 of -- I hate to say fishy, but fishy. Nothing personal.

2 MR. SCHUMANN: None taken. So the corporate shell game,
3 as you call it, that's how you see this case?

4 PROSPECTIVE JUROR SEYMON: I kind of do.

5 MR. SCHUMANN: And if I were to prove to you or attempt
6 to prove to you the various corporate structures, in your mind
7 you're not going to buy that there is difference is between the
8 corporate entities?

9 PROSPECTIVE JUROR SEYMON: I'm just wondering why in this
10 lawsuit are you here? Who are they suing? Who are they holding
11 accountable for compensating this family? Why are you here if
12 you're not responsible, if you're whoever your client is not
13 responsible?

14 To me, it doesn't make any sense. Maybe I'm just stupid.
15 I don't know.

16 MR. SCHUMANN: You're definitely not. You're definitely
17 not.

18 Let me ask you this. Do you feel that because we are in
19 trial that the party left must be somehow at fault? The only
20 party in here must somehow be at fault?

21 PROSPECTIVE JUROR SEYMON: You're representing him so
22 whatever judgment comes in your favor or their favor is coming
23 towards you and your representation of the case.

24 MR. SCHUMANN: What I meant was because it's now trial,
25 we're now here and we are still in this case.

26 PROSPECTIVE JUROR SEYMON: Yes.

27 MR. SCHUMANN: Does that to you mean that we must have
28 some kind of culpability?

1 PROSPECTIVE JUROR SEYMON: I would imagine so since
2 you're the ones defending against the Collins.

3 THE COURT: Mr. Schumann, if the Court may, just to kind
4 of preempt some of this.

5 Mr. Seyman, good afternoon. In criminal there's often
6 this inquiry about, well, the prosecution has the burden of
7 proof. The Government, the state, brings charges against an
8 individual, the defendant, the accused.

9 There is always this inquiry of prospective jurors, where
10 there is smoke there must be a fire. If two people have that
11 belief, just because someone has been arrested, subsequently
12 charged and they have now asserted their right to a jury trial
13 that, well, they must have done something because otherwise we
14 wouldn't be here, which is not what the situation is.

15 Exercising your right to a jury trial is just that.
16 You're exercising a right. All right?

17 However, it's not fair in that particular situation to a
18 defendant if there are jurors in the box that already are
19 starting off with, well, the Government, the state, has to prove
20 the charges, but I already actually think that just because they
21 are here they already have a head start and the defendant has to
22 dig themselves out of that hole.

23 So in Mr. Schumann's case, or any other defendant in a
24 civil case, it's the same.

25 A plaintiff can bring a lawsuit against one defendant,
26 multiple defendants, whatever it may be, and they have a right
27 to defend themselves. Both sides have that right to exercise
28 their right to a jury trial.

1 In civil there are certain cases where you can exercise
2 that right. So because of that, do you feel that just because
3 we're here at trial now that Mr. Schumann on behalf of his
4 client has to prove to you that they don't have culpability,
5 that just because you're here already you already feel that,
6 wow, they must be guilty of something?

7 PROSPECTIVE JUROR SEYMON: Well, no, it's not -- what I
8 feel is that kind of a basic simple bottom line is Mr. Collins
9 died in an explosion at his place of employment, and just that
10 fact, if he hadn't worked there, he wouldn't have died in an
11 explosion, okay?

12 The company, in my opinion, irrespective of the law, I
13 just feel like a company -- especially a company of that size,
14 not because they have deep pockets, but because they have
15 employees working for them in dangerous situations, that that
16 company should compensate just out of compassion, compensate to
17 some degree voluntarily go to the family.

18 I don't know if they have or anything, but voluntarily go
19 to the family and want to compensate them because it happened
20 under their watch.

21 That is just the way I feel. I still don't understand
22 how -- I forgot what your name was.

23 MR. SCHUMANN: Schumann.

24 PROSPECTIVE JUROR SEYMON: Mr. Schumann is representing a
25 company that isn't responsible for what happened to Mr. Collins.
26 Where is the responsible party then, from the company aspect?
27 Why aren't they here? Why aren't their lawyers here if that is
28 what he's saying.

1 I'm sorry, that was my observation. I was asked to be
2 honest.

3 THE COURT: You don't have anything to apologize for.
4 All of these things that the attorneys want to know, the Court
5 wants to know, is that despite whatever thoughts you have you
6 can be fair and impartial to both sides.

7 There are certain things that need to be proven.

8 In some cases it's an employer-employee relationship, so
9 we want to make sure that whatever preconceptions you have that
10 you're not relieving the plaintiff, which they have the burden
11 of proof in this case, that you're not saying, don't worry, you
12 don't need to prove that to us.

13 In this case you would still make sure that the plaintiff
14 proves their case, whatever that checklist may be.

15 PROSPECTIVE JUROR SEYMON: Is that a question?

16 THE COURT: Yes.

17 PROSPECTIVE JUROR SEYMON: I just look at it in some
18 way -- other than awarding the amount of compensation, that I
19 can see being a part of the case. But as far as the case
20 itself, to me the Collinses should be compensated. That is the
21 way I feel.

22 I'm just being honest. You can kick me out now.

23 THE COURT: It's not a kick out.

24 PROSPECTIVE JUROR SEYMON: Okay.

25 THE COURT: It's ending up with 12 jurors that can be
26 fair to both sides. The only way we can do that is with your
27 honesty. You don't have anything to apologize for.

28 Mr. Schumann, I apologize for interrupting you.

1 MR. SCHUMANN: No problem, your Honor. Thank you for
2 being honest.

3 PROSPECTIVE JUROR SEYMON: Don't take it personally.

4 MR. SCHUMANN: I don't. Thank you.

5 Does anybody else feel that I'm already way behind in
6 this lawsuit?

7 Anyone else?

8 PROSPECTIVE JUROR SANTOS: Can I just ask? I know you
9 said you were not the direct employer, but you're a subsidiary,
10 correct?

11 Do you benefit financially from the relationship you have
12 with that employer? Does your client?

13 MR. SCHUMANN: I don't think I can answer the questions
14 because it's part of the -- it will be part of the case.

15 PROSPECTIVE JUROR SANTOS: Obviously you wouldn't be here
16 if you didn't have some financial gain as a partner to that
17 employer, even if you are just a small part of it, right?

18 THE COURT: Mr. Schumann -- I will interject. I
19 apologize. Please don't answer. It's an understandable
20 question. What we're limited to hear is evidence in the case,
21 what the charges may be.

22 PROSPECTIVE JUROR SANTOS: I'm trying to better
23 understand the relationship as she stated he is not -- his
24 client is not the direct employer, whether it's an LLC, a
25 corporation, a limited partnership, an individual sole
26 proprietor.

27 If they are a part of that employer and obviously named
28 as one of the defendants in the lawsuit, they must have some

1 sort of financial gain at some point or they wouldn't be named
2 in that lawsuit.

3 THE COURT: Both parties are exercising their rights to a
4 jury trial. That is what we can tell you. And the only other
5 thing, I go back to the very beginning. If you're seated on
6 this case, I have no doubt you will find this to be very
7 interesting.

8 PROSPECTIVE JUROR SANTOS: Thank you.

9 THE COURT: Mr. Schumann?

10 MR. SCHUMANN: Thanks, Ms. Santos.

11 I do hear you correctly. I am just a few steps behind
12 plaintiff.

13 PROSPECTIVE JUROR SANTOS: Just by a little bit because I
14 don't fully understand the relationship between you and the
15 actual employer.

16 MR. SCHUMANN: Okay. Thank you.

17 Ms. Kodani, am I behind, in your eyes?

18 PROSPECTIVE JUROR KODANI: I don't have all the -- I
19 don't have enough information yet.

20 MR. SCHUMANN: Yeah. You feel like my client did
21 something to cause this incident?

22 PROSPECTIVE JUROR KODANI: I have no idea.

23 MR. SCHUMANN: Okay. Does anyone else feel that there is
24 some kind of corporate shell game being played here by anyone?

25 PROSPECTIVE JUROR LEPIANE: I just have a question.

26 I assume that to go to this stage, to go to a jury trial,
27 there have been attempted settlements that have not been
28 accepted?

1 THE COURT: Mr. Schumann, the Court is not aware that
2 there have or haven't been. There is actually a jury
3 instruction on that point to not speculate or consider that.

4 We are here. Both sides are exercising their right to a
5 jury trial.

6 PROSPECTIVE JUROR LEPIANE: So will we know that in the
7 trial?

8 THE COURT: Not in the trial.

9 If you're on the trial afterward, maybe the attorneys if
10 they wish can share that with you once the trial is concluded,
11 but in terms of prior to or during, it's not relevant to your
12 inquiry.

13 PROSPECTIVE JUROR LEPIANE: Really. Okay.

14 MR. SCHUMANN: Mr. Lepaine, is my client already behind
15 the plaintiff at this point in of time in your eyes?

16 PROSPECTIVE JUROR LEPIANE: Again, one more time.

17 MR. SCHUMANN: Is my client a little further behind the
18 plaintiff already in your eyes?

19 PROSPECTIVE JUROR LEPIANE: No. I just wondering how it
20 got to this point. I'm just curious about --

21 MR. SCHUMANN: We will certainly -- once the case starts
22 and the jury is picked, the evidence will start.

23 PROSPECTIVE JUROR LEPIANE: As part of that.

24 MR. SCHUMANN: Do you feel that any of the potential
25 owners in parent subsidiary, multiple parent subsidiary -- call
26 it a hierarchy -- do you feel that any of the parent companies
27 or investors in companies have responsibility, financial
28 responsibility for what the employer might have failed to do?

1 I know that's a convoluted question.

2 PROSPECTIVE JUROR LEPIANE: I can't answer that.

3 MR. SCHUMANN: Okay. That is this case. It's a
4 convoluted case that we're trying to narrow down as much as we
5 can.

6 But like in your mind -- I heard our lead singer over
7 there. He was talking about if an investor owns a part of a
8 company and that company has a company running it for them and
9 then everyone somehow is liable.

10 PROSPECTIVE JUROR LEPIANE: It's like saying did Biden
11 own -- if we go into a depression, Biden owns that? How will we
12 ever know the responsibility or how high the responsibility or
13 how low the responsibility goes?

14 MR. SCHUMANN: And you will hear that.

15 But as you sit here today, that is all I'm asking. I'm
16 asking right now if the blind lady of justice is standing here,
17 am I losing a little bit or am I winning or am I even?

18 PROSPECTIVE JUROR LEPIANE: There is not enough
19 information yet.

20 MR. SCHUMANN: Okay. Does anyone else feel I have --
21 they've already tipped the scale a little bit already and I'm
22 losing?

23 Any one? No?

24 Good. Mr. Reising, you know corporate structure, I
25 assume.

26 PROSPECTIVE JUROR REISING: I don't. I don't.

27 MR. SCHUMANN: You don't. You didn't -- no studying of
28 corporate law?

1 PROSPECTIVE JUROR REISING: Well, I took a course called
2 Corporate Law in 1977.

3 MR. SCHUMANN: Do you recall it?

4 PROSPECTIVE JUROR REISING: No.

5 MR. SCHUMANN: You understand that corporations,
6 companies, investors, people can set up companies, corporations,
7 LLCs and do business that way?

8 PROSPECTIVE JUROR REISING: Sure.

9 MR. SCHUMANN: And that is perfectly legal in your eyes?

10 PROSPECTIVE JUROR REISING: Of course.

11 MR. SCHUMANN: I thought maybe you said earlier that it
12 might be away to shelter yourself from liability.

13 PROSPECTIVE JUROR REISING: No.

14 MR. SCHUMANN: I'm sorry. There was someone that said
15 that. I thought it was you.

16 Does anyone recall them saying that it's kind of a way to
17 shelter liability, other than our lead singer?

18 Okay. I'm sorry I'm picking on you.

19 PROSPECTIVE JUROR SEYMON: That's okay. I'm used to it.

20 MR. SCHUMANN: I will ask you -- sorry about your loss.

21 PROSPECTIVE JUROR LEPIANE: Thank you.

22 MR. SCHUMANN: If the nurse that didn't do his or her job
23 had been an independent contractor or working for another
24 company, would you still feel that it was the hospital's fault?

25 I don't know the facts.

26 PROSPECTIVE JUROR LEPIANE: Yeah. She made a big
27 mistake. He needed to be restrained. He was agitated. They
28 took the restraints off while my daughter was visiting, but they

1 were told to put restraints back on as soon as he left.

2 So all the fault was with the nurse that didn't do that,
3 and the hospital consequently.

4 So the hospital owned it, you know. But the nurse was
5 definitely at fault by not doing her job.

6 MR. SCHUMANN: Did you ever find out who trained the
7 nurse who didn't do her job in your lawsuit?

8 PROSPECTIVE JUROR LEPIANE: Now we're getting into this
9 safety issue, which I think a couple -- the other hospital
10 people have already explained. It's part of their training. If
11 it's not part of it, it ought to be part of their training.

12 The fault was with the nurse not doing her job and not
13 restraining my dad, and ultimately the hospital is responsible
14 for that nurse.

15 Wherever she came from or whatever courses she took, you
16 assume that that -- for her to be a qualified nurse, she's gone
17 through all those safety issues and everything already.

18 MR. SCHUMANN: Okay.

19 PROSPECTIVE JUROR LEPIANE: It was definitely the fault
20 of the nurse.

21 MR. SCHUMANN: Do you feel that any of the investors in
22 the hospital should have had any responsibility.

23 PROSPECTIVE JUROR LEPIANE: Yes.

24 MR. SCHUMANN: And tell me what your opinion is on that.
25 Why do you think investors in the hospital should have the
26 responsibility?

27 PROSPECTIVE JUROR LEPIANE: Well, they own the hospital,
28 the good, the bad and the ugly of it.

1 MR. SCHUMANN: Okay. So let's assume that someone had
2 purchased ten percent of shares in the hospital. Would they,
3 then, have had a potential ten percent responsibility in your
4 case for any damage that occurred?

5 PROSPECTIVE JUROR LEPIANE: I don't understand the
6 ten percent.

7 Oh, you mean the ultimate ownership.

8 MR. SCHUMANN: Yeah, as an investor, as someone who
9 bought ten percent.

10 PROSPECTIVE JUROR LEPIANE: The hospital is a charity.
11 Ultimately who owns the company.

12 MR. SCHUMANN: Uh-huh.

13 PROSPECTIVE JUROR LEPIANE: The Catholic church, I think.

14 MR. SCHUMANN: Let's assume --

15 PROSPECTIVE JUROR LEPIANE: Take it all the way to the
16 pope.

17 MR. SCHUMANN: Is that what you think should happen?

18 PROSPECTIVE JUROR LEPIANE: No.

19 MR. SCHUMANN: I'm just asking.

20 PROSPECTIVE JUROR LEPIANE: I think it goes down to the
21 ownership, whoever is responsible for that particular hospital,
22 which was a chain. There was five different hospitals as part
23 of the total group, so that's who was responsible ultimately.

24 MR. SCHUMANN: And the employer of the hospital was
25 responsible for training the nurse to do his or her job
26 properly?

27 PROSPECTIVE JUROR LEPIANE: Exactly.

28 THE COURT: Mr. Schumann, as I mentioned before,

1 obviously you have time. We will take a break right now. I try
2 not to go more than an hour and a half between breaks.

3 We will resume when we come back.

4 Everyone, thank you. We will take a recess according to
5 whatever your watch says or your phone. We will be back at
6 3:15. Fifteen-minute break.

7 (Recess.)

8 THE COURT: If we could have counsel remain for a moment.
9 We, of course, get less than 15 minutes.

10 We will wait here. We'll wait for all the prospective
11 jurors to exit.

12 (Proceedings out of the presence of the
13 prospective jurors as follows:)

14 THE COURT: Okay. The record will reflect all
15 prospective jurors are out of the courtroom.

16 We'll resume at 3:15 according to whatever your phone or
17 Android say.

18 I apologize. I should have mentioned this this morning.
19 Logistically we had already talked about it last week, but I
20 didn't share it with you.

21 Mr. Basile, I understand you pass for cause.

22 Mr. Schumann, I don't know for sure if you're going to
23 pass for cause or not. In the event that you don't, what we are
24 going to do procedurally is there a door right here. We're
25 going to have you walk through that doorway, through our 1960
26 hallways, and we can show you the jury deliberation room.

27 We can go in there with the court reporter and handle the
28 challenges for cause there. I can exit that way and meet you in

1 that room. We can accommodate that way just because of the
2 number.

3 I would ask just because of the limited case that it be
4 counsel and the court reporter.

5 I understand there are other parties here, but let's just
6 treat it as a regular chambers conference.

7 Just when, you know, if you do make a challenge for
8 cause, we will be going that way.

9 MR. SCHUMANN: We will do that at the end.

10 THE COURT: Yes. Once you're concluded with your voir
11 dire, if there is anything else, we will go that way. I just
12 wanted to let you know ahead of time so it's not awkward where
13 we go. I want to let you know ahead of time.

14 MR. BASILE: How does the Court feel about me leaving my
15 jacket off.

16 THE COURT: That's -- I understand today.

17 MR. BASILE: I will leave it on since you have to wear
18 your robe.

19 THE COURT: Considering I practiced my whole career in
20 the desert, I understand where you're coming from.

21 You know, honestly, I'll leave it up to you. I've seen
22 it before from other counsel. Just don't sit it on the table,
23 put your boots up on the table. That's an extreme, but with the
24 coat it's very warm in here. I didn't want anybody to feel, oh,
25 is it just me. No, it's all of us. Half the jurors I'm looking
26 to see if they're raising their hands and they're just fanning
27 themselves.

28 Please take your break.

1 (Recess.)

2 (Proceedings in the presence of the
3 prospective jurors as follows:)

4 THE COURT: Mr. Schumann is going to continue here.

5 Before we continue, I just want to let you know. It's
6 not lost on us that it is warm in here. I keep seeing out of
7 the corner of my eye people fanning themselves and wonder if
8 people are raising their hands.

9 We have made a request of the facilities.

10 The least we can do for your sacrifice in being here is
11 to provide for decent air conditioning, so we're striving to do
12 that.

13 There is humidity outside, and as I mentioned, the power
14 was off all weekend. They were pulling wire last evening so
15 it's been like that. This is a nice courtroom with lower level
16 humidity. We'll take care of that.

17 Thank you, Mr. Schumann. I apologize.

18 MR. SCHUMANN: No. Thank you, your Honor.

19 Ms. Castaneda, may I ask you a question?

20 PROSPECTIVE JUROR CASTANEDA: Yeah.

21 MR. SCHUMANN: You were working with some heavy
22 equipment -- or let's say a power press, was that --

23 PROSPECTIVE JUROR CASTANEDA: It was an electric power
24 jack and balers.

25 MR. SCHUMANN: And what was the training that you
26 received in terms of how to operate to that kind of equipment?

27 PROSPECTIVE JUROR CASTANEDA: When I started it started
28 off with the training module, so the typical videos you watch

1 telling you what to do and not to do and demonstrating using it.

2 And with the baler they didn't give you any hands-on
3 experience unless they wanted you to be able to fully operate
4 it, because most of the time people are throwing cardboard in
5 there and walking away.

6 But with something like the wave, where you have to be
7 driving it, they have a manager next you to teaching you as you
8 go.

9 MR. SCHUMANN: Okay. So there was some hands-on training
10 for them?

11 PROSPECTIVE JUROR CASTANEDA: Yes.

12 MR. SCHUMANN: Okay. And were you taught to take it
13 slow?

14 PROSPECTIVE JUROR CASTANEDA: Yeah.

15 MR. SCHUMANN: Make sure you know what you're doing?

16 PROSPECTIVE JUROR CASTANEDA: Yeah. They have like a
17 slow setting and faster setting on most of the equipment. They
18 start you off on the slower setting. If you're comfortable, you
19 can switch to the faster one.

20 MR. SCHUMANN: Did they talk about the dangers of doing
21 it too fast?

22 PROSPECTIVE JUROR CASTANEDA: Yes.

23 MR. SCHUMANN: What were some of the dangers of going too
24 fast?

25 PROSPECTIVE JUROR CASTANEDA: If we go too fast -- they
26 are narrow aisles, so if you go too fast you can crash into one
27 side or it will just dent the equipment and you can hurt
28 yourself as well.

1 MR. SCHUMANN: You could hurt yourself and others?

2 PROSPECTIVE JUROR CASTANEDA: Yes.

3 MR. SCHUMANN: And then you had some experience with
4 lockouts?

5 PROSPECTIVE JUROR CASTANEDA: Very minimum. I've just
6 seen the training modules. I've never do it myself.

7 MR. SCHUMANN: What you saw about it, did that include
8 some form of redundancy whereby, for example, a second person
9 would check what had been done?

10 PROSPECTIVE JUROR CASTANEDA: Yes, on the videos, yes.

11 MR. SCHUMANN: And in what you saw, was there also a
12 third person who would check and make sure everything had been
13 done properly?

14 PROSPECTIVE JUROR CASTANEDA: Not that I remember, no.
15 But I do remember there being someone with a manager to go check
16 it was okay, that everything was done correctly.

17 MR. SCHUMANN: Okay. And they explained that for the
18 manager to double check that it was done right for safety
19 purposes?

20 PROSPECTIVE JUROR CASTANEDA: It's been a while since I
21 have seen the video, but as I recall, yes.

22 MR. SCHUMANN: Ms. Santos, did I have it correct you
23 worked in insurance?

24 PROSPECTIVE JUROR SANTOS: I still do, yes.

25 MR. SCHUMANN: And so in your work you deal with
26 employers obtaining Workers' Compensation insurance?

27 PROSPECTIVE JUROR SANTOS: Yes. I sell strictly
28 commercial insurance, so I work with a lot of companies, small

1 and large, and contractors, subcontractors.

2 MR. SCHUMANN: Okay. And so in your line of work you
3 sell Workers' Comp insurance as well?

4 PROSPECTIVE JUROR SANTOS: Yes.

5 MR. SCHUMANN: Is that the law in California, that
6 everyone has to have Workers' Comp insurance?

7 PROSPECTIVE JUROR SANTOS: Yes. If they have employees,
8 yes.

9 MR. SCHUMANN: And if an employee is injured in a
10 situation where they worked for an employer, they are -- your
11 understanding -- have you been through the process of why they
12 obtained Workers' Comp benefits?

13 PROSPECTIVE JUROR SANTOS: Yes.

14 MR. SCHUMANN: That is, no questions asked?

15 PROSPECTIVE JUROR SANTOS: Oh, yes, there are questions.
16 There is a process to filing a claim and making sure that the
17 employer, you know, was compliant with all of the standards,
18 except for their work class.

19 So depending on what they do, where they are, the
20 classifications are different than say a plumber, electrician
21 versus an insurance office?

22 If an employee gets injured at an insurance office rather
23 than doing someone's roof, that's obviously a very different
24 classification and the training that would be involved and OSHA
25 rules that they would have to follow in order to, you know, put
26 that claim in and receive the Workers' Comp compensation.

27 MR. SCHUMANN: In all of those employment cases you're
28 talking about, OSHA gets involved to find out what happened?

1 PROSPECTIVE JUROR SANTOS: Yes.

2 MR. SCHUMANN: Then at some point this time the employee
3 who was injured gets some kind of compensation?

4 PROSPECTIVE JUROR SANTOS: Yeah. I mean, they get
5 treatment immediately, they do.

6 As the claim processes, they're assigned an adjustor and
7 they get investigated.

8 Then, yeah, depending on the severity of the injuries,
9 they will receive compensation.

10 MR. SCHUMANN: Beyond the Workers' Comp compensation, do
11 you have a feeling that an employer or an investor within the
12 line of corporate structures should pay in addition to the
13 Workers' Comp?

14 PROSPECTIVE JUROR SANTOS: Again, because I work in
15 insurance, I often see those kind of things happening, where the
16 employee feels like they need to bring on a lawsuit because they
17 either were denied a claim or, you know, they didn't get enough
18 money or, you know, they can't live off of that or they're told
19 they need to go back to work once they recover.

20 And for the small companies, I don't feel it is sometimes
21 appropriate, but for a larger company that maybe should have had
22 more culpability and, for example, maybe they don't follow the
23 training procedures or they say here you go, here's a video,
24 watch it, and they don't actually follow up with their employee
25 to make sure that they are actually doing it and not just
26 pushing play and taking the test at the end, for those, then,
27 yes, I feel like maybe they do have a little more culpability.

28 If an employee decides they're going to bring lawsuits

1 for damages, then, yeah, they should be entitled to.

2 MR. SCHUMANN: And this is the employer we're talking
3 about, right?

4 PROSPECTIVE JUROR SANTOS: Right, the employer, correct.

5 MR. SCHUMANN: The company that the person worked for.

6 PROSPECTIVE JUROR SANTOS: Yes.

7 MR. SCHUMANN: Ms. Chavez, you would prefer not to be
8 here?

9 PROSPECTIVE JUROR CHAVEZ: No, the judge is correct. I
10 should be here.

11 MR. SCHUMANN: Okay. How would that affect your
12 vacation?

13 PROSPECTIVE JUROR CHAVEZ: The kids will be fine. They
14 need to learn about their responsibility.

15 MR. SCHUMANN: You're willing to set aside the vacation?

16 PROSPECTIVE JUROR CHAVEZ: Uh-huh.

17 MR. SCHUMANN: Does anyone -- I'll ask you again,
18 Ms. Santos, because I think you brought it up. Do you feel that
19 in this case that we're here on that you might wish to punish
20 the company that caused the incident or the people that caused
21 the incident monetarily?

22 PROSPECTIVE JUROR SANTOS: I don't think I would use the
23 word punish. But definitely if they are to be held accountable,
24 if they did have some part in that, you know, the liability was
25 there. If the liability was there, then they should be held
26 accountable if they are found liable.

27 MR. SCHUMANN: If I was to prove to you that my client
28 had no involvement in this incident, how it came about, the

1 unfortuna te death, as you sit here today would you be able to
2 overcome a desire to vote for the plaintiff?

3 PROSPECTIVE JUROR SANTOS: Definitely I'd keep an open
4 mind to it, yeah.

5 MR. SCHUMANN: Would it take me a little bit more than it
6 would take them?

7 PROSPECTIVE JUROR SANTOS: I mean, look, you're a lawyer.
8 They're lawyers. You guys are all lawyers. You both have a lot
9 of work to do, honestly. And, yes, I do understand your
10 umbrella and subsidiary theory. Yes, I do understand that part
11 of it.

12 As an investor, though, you really should know what
13 you're getting into before you invest into such a high-risk
14 company, right? It's a high-risk environment they're going
15 into. A gas company, those could explode at any time.

16 So, yeah, you do have a lot of work to convince me at
17 least that you had no part in it.

18 MR. SCHUMANN: Okay. So in your mind, an investor, even
19 though there might be different companies below the investor,
20 that just because you're an investor, you could have
21 responsibility?

22 PROSPECTIVE JUROR SANTOS: Yeah, you could.

23 Part of the risk, part of the reward, right?

24 MR. SCHUMANN: If it came about that the law was such
25 that a parent company is not responsible for the acts of a
26 subsidiary, would you be able to follow that?

27 PROSPECTIVE JUROR SANTOS: You mean like if you had a
28 hold harmless agreement you signed? Sure.

1 MR. SCHUMANN: No. If his Honor told you that was the
2 law, would you be able to follow that?

3 Yes?

4 PROSPECTIVE JUROR SANTOS: Yes.

5 MR. SCHUMANN: Ms. Mason, you had an interesting job in
6 ferreting out and developing a safety system at your hospital.
7 How long did that take?

8 PROSPECTIVE JUROR MASON: How long? It depended on each
9 case. I mean --

10 MR. SCHUMANN: From when you started to where it got to
11 zero.

12 PROSPECTIVE JUROR MASON: Oh, zero?

13 About six months.

14 MR. SCHUMANN: Six months.

15 PROSPECTIVE JUROR MASON: At six months we got to zero.

16 MR. SCHUMANN: And did you go through different
17 iterations of procedures we're going to do this way and then
18 something happened and then we're going to do it that way?

19 PROSPECTIVE JUROR MASON: We started with root cause
20 analysis to find why infections were occurring, and there were
21 many reasons, many possible reasons.

22 Then we just went through the system and looked at all of
23 our policies, made sure that our staff understood what they were
24 supposed to be doing. Then we followed it up with
25 accountability, were they actually doing what they were taught.

26 So there were a lot of steps involved.

27 MR. SCHUMANN: And were there instances where you'd have
28 to reprimand someone because they weren't following your

1 procedures?

2 PROSPECTIVE JUROR MASON: I did not do that because that
3 wasn't my role. My role was to look at -- look for the cause
4 and create a system that would correct it.

5 So it would be up to the individual managers if there was
6 any punitive reason.

7 MR. SCHUMANN: But the system was only as good as the
8 people following the rules within the system?

9 PROSPECTIVE JUROR MASON: That's why accountability was
10 important.

11 MR. SCHUMANN: And you can have a perfect system, and if
12 someone doesn't follow it, in your instance, then it could cause
13 major problems?

14 PROSPECTIVE JUROR MASON: That's right. Uh-huh.

15 MR. SCHUMANN: Mr. Gaipa.

16 PROSPECTIVE JUROR GAIPA: Yeah.

17 MR. SCHUMANN: You were probably going through a lot of
18 safety procedures and education in your past?

19 PROSPECTIVE JUROR GAIPA: Sure.

20 MR. SCHUMANN: Has that also developed over time? I'm
21 assuming it wasn't what it was when you first started.

22 PROSPECTIVE JUROR GAIPA: Most of our policies and
23 procedures have stayed the same, yeah.

24 MR. SCHUMANN: Okay. What would happen -- has anything
25 happened if someone backs up too much -- has the procedure
26 changed or people have just been talked to?

27 PROSPECTIVE JUROR GAIPA: The procedure hasn't changed.
28 It's always been -- well, from since I've been told avoid

1 backing at all times, right?

2 MR. SCHUMANN: Yeah.

3 PROSPECTIVE JUROR GAIPA: See, there has been new
4 technology involved that helps let supervisors know when we're
5 doing something wrong.

6 MR. SCHUMANN: Okay. So not that you were doing anything
7 wrong, but if someone does anything wrong, that automatically
8 goes to a supervisor, then they have a talking to?

9 PROSPECTIVE JUROR GAIPA: With certain instances, yeah.

10 MR. SCHUMANN: Okay. So do you have backup cameras now?

11 PROSPECTIVE JUROR GAIPA: No backup cameras -- some
12 vehicles do. The vehicles I drive don't. We have GPS devices
13 that can tell when you've stopped and then gone in reverse.

14 MR. SCHUMANN: Okay. Any equipment you work with at your
15 job other than vehicles?

16 PROSPECTIVE JUROR GAIPA: No.

17 MR. SCHUMANN: Okay. I know Ms. Santos talked about the
18 financial well-being of a defendant.

19 Mr. Woods, is that of concern to you in terms of --

20 PROSPECTIVE JUROR WOODS: The financial well-being?

21 MR. SCHUMANN: Of the defendant.

22 PROSPECTIVE JUROR WOODS: It doesn't matter.

23 You understand the facts and the law and you have to go
24 by those guidelines.

25 MR. SCHUMANN: Does anyone feel that -- other than you,
26 Ms. Santos -- that it would be important for you to know what
27 the wealth or who the investors are in the company before you
28 can give a verdict?

1 PROSPECTIVE JUROR CASTANEDA: I would feel that way too,
2 yeah. As she was saying, just so you know, it's more than what
3 they can handle and knowing that the number isn't way out of
4 their budget.

5 MR. SCHUMANN: Okay. And does that give you any pause
6 that you will not be able to hear that in this case?

7 PROSPECTIVE JUROR CASTANEDA: No.

8 I mean, we still don't know what the number is, so we
9 have to get to that first.

10 MR. SCHUMANN: At the end of this case, I will ask the
11 jury to find my client not responsible for this incident.

12 Does anyone feel that they simply cannot allow my client
13 to walk away without paying something to the plaintiffs?

14 Yes, sir.

15 PROSPECTIVE JUROR REISING: I don't necessarily feel that
16 way, but if it's your position that your client is not at all
17 responsible, then I wonder why we're here and why you haven't
18 had this case dismissed on summary judgment.

19 MR. SCHUMANN: Okay. I cannot answer that. The judge
20 will not allow us to get into that discussion, but you do
21 understand that any party, including my client, has the right to
22 have their case heard by a jury whether or not -- no matter what
23 has happened in the past with the case.

24 PROSPECTIVE JUROR REISING: Certainly.

25 And a party has a right to go into court and say we don't
26 need a trial because it's clear my client is not liable.

27 MR. SCHUMANN: Okay. And you understand that there might
28 be tactical decisions for why someone files or doesn't file a

1 certain legal document like a motion for summary judgment, for
2 example.

3 PROSPECTIVE JUROR REISING: Summary judgment gets it out
4 of it totally.

5 MR. SCHUMANN: Sure. But you understand there are
6 tactics?

7 PROSPECTIVE JUROR REISING: I will leave that to you.

8 MR. SCHUMANN: You understand people might be brought in
9 at different times in a lawsuit?

10 PROSPECTIVE JUROR REISING: Certainly.

11 MR. SCHUMANN: Okay. So let me ask you this point blank,
12 because we're here and in your opinion maybe we should have been
13 out earlier. So because we're here, do you think we have some
14 culpability?

15 PROSPECTIVE JUROR REISING: If it's a matter of the law,
16 you're saying your client is not responsible, then, yes, I
17 wonder why we're here.

18 MR. SCHUMANN: I can't comment.

19 PROSPECTIVE JUROR REISING: You're asking me and I'm
20 telling you.

21 MR. SCHUMANN: I just want to clarify.

22 So you feel whatever -- it doesn't matter what your
23 reasoning is, but just you personally feel that we probably have
24 some responsibility because we're here?

25 PROSPECTIVE JUROR REISING: Yes.

26 MR. SCHUMANN: Ms. Aguilera, I haven't asked you any
27 questions. Sorry about that.

28 Do you have any similar feelings as to Mr. Reising?

1 PROSPECTIVE JUROR AGUILERA: No, I'm pretty impartial at
2 this point.

3 MR. SCHUMANN: Okay. No feelings one way or the other?

4 PROSPECTIVE JUROR AGUILERA: No. I need to look at the
5 evidence.

6 MR. SCHUMANN: That's a good answer.

7 Not that your answer, Mr. Reising, isn't a good answer.
8 It's an honest answer. And that's really what we're here trying
9 to find out, what we all think about the facts that we know very
10 little of before you know all the facts.

11 Ms. Hernandez, we haven't talked to you either. Do you
12 have any opinions on what we had talked about? I know it's a
13 broad question, but do you feel that my client is little bit
14 behind already? Do you feel this is a shell game by companies?
15 Do you feel the plaintiff must receive compensation.

16 What do you think about any of those three questions?

17 PROSPECTIVE JUROR HERNANDEZ: In general at the end of
18 the day a life was taken. Whether that was because of human
19 error or because there was no following of safety standards to
20 review safety standards in general, the evidence has to be seen
21 for me to have an idea of where I stand.

22 MR. SCHUMANN: Ms Aguilar, is there any line of safety
23 training in your work that you went through before starting?

24 PROSPECTIVE JUROR AGUILAR: Yes.

25 MR. SCHUMANN: What kind of training did you go through?

26 PROSPECTIVE JUROR AGUILAR: The safety of the bus before
27 I drive it, the safety of the children, the safety of the
28 wheelchair lift. Just safety all day.

1 MR. SCHUMANN: Got it.

2 And you make sure people are strapped in, too?

3 PROSPECTIVE JUROR AGUILAR: The buses are equipped with
4 seatbelts, yes, and all the time with the special needs buses.

5 MR. SCHUMANN: And that training, is that hands-on type
6 training or video?

7 PROSPECTIVE JUROR AGUILAR: Both.

8 MR. SCHUMANN: And how long of a training process was
9 that before you started driving?

10 PROSPECTIVE JUROR AGUILAR: Classroom, I want to say was
11 20 hours classroom, but behind the wheel was, I don't know, 40,
12 if not more than 40. But it's constant every day training
13 within yourself. If you don't do it, you don't practice it,
14 you're going to lose it, and then it's going to be something
15 bigger than just a mistake.

16 MR. SCHUMANN: And you carry a lot of people, important
17 people, and you carry a lot of weight?

18 PROSPECTIVE JUROR AGUILAR: Yes. I can go from one
19 student to 84 with one school, so I have a lot of kids' lives in
20 my hands at one time.

21 MR. SCHUMANN: So to you safety is key --

22 PROSPECTIVE JUROR AGUILAR: Yes.

23 MR. SCHUMANN: -- I would imagine.

24 PROSPECTIVE JUROR AGUILAR: Uh-huh.

25 MR. SCHUMANN: And the 40 hours of classroom, that is
26 with someone else driving?

27 PROSPECTIVE JUROR AGUILAR: Myself driving with a trainer
28 on the bus.

1 MR. SCHUMANN: Did the company ever do anything in terms
2 of like having modern equipment, like, say, a video camera to
3 watch drivers to try and avoid human error or whether you get
4 tired, to watch the drivers, to see?

5 PROSPECTIVE JUROR AGUILAR: Not here in California, but
6 when I was in Nevada, yes, there were cameras on the drivers.

7 MR. SCHUMANN: Okay. And they were monitoring them to
8 make sure the driver was not falling asleep or doing his or her
9 job?

10 PROSPECTIVE JUROR AGUILAR: Yes, uh-huh.

11 MR. SCHUMANN: Do you find that to be good?

12 PROSPECTIVE JUROR AGUILAR: Yes. I want our district to
13 be updated and have cameras on the drivers, the kids, the entire
14 bus, inside and out.

15 MR. SCHUMANN: Okay. So if someone fell asleep -- well,
16 I've seen it happen that someone has fallen asleep behind the
17 wheel.

18 PROSPECTIVE JUROR AGUILAR: Not that I know of and I've
19 heard of, but I'm sure there are people who have fallen asleep
20 behind the wheel.

21 MR. SCHUMANN: That can happen even with thousands of
22 hours of training?

23 PROSPECTIVE JUROR AGUILAR: Yes.

24 MR. SCHUMANN: If I was able to prove to you that my
25 client had no involvement in the safety procedures at the claim
26 or the incident that killed Mr. Collins, would you be able to
27 let them walk out of here with zero dollars?

28 PROSPECTIVE JUROR AGUILAR: If you're able to prove it,

1 yes.

2 MR. SCHUMANN: Okay. Do you have -- if I'm not able to
3 prove it, do you have a dollar amount in mind already?

4 PROSPECTIVE JUROR AGUILAR: Not at this time.

5 MR. SCHUMANN: Mr. San?

6 PROSPECTIVE JUROR SAN: Yes.

7 MR. SCHUMANN: You obviously work with super sharp
8 knives, I would imagine. How do you -- how does -- do you own
9 the business? Do you work for the business?

10 PROSPECTIVE JUROR SANTOS: I'm chef, so I own the
11 business.

12 MR. SCHUMANN: You own the business. So how many chefs
13 do you have other than yourself?

14 PROSPECTIVE JUROR SAN: I have like two, three chefs.

15 MR. SCHUMANN: What do you do to train them in terms of
16 safety to make sure they don't cut their fingers, they don't get
17 blood in the food?

18 PROSPECTIVE JUROR SAN: I don't train them because they
19 are already trained by somebody else.

20 MR. SCHUMANN: And where do they go and get trained? Is
21 there a place you find good chefs from?

22 How does that work?

23 PROSPECTIVE JUROR SAN: We go like sharing kind of. I'm
24 not train them. I just say we need a chef. Do you want to
25 participate with me. So they come join me. I didn't hire them.

26 MR. SCHUMANN: So you own it together?

27 PROSPECTIVE JUROR SAN: Yeah.

28 MR. SCHUMANN: Got it. Do you do any continuous

1 discussions about safety, be safe?

2 PROSPECTIVE JUROR SAN: Yeah, that's what we do all the
3 time before we start the operation.

4 MR. SCHUMANN: So you do it every day before you start?

5 PROSPECTIVE JUROR SAN: Before we start to prepare the
6 meals.

7 MR. SCHUMANN: So the three of you talk about what we're
8 going to do, what we're going to be careful with?

9 PROSPECTIVE JUROR SAN: The most important is food
10 safety.

11 MR. SCHUMANN: And is everyone in charge of food safety?
12 Is it you or just one of your partners?

13 PROSPECTIVE JUROR SAN: We all same doing it together.

14 MR. SCHUMANN: And in your business do you have Workers'
15 Compensation?

16 PROSPECTIVE JUROR SAN: Yes, I do.

17 MR. SCHUMANN: Do you have any feelings toward my clients
18 one way or the other? Am I behind a little bit already? Am I
19 in front?

20 PROSPECTIVE JUROR SAN: I don't have any knowledge to
21 judge you guys.

22 MR. SCHUMANN: Okay. Counsel mentioned Mitsubishi as a
23 company in this case. Does anyone have any negative feelings
24 about Mitsubishi being involved over here? No?

25 Does anyone feel that Mitsubishi might have or should
26 have some kind of responsibility because they might be in the
27 hierarchy of parents and subsidiaries? No?

28 Does anyone have any feelings against electrical power

1 companies? We've heard a lot about them in the past, fires, et
2 cetera. Does anyone have any positive, negative?

3 PROSPECTIVE JUROR SEYMON: I hate to be the one to talk.

4 MR. SCHUMANN: It's okay.

5 PROSPECTIVE JUROR SEYMON: I do. I feel like we are
6 ripped off by them.

7 MR. SCHUMANN: Do you know my client in terms of where
8 they are and what they do?

9 PROSPECTIVE JUROR SEYMON: Your client being who?

10 MR. SCHUMANN: Diamond Generating Corporation.

11 PROSPECTIVE JUROR SEYMON: I never heard of them before.

12 MR. SCHUMANN: Do you know where the power plant is where
13 the incident occurred?

14 PROSPECTIVE JUROR SEYMON: I don't know that either.

15 MR. SCHUMANN: Okay. So you feel like we are getting
16 ripped off by the power companies. So would that also be a kind
17 of a negative for me?

18 PROSPECTIVE JUROR SEYMON: No.

19 MR. SCHUMANN: Okay. That's just a general?

20 PROSPECTIVE JUROR SEYMON: Yeah.

21 MR. SCHUMANN: Okay.

22 THE COURT: Counsel, I would like to send the jurors -- I
23 know I told them 3:30, but it's the first day of jury selection.
24 If we cannot have certain jurors come back tomorrow, that would
25 be in everyone's interest.

26 So I would like to have them leave by 4:00 o'clock.

27 However, there might be some other procedural things we need to
28 do.

1 Do you have an estimate on how much time?
2 MR. SCHUMANN: I don't, your Honor, yet. I'm sorry.
3 THE COURT: Okay.
4 MR. SCHUMANN: There might be a couple of procedural
5 things we can talk about.
6 THE COURT: Correct. I'm trying to see if we can get
7 those in before 4:00 o'clock.
8 MR. SCHUMANN: Should we --
9 THE COURT: Continue. Let me know if you --
10 MR. SCHUMANN: I mean, I guess it could be a good time to
11 pause and talk about the procedural issues.
12 THE COURT: Just conclude. If not, we'll come back
13 tomorrow.
14 MR. SCHUMANN: Okay.
15 Ms. Kodani and Ms. Aguilera, when you go back to work on
16 Thursdays and Fridays, can you, like, promise not to talk to
17 each other about the case?
18 PROSPECTIVE JUROR AGUILERA: We work in different
19 departments so it's not a problem.
20 PROSPECTIVE JUROR KODANI: Yeah.
21 MR. SCHUMANN: Okay. You understand you're not allowed
22 to talk about the case?
23 PROSPECTIVE JUROR KODANI: Yes.
24 MR. SCHUMANN: Sorry, your Honor.
25 Your Honor, I think this is a good time to stop for me
26 and you can do cause.
27 THE COURT: Okay.
28 Pass for cause?

1 MR. SCHUMANN: No.

2 THE COURT: All right. Let's -- we've discussed this
3 previously with counsel for both sides.

4 We will go ahead. And madam clerk, Ms. Youngberg, will
5 see you through the doors.

6 And I'll see you over there with the court reporter.

7 (Proceedings outside of the presence of the
8 prospective jurors as follows:)

9 THE COURT: Okay. We're outside the presence of the
10 jury.

11 In terms of challenges for cause, Mr. Schumann?

12 MR. SCHUMANN: Yes. I think Mr. Seyman.

13 THE COURT: Go ahead and state your reasons for the
14 record.

15 MR. SCHUMANN: He is predisposed against the defense
16 already. He has already stated several bases. Mr. Reid has
17 written down some of them verbatim because I couldn't do it at
18 the same time.

19 Do you have them right here?

20 MR. REID: Yes. Let me find my minutes. Sorry.

21 MR. SCHUMANN: I will add that he thought I was already
22 behind, he thought the corporate entities are shell games.

23 THE COURT: The Court will add from its own notes that
24 ultimately his position was that since you are here defending
25 the case, you must be guilty -- that's the Court term -- liable.
26 You must be good for something, you must owe something. That's
27 not a position he seemed to retract, at least in the Court's
28 recollection.

1 MR. BASILE: I think he retracted from that, your Honor.

2 And the key words have not been addressed here. The key
3 words for a challenge for cause is if you hear the law and the
4 facts, you could not be fair, you could not do that.

5 He clearly said even though these felt he was being
6 ripped off by the electric company that that's just a thought.
7 No one has expressed specifically that I cannot follow the law
8 and the facts.

9 THE COURT: You're mixing two different instances there.

10 The one you just mentioned was the most recent, you know,
11 discussion with him, and he did mention, yeah, that's just my
12 opinion about the electrical company. I don't think he is alone
13 in that thought.

14 But he did -- when asked if that would keep him from
15 being fair, you're correct. He did say, no, that wouldn't
16 affect my opinion in this case.

17 We go back to before the 3:00 o'clock break when he was
18 adamant that because defense was here that they must be liable
19 for something. And that's at the point where the Court kind of
20 tried to not assist Mr. Schumann, but there was a lot of
21 questions coming his way that he was not in a position to
22 answer, so he did not retract from that position.

23 Do you have something different in that? Because the
24 latter instance, the power plant, I agree with you. He did say
25 that wouldn't affect his ability.

26 MR. BASILE: The only thing I recall, your Honor, even
27 though he said that, remember all this started out, it was a
28 confusing representation of this case by saying the last one

1 standing, the last one standing, which I let go for a while, but
2 then I had to speak up.

3 Then if not the employer, what are you going to do. They
4 all got confused about that. That is what led into this.

5 Again, the standards for a challenge for cause are that
6 they cannot follow the law and facts that they have some bias.

7 I never heard bias or prejudice expressed one time. So
8 I'll submit it, your Honor.

9 THE COURT: Okay. The motion is granted as to
10 Mr. Seyman.

11 Ultimately the Court finds that the position of the party
12 being here in this lawsuit at this time means that they are
13 liable, so he already had a disadvantage.

14 So Seyman will be replaced.

15 We'll go ahead and do that now just so you know when we
16 go back in.

17 Ms. Kodani, Juror Number 13, will be seated as Juror
18 Number 6 now.

19 Mr. Schumann, any others?

20 MR. SCHUMANN: Yes. Mr. Reising basically said if we're
21 here we must be liable because we should have filed a motion for
22 summary judgment. And if we had no liability, we would be out
23 on a motion for summary judgment.

24 I can't get into discussing a motion for summary judgment
25 with a potential juror, that it was filed and that it was argued
26 and that a judge might have a different opinion, because if I
27 talk about that, then the rest of the jury is going to think,
28 well, the judge disagreed with you and therefore I'm liable.

1 I don't think he can set that aside. He will tell the
2 rest of the jury that, hey, they should have filed an MSJ.

3 THE COURT: Well, I guess we're speculating as to where
4 he's going to go with that.

5 To go to Mr. Basile's point, he didn't express or
6 expressly imply that he wouldn't be able to be fair in the case.

7 You know, it's a Catch-22. I know you're making your
8 inquiry, but you're also dealing with an attorney. No one else
9 would bring up the fact that there is a procedural mechanism to
10 not be at this stage.

11 I think this inquiry was kind of along the lines of that
12 with Mr. Seyman. And he's the one that brought it up with the
13 MSJ. It wasn't you that brought it up.

14 He was merely expressing that he couldn't take in why are
15 we here then. Then he mentioned the MSJ, but I didn't hear him
16 say he wouldn't be able to be fair and impartial in the case.
17 It's a thought he had, but I didn't hear him say it would affect
18 his ability to be fair.

19 I don't know if there was more inquiry. The Court was
20 considering doing further inquiry, but then we would be going
21 back and forth with counsel.

22 As to Mr. Reising, the Court is going to deny that
23 challenge for cause.

24 Are there any others?

25 MR. SCHUMANN: Yes.

26 MR. REID: Ms. Santos. She clearly stated we were
27 starting behind in the game. If you're getting financial gain,
28 then, yes, you're behind. You have a lot of work to do to

1 convince me you don't have a part.

2 She has already pre-judged the case, your Honor.

3 THE COURT: Mr. Basile?

4 MR. BASILE: But she that did say, and I have it here,
5 both sides have a lot of work to do. That's natural for a juror
6 to say, both sides.

7 You know, they are discussing complex legal terms on
8 things with the woman and bringing up -- I didn't object -- all
9 that stuff about Workman's Comp and should he recover. I
10 didn't. Both sides have a burden here. She never once said she
11 couldn't follow the law.

12 So I think that one should be denied, your Honor. I
13 submit.

14 MR. REID: Your Honor, she also mentioned that --

15 THE COURT: Sorry, go ahead, Mr. Reid. Make your record.

16 MR. REID: I apologize.

17 She also mentioned that large companies should have
18 plenty of insurance, essentially saying that they've got
19 insurance. Now, I don't know how you instruct around that.

20 THE COURT: She's an insurance broker. What do you
21 expect her to say?

22 MR. REID: I understand, but if she is going to be
23 telling or influencing the jury that way on top of the other
24 things where she is already prejudiced against DG Corp, I think
25 she should be stricken, your Honor.

26 THE COURT: Again on that latter part we're speculating.
27 She's an insurance broker. She is going to share her outside
28 insurance experience. It may influence her. However, to

1 Mr. Schumann's original point about you have a lot to prove,
2 you're at a disadvantage I disagree with. Mr. Basile.

3 You have the burden here. They can sit there on their
4 hands and not say anything. The burden is on you. You're the
5 one that has the -- we need to discuss the pending
6 cross-complaint on the case, but the burden is on you.

7 The fact you both have a lot of work to do is an
8 incorrect statement technically.

9 MR. BASILE: I'm going to add one more. She said I'm
10 open-minded, could find for the defendant. She said both sides
11 have a lot to do to convince her, but she agreed see that could
12 follow the law about corporate responsibility. He specifically
13 asked her that and she said she could follow the law.

14 Those are the key things, will they follow the law. And
15 she certainly makes it clear that she would.

16 THE COURT: The Court's notes are consistent with
17 Mr. Schumann's first point, not on that latter point about the
18 speculating that she is going to share her insurance
19 information, but with the other jurors.

20 Anyway, the motion is granted as to Ms. Santos.

21 Then Mr. Alvarez will be replacing Juror Number 7,
22 Ms. Santos.

23 Mr. Schumann?

24 MR. SCHUMANN: Yeah. I had a concern with Ms. Kodani.
25 She started crying in the middle of the voir dire and she seemed
26 extremely distraught. Her dad just died 12 days ago, I guess.

27 I think we should let her go either for cause -- so I'll
28 ask for cause. I think we should let her go as a group. It's

1 not fair to her to bolster through this. She's been extremely
2 emotional.

3 How do you get that out of her that she is not -- she has
4 already cried twice.

5 I don't think she can set aside her own feelings, being
6 this close in time to her father's death.

7 THE COURT: Mr. Schumann, the Court does concur in your
8 observations. When the Court was doing its voir dire she did
9 appear to be emotional. You could tell her eyes well up. She
10 did become emotional. Mr. Basile was doing proper voir dire in
11 terms of possible damages in the matter. She did appear to
12 become a little emotional again, not just outright crying.

13 However, she did seem to regain her composure. While she
14 did seem a little emotional, she ultimately was -- I had to
15 cross something out here. I actually did have her initially for
16 cause in the Court's own notes. I ended up crossing it out
17 because she did come back twice and say that she could be fair
18 to both sides.

19 Mr. Schumann, you had a lot of -- not a lot, I'm sorry --
20 open questions there at the end about does anyone feel I am
21 starting from behind. Does anyone feel -- there were a couple
22 other questions there where it was open-ended to the panel, and
23 I think there was one where you actually even went back to her
24 towards the end and asked her if she could be fair.

25 She did come back at least twice that the Court recalls
26 where she regained her composure and said see that would be able
27 to follow the law and be a fair juror.

28 I do understand the reason you brought this up, but she

1 does seem to have come back.

2 MR. SCHUMANN: Okay.

3 THE COURT: You may use your peremptories as you wish.

4 MR. SCHUMANN: To be honest, that was Ms. --

5 THE COURT: Kodani you were discussing.

6 MR. SCHUMANN: I was asked whether we should let the
7 single mom go who asked for a vacation. She said the kids have
8 to learn to live with not going on vacation. I think that
9 wouldn't be fair to her as a personal --

10 THE COURT: As a father with young children, I empathize
11 with her.

12 As an officer of the Court with limited resources and the
13 fact that we specifically told them to fill out the form so no.
14 She came back and said her children needed to learn a lesson,
15 but maybe it's her that needs to read the hardship form more
16 carefully.

17 I appreciate that. You may use your peremptories with
18 whatever mercy you wish.

19 MR. SCHUMANN: Thank you, your Honor.

20 What do we do tomorrow?

21 THE COURT: Let's get these jurors out of here, but we
22 will go ahead.

23 MR. SCHUMANN: I thought they left already.

24 THE COURT: We will thank and excuse -- we'll seat the
25 new 12 as they should be and then tomorrow morning we'll
26 continue with the six pack. Is that okay, Ms. Youngberg?

27 THE CLERK: You wanted to start with peremptories first
28 thing tomorrow?

1 THE COURT: Let's do the peremptories first thing
2 tomorrow.

3 (Proceedings in the presence of the
4 prospective jurors as follows:)

5 THE COURT: Thank you.

6 The Court will now thank and excuse the following jurors.
7 First, Juror Number 6, Mr. Seyman. Thank you.

8 Thank you for your time this morning and this afternoon.

9 PROSPECTIVE JUROR SEYMON: You've all been very nice.

10 THE COURT: We'll see you during season.

11 If you could please take seat number six.

12 The Court will next thank and excuse Juror Number 7,
13 Ms. Santos.

14 Thank you again for your time this afternoon and this
15 morning.

16 Mr. Alvarez, if you would please take seat number seven.

17 Okay. Jurors one through eight, please memorize your
18 seat. That is the same seat you will be taking tomorrow morning
19 at 10:00 a.m.

20 We are going to conclude here for this afternoon so we
21 can prepare for tomorrow.

22 But we will see you tomorrow. Hopefully we will have a
23 jury selected by then. And our apologies to the panel. I know
24 that it always moves a little bit slower with the first 18. It
25 will move much quicker tomorrow. Here's to that lunch time
26 jury, but we will do our best to get this jury selected by
27 tomorrow.

28 Sorry. Ms. Castaneda?

1 PROSPECTIVE JUROR CASTANEDA: I was about how I wasn't
2 getting, I'm still getting paid -- can I be moved that different
3 time when I'm off of probation? I wouldn't be getting any
4 payment from missing work.

5 THE COURT: We're limited again because of the hardships.
6 That's why we pass out that form so when we get here we can
7 really move past that.

8 I mean, if there is a stipulation of counsel?
9 Mr. Basile?

10 MR. BASILE: I'm fine with letting Ms. Castaneda off.
11 I would like to have her, but I understand her hardship.

12 MR. SCHUMANN: Yes, your Honor.

13 MR. REID: Yes, your Honor.

14 THE COURT: Okay. Ms. Castaneda, if you want to go ahead
15 and pick a Monday on the calendar, or a Tuesday if that's the
16 case.

17 PROSPECTIVE JUROR CASTANEDA: I'm off of probation by
18 August. So I guess August 8th.

19 THE COURT: Okay. You don't want September 6th?

20 PROSPECTIVE JUROR CASTANEDA: No. I'm okay.

21 THE COURT: Thank you, Ms. Castaneda.

22 PROSPECTIVE JUROR CASTANEDA: Thank you.

23 THE CLERK: August 8th, your Honor.

24 THE COURT: August 8th, 8:00 a.m. The Larson Justice
25 Center in Indio. Please report thereby 8:00 a.m. to the second
26 floor jurors' room.

27 Thank you, Ms. Castaneda.

28 Per counsel's notes, we're going to go ahead and seat

1 Mr. Gaipa. We're going to have him sit in juror seat number 2.

2 Mr. Basile, I know we discussed about peremptories. I
3 leave it to you, but if there are peremptories to be exercised,
4 can we do that now to just move it along?

5 MR. BASILE: I can do it as long as we both do it.

6 THE COURT: Okay. Well, there are three so someone is
7 going to be left out. So let's at least try that.

8 MR. BASILE: Your Honor, we're satisfied with how this
9 jury is presently constituted. We're willing to accept the jury
10 as presently constituted.

11 THE COURT: One moment. Thank you, Mr. Basile.

12 Mr. Schumann, peremptories?

13 MR. SCHUMANN: Yes, your Honor. The defense would like
14 to thank and excuse Juror Number 6, Ms. Kodani.

15 THE COURT: Ms. Kodani, you do not have to come back
16 tomorrow morning.

17 PROSPECTIVE JUROR KODANI: Okay.

18 THE COURT: Okay. Thank you for your time this morning.
19 Have a nice day.

20 Mr. Lepaine, if you could please take seat number six.

21 Mr. Basile, the peremptories are back with you.

22 MR. BASILE: Your Honor, we are satisfied with this jury
23 as presently constituted and we will accept them.

24 THE COURT: Okay. Thank you.

25 And we're returning to defense, either to Mr. Schumann or
26 Mr. Reid.

27 MR. SCHUMANN: Yes, your Honor. Defense would like to
28 thank and excuse Juror Number 6.

1 THE COURT: Oh, Mr. Lepaine?
2 Thank you, Mr. Lepaine.
3 PROSPECTIVE JUROR LEPIANE: Okay.
4 THE COURT: Thank you for you time this morning and this
5 afternoon. Have a nice day.
6 I'm sorry. If you could leave the questionnaire there.
7 Is that our questionnaire that is in your hand?
8 Thank you. Have a nice day.
9 Okay. Back to you, Mr. Basile.
10 MR. BASILE: All right, your Honor. At this time we'd
11 like to --
12 THE COURT: Sorry, skipping ahead. Let's go ahead and
13 seat Mr. Espinoza in seat number six.
14 All right. I guess you should take a look at the 12
15 first.
16 MR. BASILE: Right. Thank you, your Honor.
17 THE COURT: Please.
18 MR. BASILE: Your Honor, we would like to thank and
19 excuse Ms. Russ.
20 THE COURT: Okay.
21 PROSPECTIVE JUROR RUSS: I was concerned that I wouldn't
22 be able to keep up.
23 THE COURT: I think you would have been able to.
24 Thank you. Have a nice day. Ms. Aguilera, if you could
25 take one seat back, seat number 12.
26 Okay. And we are now with -- I'm sorry. The last one
27 was Ms. Russ.
28 Okay. Back to defense?

1 MR. SCHUMANN: Defense would like to thank and excuse
2 Ms. Chavez, Juror Number 9.

3 PROSPECTIVE JUROR CHAVEZ: Thank you.

4 THE COURT: Thank you, Ms. Chavez. I appreciate you
5 being here all day.

6 We're running close to sheriff overtime pay. We're going
7 to call you so at least when you come in tomorrow morning you
8 know if you're one of the 18 or not. Everyone is to come back
9 tomorrow at 9:00 a.m., but we will call you so you know where
10 you're going to be seated.

11 Please listen for your name.

12 THE CLERK: Mary Allen, A-L-L-E-N.

13 Pnina Weiser, W-E-I-S-E-R.

14 Angelique Souza, S-O-U-Z-A.

15 Jack Epsstine, E-P-S-T-I-N-E.

16 James Esparza, E-S-P-A-R-Z-A.

17 Herb Schultz, S-C-H-U-L-T-Z.

18 And Thomas Jeske, J-E-S-K-E.

19 THE COURT: Great, thank you.

20 So as to the seven new jurors seated, the six in the
21 front and Juror Number 9, we will resume tomorrow morning at
22 9:00 a.m. We'll open the doors at 9:59 for you to come in.

23 The Court will go through the questionnaire. Tomorrow
24 morning I'll just ask you to briefly to read it to yourselves
25 and then we can go through, get your responses and then we can
26 proceed with attorney questioning.

27 As to the remaining other 11 that are in the box, one
28 through six and seven, eight, ten, 11, 12, there will be no more

1 questions to you. Your questioning has concluded at this point.

2 So it will be just be questioning as to the next seven.

3 It will move along much quicker tomorrow.

4 So, again, thank you, everyone, for your patience.

5 We will see you tomorrow morning at 9:59 a.m.

6 One last instruction, I'm sorry, since we are breaking
7 for the day.

8 This is an admonishment. You will hear it on the jury
9 during the breaks. I will read it now since we're concluding
10 for the day.

11 So you have started to receive more information regarding
12 the facts of this case, although not all of them.

13 I want to remind you that you are not to discuss either
14 amongst yourselves or with anyone else any subject connected
15 with this trial. You are not to conduct any sort of research.
16 Please do not do that. And that you're not to form or express
17 any opinion concerning this trial until the cause has been
18 submitted to a jury for their decision.

19 Please, when you're out in the hallway, you're welcome to
20 discuss things with your fellow jurors, what is a good place to
21 eat, boy, I hope that air conditioning works better tomorrow,
22 all those things. Just don't discuss the attorneys or any of
23 the facts of the case.

24 Thank you so much.

25 Have a nice day.

26 (Proceedings out of the presence of the
27 Prospective jurors as follows:)

28 THE COURT: Still on the record. All prospective jurors

1 have left the courtroom.

2 Okay. Counsel, we will see you. If you want to come in
3 anytime after 9:30 time to get set up, you're welcome to. I'm
4 looking at the calendar tomorrow. Hopefully we will be done by
5 then. We'll see. But any issues we can discuss them then.

6 Then we will be bringing in the jury at 9:59 to get
7 started right at 10:00.

8 Peremptories will resume back with plaintiff; am I
9 correct on that?

10 MR. REID: Yes.

11 MR. BASILE: Yes. And, your Honor, can my tech person
12 have a moment to set up today or should I bring him back
13 tomorrow? Whatever is your clerk's pleasure.

14 THE COURT: The deputy has to leave the courtroom.

15 So this is why I know there was concern about the 3:30.
16 This is why. Because we have limited resources. I mean, we
17 barely have air conditioning today. So, again, it's not
18 anything against you, Mr. Basile. It's just that we technically
19 need to shut the courtroom down.

20 MR. BASILE: So we will shoot for tomorrow.

21 THE COURT: Yes. That is the last thing I wanted to
22 discuss.

23 For your witnesses, which I currently still have as
24 Dennis Johnson, the current plant manager, if we could go ahead
25 and have -- I can tell you now you won't have to do your opening
26 statements until 1:30 tomorrow.

27 Do you have a time estimate, Mr. Basile?

28 MR. BASILE: It will be one hour or less.

1 THE COURT: Okay. Mr. Schumann?

2 MR. SCHUMANN: Oh, definitely less than that.

3 THE COURT: Okay. So plan on having Mr. Dennis Johnson
4 available tomorrow afternoon.

5 MR. BASILE: They are producing --

6 THE COURT: Okay. I think that's pretty much all we'll
7 be able to get through.

8 The Court will hopefully be finished with jury selection
9 in the morning. Maybe I can start with pre-instruction and then
10 you'll do your opening statements.

11 MR. REID: If I could ask for a little clarification.
12 He's talking about an hour and we're talking about slightly less
13 than. We're going to get 20 minutes with Mr. Johnson. Does it
14 make sense to bring him in on Wednesday morning?

15 We still have motion in limine issues to deal with.
16 There are some other pending things like the prove-up brief,
17 things like that. I'm wondering if it makes sense to try to
18 clear that stuff up.

19 THE COURT: If you each go about 45 minutes, I don't want
20 to waste the jury's time.

21 MR. REID: I understand. We will have him here.

22 THE COURT: I appreciate logistically that does seem
23 accurate, but I can't predict how long you're going to go for.

24 Obviously, if you want to go two hours with your opening,
25 then maybe no one will testify, but we need to be ready in the
26 event you guys are more concise.

27 MR. REID: Understood, your Honor.

28 THE COURT: Thank you, everyone. Have a nice day.

1 (Proceedings concluded.)
2 (Next Volume is Volume 3, Page 401.)
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COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT - DIVISION TWO
APPEAL FROM THE SUPERIOR COURT OF RIVERSIDE COUNTY

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DENISE COLLINS and CHRISTOPHER)
COLLINS,)
) DCA No. E080233
Plaintiffs/Respondents,)
) Riverside County
vs.) Case No. PSC1901096
)
DIAMOND GENERATING CORPORATION,)
) Volume 3 of 19
) Pages 401-547
Defendant/Appellant.) (548-600 Blocked)
)

REPORTER'S TRANSCRIPT OF APPEAL
BEFORE THE HONORABLE MANUEL BUSTAMANTE, DEPARTMENT PS2

June 28, 2022

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SUPERIOR COURT - STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

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DENISE COLLINS and CHRISTOPHER)
COLLINS,)
)
Plaintiffs,)
)
vs.) CASE NO. PSC1901096
)
DIAMOND GENERATING CORPORATION,)
)
Defendant.)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE MANUEL BUSTAMANTE - DEPARTMENT PS2

JUNE 28, 2022

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(Appearances continued on next page.)

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JUNE 28, 2022 - MORNING SESSION
BEFORE THE HONORABLE MANUEL BUSTAMANTE

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(Proceedings held out of the presence of the
prospective jurors as follows:)

THE COURT: Good morning. I'll formally call the matter
of Collins versus DG Corp.

Thank you, everyone, for being here.

I understand you all came in at 9:59.

Unfortunately, we can't go on the record until we did
roll call because it looked like we were missing someone. So we
had to wait for that to happen.

Is that one individual still missing?

THE CLERK: Yes, your Honor. Both individuals are still
missing.

THE COURT: Two individuals?

THE CLERK: Yes, your Honor.

THE COURT: We'll deal with that later this morning, but
we'll have to do an order to show cause for being held in
contempt for not returning.

Okay. So welcome, counsel, welcome back.

Let's resume with jury selection.

Hopefully the air conditioning is more to everyone's
liking. We tested it out this morning. It was noticeably
better.

We have seven new prospective jurors. Everyone has their
questionnaire. Perfect.

We will just begin with, first, Ms. Allen.

1 PROSPECTIVE JUROR ALLEN: Hi.

2 THE COURT: Hi, good morning.

3 If you want to just start, let me go through here.

4 This is Mary Paula Allen?

5 PROSPECTIVE JUROR ALLEN: Yes.

6 THE COURT: Great. We know that answer to number 1. If
7 you would just go ahead and lead us through the questions.

8 PROSPECTIVE JUROR ALLEN: Okay. I live in Desert Hot
9 Springs, Riverside County.

10 My current occupation is a floral clerk.

11 I live with my sister, and she is not employed. She is
12 on permanent disability.

13 I have one adult son, not living at home. He doesn't
14 have a current occupation at the moment. He just recently
15 became incarcerated. Obviously, not working.

16 I've not previously ever served on a jury.

17 My highest level of formal education is some college.

18 I do not have any close friend or relatives that has any
19 close connection can the Court or legal system.

20 I have never been sued and I don't have any knowledge of
21 any close friend or family ever being sued or presented a claim
22 against anyone or sued anyone else.

23 The last question, at this point, I do not know if I
24 could be a fair judge of the facts in this case.

25 THE COURT: Is there any particular reason? Is there
26 anything you've heard, any of the subject matter? Anything in
27 your background?

28 PROSPECTIVE JUROR ALLEN: Well, of course, without

1 knowing all the facts yet, I couldn't hear everything that --
2 well, yesterday and still not knowing all the facts, I'm unclear
3 at this point how it ended up being the current defendant's
4 position in this case. You know, I'm not sure what happened to
5 everyone else, you know?

6 THE COURT: We're here because there is a lawsuit, a
7 pending lawsuit.

8 PROSPECTIVE JUROR ALLEN: Right. Well --

9 THE COURT: There is a dispute that the parties need your
10 help to resolve.

11 PROSPECTIVE JUROR ALLEN: So I'm not sure.

12 THE COURT: Okay. I understand it's an order thing. We
13 ask you all these questions about can you follow the law, can
14 you follow the Court's instructions, can you be fair, without
15 telling you any of what the instructions are, the law is and
16 much of the facts.

17 We're asking for a full commitment from you, but we're,
18 again, just telling you what the general subject matter is and
19 then asking if there is anything in your background that would
20 cause you to have a strong bias one way or another.

21 Then we'll give you the instructions and that will help
22 simplify things. It's a list of elements, a checklist you have
23 to go through and weigh the evidence and determine if things
24 have been proven or not proven in this case by a preponderance
25 of the evidence.

26 PROSPECTIVE JUROR ALLEN: Okay.

27 THE COURT: Which just means more likely than not.

28 I know, more legal terms.

1 PROSPECTIVE JUROR ALLEN: Right.

2 THE COURT: Well, keep an open mind. I'm sure the
3 attorneys will have more follow-up for you. It's not unusual to
4 have jurors say, well, how do I know if I can follow
5 instructions. I don't even know what they are yet.

6 Is there anything else, Ms. Allen?

7 PROSPECTIVE JUROR ALLEN: Not that I can think of.

8 THE COURT: Okay. Well, if you think of anything, please
9 let the attorneys know, okay?

10 Thank you.

11 Juror Number 13, we have Ms. Weiser.

12 PROSPECTIVE JUROR WEISER: Pnina Weiser.

13 THE COURT: Good morning.

14 PROSPECTIVE JUROR WEISER: So the answer to number 2, I
15 live in Cathedral City. I live alone currently. I have three
16 adult children. They do not live with me.

17 My older daughter, she is a scientist, a molecular
18 biologist. She works for Illuminae(ph) in San Diego.

19 My son is a scientist, biochemist. He lives in L.A.,
20 working with health.

21 And my daughter, she is international business and
22 marketing. She works for Sales Force and she lives in Chicago.

23 THE COURT: What was that company, the last one?

24 PROSPECTIVE JUROR WEISER: She works for Sales Force.

25 THE COURT: Sales Force.

26 PROSPECTIVE JUROR WEISER: International business and
27 marketing.

28 Previously in 2006 I served in a jury in Van Nuys,

1 California, L.A. County. And we did -- it was a civil case and
2 we did reach a verdict.

3 My highest education is a degree, AA degree in mechanical
4 design, drafting and design.

5 Currently I'm retired and I work -- I worked until 2015
6 at Crane Aerospace as a CAD designer. I've been doing the same
7 thing -- I did the same thing for the last 40 years.

8 I have no close friends or any of my family that is
9 connected to the Court system.

10 And we have no lawsuits. We never sued anybody.

11 And my answer to number 10 is I believe that after I hear
12 all the facts I'll be able to have the correct judgment.

13 THE COURT: Spoken very much like an engineer.

14 Of course, you don't know anyone in the legal system?
15 Everything was in the sciences?

16 Thank you, Ms. Weiser.

17 PROSPECTIVE JUROR WEISER: Uh-huh.

18 THE COURT: Next we have Angelique Souza.

19 PROSPECTIVE JUROR SOUZA: Yes.

20 THE COURT: Good morning.

21 PROSPECTIVE JUROR SOUZA: The answer to number 2 is I
22 live in La Quinta.

23 Number 3, I'm an accountant.

24 Number 4, I do live with my daughter, who's 18 and going
25 to college of the Desert right now, currently.

26 Number 5, I have another child. My son is 22 and lives
27 in Austin, Texas. He is a graphic designer and website -- works
28 on websites.

1 THE COURT: Okay.

2 PROSPECTIVE JUROR SOUZA: Number 6, I have never served
3 on a jury before.

4 Number 7, I have some college education.

5 Number 8, I do not have any close relatives or friends
6 with the Court system.

7 And number 9, I have never -- I'm not -- let's see. I've
8 never had a claim against me or with anyone else or a lawsuit.

9 And, number 10, I do believe I can be fair.

10 THE COURT: Okay. Thank you.

11 PROSPECTIVE JUROR SOUZA: You're welcome.

12 THE COURT: Next we have Juror Number 15, which would be
13 Jack Epstine?

14 PROSPECTIVE JUROR EPSTINE: Uh-huh.

15 THE COURT: Good morning.

16 PROSPECTIVE JUROR EPSTINE: Hi.

17 Okay. Number 2, I live in Palm Springs.

18 Number 3, I'm a nurse. I'm pretty much retired. I work
19 a few home visit cases a week. I'm also a writer.

20 Number 4, no, I do not live with any other adult.

21 Number 5, I have no children.

22 Number 6, I was never on a jury. I was on a mock jury
23 once. It was kind of a market research thing. So I did that.

24 Number 7, I have a BA in English.

25 Number 8, no. The answer is no.

26 Number 9, I did file a wrongful termination suit against
27 a facility I worked in and the outcome was satisfactory to me.

28 And number 10, yes, I think I could be a fair judge of

1 the facts.

2 THE COURT: Okay. Thank you.

3 So you were an RN?

4 PROSPECTIVE JUROR EPSTINE: LVN.

5 THE COURT: LVN.

6 And what do you write about? Do you write about the
7 Court system and lawsuits?

8 PROSPECTIVE JUROR EPSTINE: No.

9 THE COURT: No.

10 PROSPECTIVE JUROR EPSTINE: I might after this.

11 THE COURT: Thank you, Mr. Epstine.

12 Next we have Juror Number 16, which would be, is it James
13 Matthew Esparza?

14 PROSPECTIVE JUROR ESPARZA: Yes.

15 THE COURT: Good morning.

16 PROSPECTIVE JUROR ESPARZA: Good morning.

17 Question number 2, I live in Desert Hot Springs.

18 Question number 3, I'm a janitor.

19 Question number 4, yes, I live with other adults. My
20 sister, my brother-in-law and my nephew.

21 My brother-in-law, he works for the union. My sister is
22 a substance abuse director. And my nephew, he works in the
23 union also.

24 THE COURT: I'm sorry. What type of union?

25 PROSPECTIVE JUROR ESPARZA: Electrical.

26 THE COURT: Okay.

27 PROSPECTIVE JUROR ESPARZA: They put solar panels up.

28 THE COURT: Great.

1 PROSPECTIVE JUROR ESPARZA: Yes, I have one daughter.
2 She lives in Gruene, Texas.

3 Okay. Number 6 -- oh, she's a housewife, my daughter.

4 I never served on a jury.

5 My highest education was 12th grade.

6 I do not have any friends or relatives in the Court
7 system.

8 And I do not have any knowledge of any family or friends
9 that had any lawsuits.

10 And I think I could be a fair judge in this case.

11 THE COURT: All right. Thank you, Mr. Esparza.

12 We next have Herb Kenneth Schultz.

13 PROSPECTIVE JUROR SCHULTZ: Number 2, I live in Palm
14 Springs, Riverside County.

15 Number 3 is as a consultant. My business is helping
16 people navigate government, federal, state, local, and it has
17 included the Department of Justice in the state as well as local
18 Riverside County.

19 I should mention a prior occupation was as labor
20 secretary in California, so I oversaw Workers' Compensation and
21 Cal OSHA and have some defined views.

22 Live with another adult, my husband. No children. No
23 serving on a jury. Master's degree in public policy, number 7.

24 Number 8, husband who is a civil litigator within the
25 state. Given my occupation, I've been deeply involved and
26 continue to be involved with -- just about lawyers, judges. And
27 I have in my job as senior advisor in the Governor's office,
28 continued to help people who are seeking out judgeships by

1 talking with people directly into the Governor's office and
2 making recommendations for the Governor's I serve and the
3 Governor that's serving now.

4 Yes, in terms of one potential case that was not wrongful
5 death, but it was bodily injury. That was settled through an
6 insurance settlement. It had to do with my husband in a car
7 accident, so I have been through that and certainly have been
8 involved in many, many different types of lawsuits in my
9 professional capacity.

10 I always think I can be fair, and I've had to do that in
11 my career. I didn't put a hardship because I'd like to serve,
12 and I certainly requested a three to five. I've got travel in
13 the middle of July that I can't get out of that is work-related,
14 so I won't go to September 6th. I will go to July 25th, just
15 after my travel.

16 But I would request that based on I think I could be fair
17 with my knowledge base. But given everything that I currently
18 am involved in, some of it at least is a conflict.

19 THE COURT: When are your travel plans?

20 PROSPECTIVE JUROR SCHULTZ: The travel plans are the week
21 of the 11th of July. So I'm back on the Sunday the 17th, so the
22 18th, the 25th, whatever it might be. I'm happy to try again.

23 THE COURT: All right. And you weren't the only one. A
24 couple individuals had put no hardship. They can serve three to
25 five days, ten days. Just looking at the Court's schedule,
26 though, in reality I think I added it yesterday. It was over 12
27 to 14 days. It's just over a longer period of time. As I
28 mentioned, it's not counsel's fault.

1 PROSPECTIVE JUROR SCHULTZ: No. I certainly get that,
2 but as primary bread winner, and I work for myself, it's hard to
3 be able to do that. That's why I didn't put it down as a
4 conflict.

5 THE COURT: Okay. Counsel stipulate?

6 MR. BASILE: Yes, your Honor.

7 MR. SCHUMANN: Yes, your Honor.

8 THE COURT: We'll go ahead and give you an order here in
9 a moment.

10 You said July --

11 PROSPECTIVE JUROR SCHULTZ: July 18th, July 25th,
12 anything after. I return on the 17th.

13 THE COURT: As you mentioned, you're going to pass
14 September 6th?

15 PROSPECTIVE JUROR SCHULTZ: You keep saying the courtroom
16 9/6. It's my birthday this week.

17 THE COURT: This will be for Larson Justice Center in
18 Indio.

19 PROSPECTIVE JUROR SCHULTZ: That's fine.

20 THE COURT: I think that was built in '95.

21 PROSPECTIVE JUROR SCHULTZ: Been there many times.

22 THE COURT: Eight a.m., second floor, the jury
23 commissioner's room.

24 THE CLERK: What date, your Honor?

25 THE COURT: July 18th.

26 PROSPECTIVE JUROR SCHULTZ: Let's do the 25th because
27 I'll just be getting back.

28 THE COURT: It will give you some time to adjust.

1 July 25th?

2 THE CLERK: This is Juror Number --

3 THE COURT: Juror Number 17, Mr. Schultz.

4 Thank you, Mr. Schultz. In order to allow for more
5 efficient time, if we could fill seat number 17, please.

6 THE CLERK: Okay, your Honor.

7 Julie Leskoviansky, L-E-S-K-O-V-I-A-N-S-K-Y.

8 THE COURT: Good morning.

9 PROSPECTIVE JUROR LESKOVIANSKY: Good morning.

10 THE COURT: This is Julie Leskoviansky, correct?

11 PROSPECTIVE JUROR LESKOVIANSKY: Correct.

12 THE COURT: If you could just walk us through the
13 questions there.

14 PROSPECTIVE JUROR LESKOVIANSKY: My name is Julie
15 Leskoviansky. I live in the City of Palm Springs, California.

16 Currently I'm employed with Shottenkirk Desert Lexis in
17 Cathedral City being a receptionist there.

18 I live with my husband. His occupation is maintenance
19 engineer for a local resort in California. In Palm Springs, to
20 be exact.

21 Currently he is on leave of absence from his job because
22 of a surgery to his neck, and he's still recovering from that.

23 I have two children by my first marriage. He has three
24 children by his first marriage.

25 My son is a police officer in Grand Rapids, Michigan. I
26 have a brother who is a police officer in Metamora, Michigan.

27 My second son is a plastics engineer for a large
28 corporation.

1 My husband's children, one is in real estate. That would
2 be his son in Michigan.

3 His daughter is -- works for a mortgage company as well
4 as the third son. He also works at the same mortgage company.
5 These are all in Michigan. I'm from Michigan, as you can tell.
6 Recently moved here, a year ago. I'm new to this whole system.

7 I've never served on a jury.

8 My highest level of education would be a high school
9 graduate with vocational training, so I'm a licensed
10 cosmetologist.

11 And as I said earlier, my son and my brother are both
12 directly affiliated with the law system, being police officers
13 in the State of Michigan.

14 I've never been sued. I don't know anyone in my family
15 or friends that have been sued, so that's goes without saying.

16 And I believe I could be a fair judge in this case. I
17 know that my son and my brother are officers. You know, they
18 serve the public, and that's what I'm trying to do right now, is
19 serve the public.

20 THE COURT: Okay. I appreciate that.

21 As I mentioned yesterday, we can't do this without you.
22 I'm not sure what the current numbers are, but sometimes juror
23 summons are in the 50 percent, at least in Riverside County --
24 50 percent response rate.

25 PROSPECTIVE JUROR LESKOVIANSKY: When I lived in Michigan
26 my whole entire life, I was called to do jury duty and it was
27 dismissed. I didn't even report it.

28 THE COURT: That will be different here.

1 PROSPECTIVE JUROR LESKOVIANSKY: That's what I heard.

2 THE COURT: If you serve, I think you get 12 months or 18
3 months.

4 THE CLERK: Twelve to 18.

5 THE COURT: It used to be two years not having served.
6 Now I think they changed it to 18. It might be down to 12 now.
7 You'll get it on the clock, same time every year, now.

8 PROSPECTIVE JUROR LESKOVIANSKY: That is good to know.

9 THE COURT: Thank you.

10 PROSPECTIVE JUROR LESKOVIANSKY: You're welcome.

11 THE COURT: Mr. Thomas Gerard Jeske?

12 PROSPECTIVE JUROR JESKE: Good morning. I'm happy to
13 answer the questions, but unfortunately I have a ten-day Alaska
14 cruise that was booked a year ago with three other couples that
15 leaves on July 20th.

16 THE COURT: I would ask for a stipulation that the trial
17 will be done by then, but there is no guarantees.

18 MR. BASILE: We'll stipulate to the trial being over by
19 July 20th.

20 THE COURT: With scheduling, I won't put that burden on
21 you, Mr. Basile, but thank you.

22 Okay. Same deal as everyone else. We need you. We'll
23 just get you a different time.

24 PROSPECTIVE JUROR JESKE: October 3rd would be great.

25 THE COURT: A full five-day week.

26 PROSPECTIVE JUROR JESKE: Uh-huh.

27 THE COURT: Okay. So, Mr. Jeske, then you're ordered to
28 appear at the Larson Justice Center 8:00 a.m. on the second

1 floor of the jury room, 8:00 a.m.

2 Was this postponed?

3 PROSPECTIVE JUROR JESKE: It was.

4 THE COURT: So if you don't use it, they won't postpone
5 it for another year.

6 PROSPECTIVE JUROR JESKE: I don't think so.

7 THE COURT: Thank you.

8 Good morning.

9 Mayra Alcaraz-Lopez?

10 PROSPECTIVE JUROR ALCARAZ-LOPEZ: Alcaraz.

11 THE COURT: Oh, okay. There it.

12 THE CLERK: There it is.

13 PROSPECTIVE JUROR ALCARAZ-LOPEZ: I will have some issue.

14 THE COURT: Let's hear it.

15 PROSPECTIVE JUROR ALCARAZ-LOPEZ: So I only started
16 working at a new job in Palm Desert on July 5th. Being a new
17 worker, they're not going to pay for my jury duty.

18 THE COURT: Which employer is that?

19 PROSPECTIVE JUROR ALCARAZ-LOPEZ: Impression Design.

20 THE COURT: So it's a local business?

21 PROSPECTIVE JUROR ALCARAZ-LOPEZ: Yes.

22 THE COURT: You've already checked in for jury duty.

23 PROSPECTIVE JUROR ALCARAZ-LOPEZ: At least for now.

24 THE COURT: Did you mark that on your form yesterday?

25 PROSPECTIVE JUROR ALCARAZ-LOPEZ: No, because I didn't
26 expect -- there is my first time being in a jury. I didn't know
27 it was going to be long.

28 THE COURT: For future reference, that hardship form, you

1 need to put that on there.

2 Obviously, financial hardship is a big one. If you don't
3 work, you don't get paid. If you don't get paid, you can't pay
4 your bills. That's recognized and by code. We can go ahead and
5 excuse jurors. But if we excuse jurors because it's
6 inconvenient for them to be here, we just wouldn't be able to
7 find anyone to serve. We have to try to be fair to everyone.

8 If you don't work, will you get paid?

9 PROSPECTIVE JUROR ALCARAZ-LOPEZ: I'm assuming it's going
10 to be a no.

11 THE COURT: If you don't show up to work, you don't get
12 paid?

13 PROSPECTIVE JUROR ALCARAZ-LOPEZ: Yeah.

14 THE COURT: If you don't get paid, will you be able to
15 pay your bills?

16 PROSPECTIVE JUROR ALCARAZ-LOPEZ: I kind of need to get
17 paid.

18 THE COURT: Will you be able to pay your bills?

19 PROSPECTIVE JUROR ALCARAZ-LOPEZ: No.

20 THE COURT: Same offer as everyone else. Pick a Monday.

21 PROSPECTIVE JUROR ALCARAZ-LOPEZ: October 3rd.

22 THE COURT: Great. Okay.

23 Ms. Alcaraz, Indio, not here. Indio, Larson Center,
24 Monday, October 3rd, 8:00 a.m.

25 You don't have to call in or anything the day before.
26 Just be there 8:00 a.m. that morning for jury service.

27 PROSPECTIVE JUROR ALCARAZ-LOPEZ: Okay.

28 THE COURT: Okay. We will address it in a moment, sir.

1 Next juror, please.

2 THE CLERK: Michael Goldstein, G-O-L-D-S-T-E-I-N.

3 THE COURT: Good morning. Michael Alan Goldstein?

4 PROSPECTIVE JUROR GOLDSTEIN: That's me.

5 THE COURT: I looked up for a moment. There is a local
6 attorney Michael Goldstein.

7 PROSPECTIVE JUROR GOLDSTEIN: I know. I get confused for
8 him all the time.

9 THE COURT: Very nice gentleman.

10 Anyways, welcome.

11 Are you ready to proceed with the questions?

12 PROSPECTIVE JUROR GOLDSTEIN: I am.

13 THE COURT: Great.

14 PROSPECTIVE JUROR GOLDSTEIN: I live in Palm Springs.
15 I'm retired.

16 I was in the wholesale meat business.

17 I live alone, no children.

18 I'm not served on a jury.

19 Let's see. Some college.

20 Have many friends in the legal system.

21 I've been in a civil suit.

22 And I had a family member that was in litigation against
23 Mitsubishi. I know other people who have been in civil suits.

24 And my experience in the Court system in my own civil
25 suit, I have a bias.

26 THE COURT: Okay. Anything about this personal
27 experience -- you mentioned this bias -- that would cause you to
28 not be able to be fair in this case?

1 PROSPECTIVE JUROR GOLDSTEIN: Fair by my terms.

2 What that means is I had cause to sue a tenant who broke
3 a commercial lease, and they not only made up something to sue
4 me but they lied about absolutely everything, so that if I was
5 to believe, especially, the attorneys that one of them was
6 lying, I would have a very hard time taking any other direction
7 other than believing that they were lying.

8 I had a pretty tough experience with that.

9 THE COURT: Well, there is a jury instruction on witness
10 credibility. It gives you a list of factors that you can take
11 into consideration in determining whether you're going to
12 believe all, part or none of their testimony.

13 Does that sound like an instruction you think you would
14 be able to follow?

15 PROSPECTIVE JUROR GOLDSTEIN: All, part or none of their
16 testimony.

17 THE COURT: Essentially it's telling you how to assess
18 witness credibility, whether it's something credible or not.

19 PROSPECTIVE JUROR GOLDSTEIN: It wouldn't be witness
20 credibility. It would be attorney credibility, too.

21 My experience with all of the litigation is that there is
22 a lot of it. I didn't do it when I did do it.

23 THE COURT: Well, that's why we need jurors, to help
24 settle those disputes.

25 So if you think you could be fair to both sides?

26 PROSPECTIVE JUROR GOLDSTEIN: Possibly. Possibly, not.

27 THE COURT: We'll let the attorneys flesh that out a
28 little bit more.

1 You mentioned family members -- I'm sorry. When I'm
2 looking at the screen, I'm reading the transcript here.

3 Family member had a lawsuit against Mitsubishi.

4 PROSPECTIVE JUROR GOLDSTEIN: Yes.

5 THE COURT: Was that in an automotive context, something
6 different?

7 PROSPECTIVE JUROR GOLDSTEIN: Mitsubishi bought their
8 company and they had cause to litigate.

9 THE COURT: And so question number 10, unknown whether
10 you could be fair judge of the facts in this case; fair to say?

11 PROSPECTIVE JUROR GOLDSTEIN: No.

12 THE COURT: Thank you, Mr. Goldstein.

13 Juror Number ten, Ms. Aguilar, yes?

14 PROSPECTIVE JUROR AGUILAR: So on the form I did check
15 three to five days and I did answer wasn't sure how many days
16 would be paid for. I spoke with HR yesterday and I will get
17 paid up until July 8th because that's when my route ends, but
18 anything after July 8th I will not be getting paid and I cannot
19 accept summer work. That's -- I can't do that.

20 THE COURT: All right. So you work for the school
21 district, right?

22 PROSPECTIVE JUROR AGUILAR: Yes.

23 THE COURT: So your route ends on July 8th.

24 What were you planning on doing after that?

25 PROSPECTIVE JUROR AGUILAR: Getting summer work which
26 they call us.

27 Basically, I'm on call. I did apply for unemployment I'm
28 waiting for a phone call from them, and I'm waiting for a call

1 from the district to accept work from them to work throughout
2 the summer.

3 If I am here, I can't work. And if I'm not working
4 there, I won't get paid.

5 THE COURT: That takes you up through July 8th. Then
6 unemployment will kick in?

7 PROSPECTIVE JUROR AGUILAR: That's the plan.

8 THE COURT: But then if you get called --

9 PROSPECTIVE JUROR AGUILAR: I want to work. I don't want
10 to be on unemployment.

11 THE COURT: Of course.

12 Coachella Valley Unified starts in August?

13 PROSPECTIVE JUROR AGUILAR: I believe so. I believe it's
14 the week of August 9th we go back.

15 THE COURT: Okay. Thank you, Ms. Aguilar.

16 There was someone else, Ms. Hernandez?

17 PROSPECTIVE JUROR HERNANDEZ: Yes. I did confer with my
18 HR as well yesterday afternoon. I was told that I will only be
19 covered five days. Today is the second day, so they will only
20 cover me three days out of this trial.

21 Like I mentioned, I do live with my parents. I do pay
22 for half of our living costs, so not being able to get paid for
23 the remainder of this trial will provide a personal hardship for
24 us, especially in this economy.

25 THE COURT: Understood.

26 You heard me mention this yesterday. It has to be a
27 hardship to you.

28 Any time you miss work, it goes without saying it's a

1 hardship to your employer. You hear that all the time from
2 medical professionals, doctors. If they're not there, then
3 their patients have to move their appointments. Again, we
4 wouldn't be able to have anyone.

5 In your case, from what we have yesterday you live with
6 your parents.

7 PROSPECTIVE JUROR HERNANDEZ: Yes.

8 THE COURT: You're saying now that your parents have you
9 pay rent?

10 PROSPECTIVE JUROR HERNANDEZ: Yes, I am paying rent. I
11 am the only one living with there. They're a limited income of
12 what they can do.

13 THE COURT: And you have your own bills?

14 PROSPECTIVE JUROR HERNANDEZ: I do.

15 THE COURT: For your vehicle?

16 PROSPECTIVE JUROR HERNANDEZ: Exactly. I work in Palm
17 Springs because it's the only place I could find work. I
18 wouldn't come to Palm Springs if I didn't have work.

19 THE COURT: You live in Indio and you have to drive to
20 Palm Springs and you have to put gas in your car, and if you
21 don't work, you can't pay your bills.

22 PROSPECTIVE JUROR HERNANDEZ: Exactly.

23 THE COURT: Pick a date on the board. Clerk.

24 PROSPECTIVE JUROR HERNANDEZ: I'd say September 26th.

25 THE COURT: September 26th?

26 PROSPECTIVE JUROR HERNANDEZ: Yes.

27 THE COURT: Okay. You are ordered to appear in Indio,
28 Larson Justice Center, 8:00 a.m. that morning, September 26th.

1 Thank you, Ms. Hernandez.

2 Ms. Aguilar?

3 PROSPECTIVE JUROR AGUILAR: I did confer with my employer
4 yesterday. In fact I don't get any paid any days. Even if I
5 was off my 90-day probationary period, I don't get paid at all.

6 That will be especially if I'm just getting three days a
7 week of work. That is going to limit my income. And I do have
8 my car payments and I do help with rent, so, yeah, it's going to
9 be a situation where I don't get paid at all.

10 THE COURT: And you also live at home with your parents?

11 PROSPECTIVE JUROR AGUILERA: Yes.

12 THE COURT: Do you have to pay rent to your parents as
13 well?

14 PROSPECTIVE JUROR AGUILERA: I help them.

15 THE COURT: Do you pay for your vehicle?

16 PROSPECTIVE JUROR AGUILERA: Yes, I do.

17 THE COURT: You pay for your gas?

18 PROSPECTIVE JUROR AGUILERA: Yes, I do.

19 THE COURT: You pay for your cellphone.

20 PROSPECTIVE JUROR AGUILERA: Yes, I do.

21 THE COURT: If you miss a couple days of work, you won't
22 be able to pay your bills?

23 PROSPECTIVE JUROR AGUILERA: It's going to be hard.

24 THE COURT: Anyone else?

25 Ms. Aguilera, just so everyone is aware, the people
26 remaining, I haven't done it here, but I do recall other
27 courts -- I've seen other courts do it.

28 You will get the reason that we have juries and that

1 people have gone to war over it, individuals have sacrificed
2 their life, all of that. Asking for a continuance or to
3 postpone duty from those judges is like moving a mountain, so
4 there is no guarantee that you won't run into one of those in
5 September, or whatever date you're going to pick. Keep that in
6 mind.

7 Moving to another date may result in a more inconvenient
8 situation than what we have here in the middle of summer, so
9 please keep that in mind.

10 Yes, Ms. Aguilera, pick your date.

11 PROSPECTIVE JUROR AGUILERA: I'm going to say -- I'd say
12 August 8th.

13 THE COURT: August 8th. Okay.

14 Monday, August 8th, that Monday morning, 8:00 a.m.
15 Indio, Larson on Center, second floor, please.

16 Thank you, Ms. Aguilera.

17 THE CLERK: Juror Number 12, your Honor.

18 THE COURT: Juror Number 12, yes.

19 All right. Ms. Allen, what did you not tell us about 30
20 minutes ago?

21 PROSPECTIVE JUROR ALLEN: Oh, well, I think I put on my
22 form that my work will pay me for a week, and I haven't been
23 able to get through to -- I mean, that's like what my bosses
24 told me, and I haven't been able to get through to whoever I
25 could talk to in the company, like a main office, to see if --
26 to get nay more details if they would pay me any longer.

27 So at this point I really don't know.

28 THE COURT: That is with the floral shop?

1 PROSPECTIVE JUROR ALLEN: Yes. It's floral in a grocery
2 store.

3 THE COURT: Okay. Sometimes criminal cases go for two
4 months, so go ahead. Pick your date on the board. One moment.
5 You'll be driving to Indio. Keep that in mind.

6 PROSPECTIVE JUROR ALLEN: Well, you know, I think it's
7 probably better to take my chances and stay here, you know,
8 especially given gas prices and everything.

9 THE COURT: Again, we're -- thank you, Ms. Allen.
10 We're in session Monday through Wednesday, so that still
11 leaves Thursday, Friday, full days, Saturday, Sunday,
12 potentially. I'm not sure of your employer's hours. I
13 appreciate that. For you it seems like it's a much quicker
14 commute here than going to Indio.

15 PROSPECTIVE JUROR ALLEN: Yeah.

16 THE COURT: Okay.

17 PROSPECTIVE JUROR ALLEN: Okay. I just am feeling a
18 little anxious, but anyway.

19 THE COURT: You're making us feel anxious.

20 PROSPECTIVE JUROR ALLEN: I'll choose to stay here.

21 THE COURT: Thank you for that, Ms. Allen. We appreciate
22 that.

23 Okay. We're going to seat someone in juror seat
24 number 8.

25 THE CLERK: Juror 8 will be Peter Mortimer,
26 M-O-R-T-I-M-E-R.

27 THE COURT: You can go around this way.

28 Thank you, Mr. Mortimer.

1 Seat number 12, please?

2 THE CLERK: Jeffrey Pratt, P-R-A-T-T.

3 THE COURT: Peter Mortimer.

4 PROSPECTIVE JUROR MORTIMER: Full name is Peter Augustus
5 Mortimer. I live in Desert Hot Springs. I was a pharmacy
6 technician but I currently unemployed. Live with my mom and
7 dad. I have no children.

8 I have not served on a jury before.

9 My highest level of formal education is a bachelor's
10 degree in criminology.

11 I do have a lot of close -- I do have a lot of relatives
12 who have connections with the legal system, including many aunts
13 and uncles -- sorry, uncles.

14 No, I've never had any connections to lawsuits.

15 And, yes, I think I could serve as a fair judge on this
16 case.

17 THE COURT: Thank you, Mr. Mortimer.

18 PROSPECTIVE JUROR MORTIMER: Thank you.

19 THE COURT: A pharmacy technician, not working right now?

20 PROSPECTIVE JUROR MORTIMER: No.

21 THE COURT: I might have missed it. You said mom and
22 dad. What are their occupations?

23 PROSPECTIVE JUROR MORTIMER: My dad is a retired aircraft
24 mechanic and my mother works in medical education.

25 THE COURT: Retired aircraft mechanic. And your mom?

26 PROSPECTIVE JUROR MORTIMER: She works in medical
27 education.

28 THE COURT: Specifically what kind medical education?

1 PROSPECTIVE JUROR MORTIMER: She works with doctors
2 and --

3 THE COURT: Does she work for university?

4 PROSPECTIVE JUROR MORTIMER: Kind of goes through
5 universities, but it's mainly through -- it's at Eisenhower, so
6 she kind of works and manages doctors, that kind of thing.

7 THE COURT: Thank you, Mr. Mortimer.

8 Bachelor's in criminology.

9 Oh, you mentioned that you did know individuals in the
10 court system.

11 PROSPECTIVE JUROR MORTIMER: Yes. I'm actually a direct
12 descendent of John Jay so I have uncles -- several uncles who
13 are involved -- who are lawyers. I have another uncle, a
14 different side of the family, who is in -- who is actually a
15 different type of lawyer, but he also has practiced law. Sorry,
16 not uncle. I've had cousins from that uncle. His sons work in
17 corporate law.

18 THE COURT: Okay. Thank you, Mr. Mortimer.

19 So there haven't been any discussions at family reunions,
20 family gatherings, anything that would lead you to think you
21 couldn't be a fair judge in this case?

22 PROSPECTIVE JUROR MORTIMER: Well, I'm still considering
23 becoming a lawyer myself. That is what I really want to do. I
24 know a lot about -- well, I think I could be a fair judge in
25 this case.

26 I have heard some stuff, but I really don't know too
27 much.

28 THE COURT: This would be a great experience for you and

1 we appreciate it. Thank you, Mr. Mortimer.

2 PROSPECTIVE JUROR MORTIMER: Thank you.

3 THE COURT: Next we have Jeffrey Pratt.

4 PROSPECTIVE JUROR PRATT: Good morning. I live in Palm
5 Springs. I am a bank examiner with Federal Reserve Bank of San
6 Francisco. I focus on anti-money laundering.

7 I live with my partner. He is an architect. No
8 children.

9 I have served on a jury. It was in 1992. It was one day
10 and we came to a conclusion. It was traffic-related, if I
11 recall.

12 I have a master's degree in history.

13 I do not have any close friends with connections to the
14 Court or legal system.

15 I own a condominium in San Francisco and there was a
16 lawsuit against the builder. I had really no involvement in it,
17 and I do think I could be a fair judge.

18 THE COURT: Thank you.

19 Is it that -- I can't remember the tower. It is the one
20 that's starting to lean?

21 PROSPECTIVE JUROR PRATT: Millennium Tower.

22 THE COURT: I know there has been some press on that one.
23 Very interesting profession.

24 I'm sorry. Let me go back to number 10. You do think
25 you could be a fair judge?

26 PROSPECTIVE JUROR PRATT: I do.

27 THE COURT: Thank you, Mr. Pratt.

28 Mr. Basile.

1 MR. BASILE: Can I inquire about Ms. Aguilar?

2 THE COURT: In terms of financial hardship based on what
3 the Court has right now, the Court does not find a financial
4 hardship.

5 MR. BASILE: I just wanted to find out.

6 Good morning, folks. I'll try to be quick, but there was
7 a lot of lot there that jumped out at me.

8 Let's go with Ms. Leskoviansky. You said how you're
9 looking to serve. I'm kind of going to address this to
10 everybody and try to do it quickly. Ms. Weiser and you guys
11 mentioned about juries and willing to serve and the judge
12 mentioned about people have died to have a jury. Did you know
13 that?

14 PROSPECTIVE JUROR LESKOVIANSKY: Uh-huh.

15 MR. BASILE: People have fought and died over jury
16 trials, so I want to thank you. I really appreciate that you're
17 willing to serve.

18 Ms. Weiser, am I saying that right? Is it okay,
19 Ms. Weiser?

20 PROSPECTIVE JUROR WEISER: Yes.

21 MR. BASILE: I detected an accent there.

22 PROSPECTIVE JUROR WEISER: Israel.

23 MR. BASILE: And you served on a civil jury?

24 PROSPECTIVE JUROR WEISER: Nothing here. In Van Nuys
25 Court, L.A. County.

26 MR. BASILE: So coming from Israel, another country, and
27 having experience firsthand our civil justice system, how is
28 your experience? How do you feel about our civil justice

1 system?

2 PROSPECTIVE JUROR WEISER: I never lost my accent, but
3 I've been here most of my life. I don't -- I'm not sure of the
4 system over there. I grew up basically -- I've been here for
5 many years.

6 MR. BASILE: You had experience here in a civil case,
7 right?

8 PROSPECTIVE JUROR WEISER: It was a civil case, but it
9 wasn't like that. It's not the same.

10 MR. BASILE: It wasn't a wrongful death case?

11 PROSPECTIVE JUROR WEISER: No, not a wrongful death. No
12 one died. It was a car accident.

13 MR. BASILE: And you reached a verdict?

14 PROSPECTIVE JUROR WEISER: We did reach a verdict.

15 MR. BASILE: And your service was satisfying for you?

16 PROSPECTIVE JUROR WEISER: Yes.

17 MR. BASILE: Did it make you believe strongly in a jury
18 system?

19 PROSPECTIVE JUROR WEISER: Absolutely.

20 MR. BASILE: And you feel the same way?

21 PROSPECTIVE JUROR LESKOVIANSKY: Uh-huh.

22 MR. BASILE: Thank you. That's why you're here.

23 Ms. Allen, you mentioned that hearing what you could hear
24 yesterday that it was confusing and complex and all that.

25 I wanted to share with you I understand that. Because
26 when we began this case, it was confusing, complex, and you're
27 going to learn a lot about why these people are here on that
28 once I do opening statement today for sure.

1 So do you have any preconceived notion on which side you
2 would lean or can you wait until you hear exactly why they're
3 here somewhat, do you think?

4 PROSPECTIVE JUROR ALLEN: Well, I'm trying not to.

5 MR. BASILE: Which way do you lean? Do you lean towards
6 one side or the other?

7 PROSPECTIVE JUROR ALLEN: Again, I'm trying not to. At
8 this point, to be totally candid, I'm tending to lean towards
9 the plaintiff's side, but, like, I'm trying to wait until I hear
10 more details.

11 MR. BASILE: Right. And you know, it's all right to feel
12 that way now. The test is even if you feel you're leaning one
13 way or another right now, the test that his Honor has mentioned
14 is do you think that would get in the way? Can you still follow
15 the law and listen to the evidence in deciding? Because that's
16 what we want everyone to do.

17 PROSPECTIVE JUROR ALLEN: You know, I'm doing my best to
18 stay objective.

19 MR. BASILE: Do you think you can? Flat out question.
20 If you say no, you can't, that's what we want to hear. If you
21 say yes, you can, I know I'm asking a black and white answer,
22 yes or no, here, but that's kind of what we have to hear. Yes,
23 I can wait and listen to the evidence and the law or I have such
24 preconceived feelings for one side -- you mentioned our side --
25 and I want to start out at a level playing field.

26 If it's all right with me, if you say you --

27 PROSPECTIVE JUROR ALLEN: Right, I understand that.

28 You know, I honestly don't know. I don't know.

1 MR. BASILE: Okay. All right.

2 PROSPECTIVE JUROR ALLEN: You know, I've already been
3 struggling with it back and forth and I don't know. I guess I
4 will try to wait and hear more.

5 MR. BASILE: Okay. That's great. That's what I wanted
6 to hear.

7 When you were saying I just don't know, if you could
8 complete that. I just don't know that I could be fair or I just
9 don't know how I'm feeling right now. I can put that aside.

10 PROSPECTIVE JUROR ALLEN: I can't swear that I can be
11 fair.

12 MR. BASILE: That's good enough. That's good enough.
13 We'll leave it at that. Thank you.

14 I'm interested in talking a bit with you, Mr. Mortimer.

15 PROSPECTIVE JUROR MORTIMER: Thank you.

16 MR. BASILE: You seem to have a keen interest in law.
17 And you got that from your family, I guess?

18 PROSPECTIVE JUROR MORTIMER: I've always been kind of
19 interested in it. I kind of got interested in it a little bit
20 later, but I do have family -- one of my uncle's sons is a
21 corporate lawyer, and I also have various family members on my
22 dad's side who are actually his uncles.

23 I'm pretty sure that some of my cousins might be involved
24 in just legal aspects, but I do have sides of the family who are
25 lawyers, yes.

26 MR. BASILE: You mentioned one was a corporate lawyer.

27 PROSPECTIVE JUROR MORTIMER: Yes.

28 MR. BASILE: How about the other ones. Do you know what

1 they do?

2 PROSPECTIVE JUROR MORTIMER: I don't know what kind of
3 law they practice, but it has something to do with maybe
4 contracts.

5 MR. BASILE: Well, in this case, as you see, there are
6 lawyers representing a corporation. So what do you think
7 about -- cases are presented through lawyers. Lawyers speak for
8 their clients. They do, for the people they represent. How do
9 you feel about judging corporate conduct?

10 That's what we're about in this case, judging corporate
11 conduct. When you have corporate lawyers and a family who are
12 corporate lawyers and this case, how do you think about that?

13 PROSPECTIVE JUROR MORTIMER: I think I would need to have
14 more information than what I currently have to make a decision
15 on the case itself. That's kind of what I'm thinking about
16 right now.

17 MR. BASILE: Well, that's understandable.

18 Here's the tough position I'm in. This is the only time
19 we get to talk to people. When you say I need more information,
20 before I can determine that, if more information comes back,
21 it's too late to raise your hand and say, hey, hearing what I
22 heard, you know, I can't do this.

23 So how do you feel now?

24 PROSPECTIVE JUROR MORTIMER: I feel pretty much the same.

25 MR. BASILE: You could be fair and straight with it?

26 PROSPECTIVE JUROR MORTIMER: Yes. Yes.

27 MR. BASILE: Okay. Now, there's another --

28 PROSPECTIVE JUROR MORTIMER: You mean, like -- do you

1 mean do I think eventually I could judge this case fairly?

2 MR. BASILE: No. When you're saying I'd have to wait and
3 see, I was wondering what you would have to wait and see.

4 PROSPECTIVE JUROR MORTIMER: Just more about the case,
5 more evidence.

6 MR. BASILE: Good, great.

7 One more things about lawyers and then we'll get off it.
8 Have you thought about being a trial lawyer, doing this type of
9 work?

10 PROSPECTIVE JUROR MORTIMER: I really have not, no.

11 MR. BASILE: Okay. Have you given any thought about
12 representing people versus representing corporations yet?

13 PROSPECTIVE JUROR MORTIMER: I would kind of -- I think I
14 would kind of go towards more people if I decide to do it.

15 MR. BASILE: Okay. Thank you. Thank you.

16 PROSPECTIVE JUROR MORTIMER: Thanks.

17 MR. BASILE: Some general questions for you guys that I
18 have.

19 I know you all were here yesterday and we talked a lot
20 about safety training and things like that.

21 Do you remember that, Mr. Esparza?

22 PROSPECTIVE JUROR ESPARZA: Yes.

23 MR. BASILE: Remember I was talking about all that safety
24 stuff?

25 PROSPECTIVE JUROR ESPARZA: Yes.

26 MR. BASILE: Any thoughts about training and safety,
27 safety training, safety systems?

28 I know you work -- is it for a school?

1 PROSPECTIVE JUROR ESPARZA: For a dealership.
2 MR. BASILE: For a dealership.
3 Have you been involved in any safety training?
4 PROSPECTIVE JUROR ESPARZA: Yeah. We go through KPA.
5 It's like -- it's just like -- we go through training. You
6 know, like we have to know the chemicals. We have to, you know,
7 I'm trying to think of it. For sexual harassment, you know.
8 It's like a --
9 MR. BASILE: General, broad?
10 PROSPECTIVE JUROR ESPARZA: Yeah.
11 MR. BASILE: You said you were at a dealership?
12 PROSPECTIVE JUROR ESPARZA: Yes.
13 MR. BASILE: And I can't think of -- I don't know. I've
14 had friends in the car dealership.
15 There are no dangerous areas. You're not working with
16 lifts, hydraulic lifts?
17 PROSPECTIVE JUROR ESPARZA: No, we're not. I work with a
18 mop mostly, custodian.
19 MR. BASILE: You smile when you say that. You enjoy your
20 work?
21 PROSPECTIVE JUROR ESPARZA: Yes.
22 MR. BASILE: That's what I did at my dad's bar, I carried
23 a mop around.
24 Okay. Anyone else have experience with the safety
25 system, the new people that are up here?
26 Mr. Pratt?
27 PROSPECTIVE JUROR PRATT: No.
28 MR. BASILE: Anyone else?

1 Yes, Mr. Mortimer and Mr. Epstine, right?

2 Since I talked to you, I'm going to ask you to hold that
3 thought. Make sure I come back to you.

4 Yes, sir.

5 PROSPECTIVE JUROR EPSTINE: You know, I'm a nurse, so at
6 the hospitals and the facilities I worked in, we do safety
7 training every year, actually.

8 MR. BASILE: What is the most important part that's
9 covered in that?

10 PROSPECTIVE JUROR EPSTINE: Of the safety training?

11 MR. BASILE: Yes.

12 PROSPECTIVE JUROR EPSTINE: It would depend on the
13 facility.

14 When I worked at San Francisco General, it was -- I
15 worked on the AIDS oncology unit, so a lot was chem spills and
16 how to clean them up and CPR and also patient safety.

17 We had -- 75 percent of the population was alcohol or
18 drug addicted, so we had to watch out for their safety.

19 MR. BASILE: Was it a treatment center?

20 PROSPECTIVE JUROR EPSTINE: No, a hospital.

21 MR. BASILE: It still had 75 percent?

22 PROSPECTIVE JUROR EPSTINE: Yes.

23 MR. BASILE: You're retired from that?

24 PROSPECTIVE JUROR EPSTINE: I do a few home visits a
25 week, but that's it.

26 MR. BASILE: You're okay with judging corporate conduct
27 and a safety system for what little we talked about in this
28 case?

1 PROSPECTIVE JUROR EPSTINE: Yeah. I would try to be fair
2 about it.

3 I was in a situation where in a facility I worked at one
4 of the patients suicided and it was explained to me that that
5 company was an LLC and that there was like this branch of all
6 the other companies that owned it, so the people in that branch
7 wouldn't be liable.

8 But it was kind of shameful because a person suicide had
9 on our watch. I wasn't there but, you know, I worked there. So
10 I just found it odd that the company that owned them was, oh, we
11 weren't there. We had nothing to do with that, but yet they
12 took the money that we gave them.

13 MR. BASILE: Who took the money?

14 PROSPECTIVE JUROR EPSTINE: In other words, the profits
15 that that company generated went to the corporate office but
16 their attitude was we're separate. They are their own entity
17 and we're something else.

18 MR. BASILE: I see. So do you feel that when a
19 corporation is benefiting from an enterprise that they should
20 have some responsibility?

21 PROSPECTIVE JUROR EPSTINE: Yes. I feel that in that
22 situation they made money off of that person's misfortune, that
23 they were drug-addicted. And the money that the company -- the
24 little LLC that I worked into, went up the chain. So, yeah,
25 they were happy to take the money when things were going well.
26 So when things didn't go well, then the money should have gone
27 down.

28 MR. BASILE: I'm sorry you had that experience.

1 Do any of you, anybody else, feel that way, that when a
2 corporation is benefiting from an operation, that they should
3 share some responsibility?

4 Well let me put it this way. Anybody feel any
5 differently?

6 Okay. I don't have any hands.

7 Thank you for that. It's very important. Thank you.

8 Mr. Mortimer?

9 PROSPECTIVE JUROR MORTIMER: I'm not sure -- was that
10 question about safety, about the general thing -- has there ever
11 been a lawsuit with a safety system or just general experience
12 with safety systems.

13 I worked in a wine store and I operated a lift that made
14 me go in the air and put the wine on the top of the thing. We
15 had a big safety thing. Yes, it was very important to operate
16 it in a safe manner to make sure, you know, nothing happened.

17 I think there were a couple cases of people getting
18 injured on the lift. I'm not sure if it had ever -- I'm not
19 sure if there was ever any lawsuits, but I have had experience
20 hearing that.

21 MR. BASILE: That brings up a good point.

22 Can businesses that are operating where there is a
23 danger, do you think they can do things to make sure their
24 employees don't make mistakes or don't cause problems?

25 PROSPECTIVE JUROR MORTIMER: Yes. I think they should
26 provide good training, whether it be through, you know, modules
27 or, you know, hands-on or whatever type of training that you
28 provide, especially if it's corporate, you know, especially if

1 it's a company. They should definitely do it right, you know,
2 and do exactly, be explicit what they do.

3 MR. BASILE: Thank you.

4 Anybody feel any different than about that than
5 Mr. Mortimer?

6 Mr. Esparza -- Ms. Souza, how are you feeling with that?
7 How are you feeling with what was just said, that companies
8 should if it's a dangerous workplace tell me I'm wrong,
9 Mr. Mortimer, companies should train employees to make sure
10 employees don't make mistakes?

11 PROSPECTIVE JUROR SOUZA: Of course.

12 MR. BASILE: You're an accountant now, right?

13 PROSPECTIVE JUROR SOUZA: Uh-huh.

14 MR. BASILE: I would really get in trouble if I asked you
15 if this is a financial hardship for you, so I won't ask that.

16 Let me ask this to everyone here. Has anyone lost a
17 loved one. Anyone here who has lost a loved one?

18 I see Mr. Epstine.

19 PROSPECTIVE JUROR SOUZA: No, but I just found out
20 yesterday we're moving him to hospice, so that will be soon,
21 very soon.

22 MR. BASILE: I take it you're close to your dad?

23 PROSPECTIVE JUROR SOUZA: (Nodding.)

24 MR. BASILE: As these will probably be special times, I
25 hope, for you.

26 PROSPECTIVE JUROR SOUZA: He lives in Michigan, but we're
27 keeping in touch, FaceTime.

28 MR. BASILE: Another person in Michigan.

1 PROSPECTIVE JUROR SOUZA: Yes.

2 MR. BASILE: I hope all the best with that.

3 PROSPECTIVE JUROR SOUZA: Thank you.

4 MR. BASILE: The jury's task if you find this corporation
5 responsible is to put a value on those two relationships between
6 a wife and husband for 32 years. You've all heard me talk about
7 that yesterday and a father and son for 32 years and you being
8 an accountant. How would that come into play at all for you in
9 calculating like the loss of 32 years?

10 I know there is this concept of inflation. Like, you
11 know, a million dollars, especially now. A million dollars 30
12 years from now is probably going to be like -- what would you
13 guess?

14 PROSPECTIVE JUROR WEISER: A hundred dollars.

15 MR. BASILE: A hundred dollars. I'm glad I'm almost 70.

16 You know, on a serious note, how do you -- some people
17 feel that when someone -- it's a wrongful death. When there is
18 a wrongful death, what's the use of coming to court? You can't
19 bring them back. Some people feel that way.

20 Others feel, well, the only thing the law allows for
21 justice is money, so they should.

22 Which way do you folks -- to cut to the chase, do you
23 feel all right about coming to ask for money for a death? Does
24 anyone have any problems with that, Mr. Esparza?

25 That's all I can come in here and ask for.

26 PROSPECTIVE JUROR ESPARZA: Well, that's the law. That
27 money part is, yeah. You should get money for -- my nephew, he
28 was murdered like last year and that's, you know, they found the

1 culprit, but they all got jail time and --

2 MR. BASILE: That wasn't enough, was it?

3 PROSPECTIVE JUROR ESPARZA: No. My sister still goes to
4 the grieving process.

5 MR. BASILE: When did that happen? Just pretty recently?

6 PROSPECTIVE JUROR ESPARZA: Yeah, a couple years ago. It
7 happened in Hemet.

8 MR. BASILE: It was your nephew?

9 PROSPECTIVE JUROR ESPARZA: Yeah.

10 MR. BASILE: How old was he?

11 PROSPECTIVE JUROR ESPARZA: He was like 24, maybe.

12 MR. BASILE: I never know what to say when someone says
13 that to me.

14 PROSPECTIVE JUROR ESPARZA: Yeah.

15 MR. BASILE: But I'm sorry. I'm sorry for your sister.

16 PROSPECTIVE JUROR ESPARZA: They just dumped him on the
17 side of the road.

18 MR. BASILE: So this isn't a criminal case, you know.

19 PROSPECTIVE JUROR ESPARZA: Yeah.

20 MR. BASILE: And --

21 PROSPECTIVE JUROR ESPARZA: It's a civil case.

22 MR. BASILE: Where I'm stuck is it's hard for me to
23 say -- I can't say the find the right word, but I want to say
24 I'm sorry that somebody couldn't have done more for you, for
25 your sister.

26 My struggle is, I mean, they get to bring a civil case
27 and seek justice, and your sister I'm sure isn't getting that
28 opportunity.

1 PROSPECTIVE JUROR ESPARZA: Yeah.

2 MR. BASILE: So are you going to be like not understand,
3 jeez, my sister didn't get to do this, I don't think anyone else
4 should?

5 PROSPECTIVE JUROR ESPARZA: Yeah.

6 MR. BASILE: Do you kind of feel that way?

7 PROSPECTIVE JUROR ESPARZA: Kind of.

8 MR. BASILE: Do you think it will make it hard for you to
9 be a juror in this case?

10 PROSPECTIVE JUROR ESPARZA: Kind of.

11 MR. BASILE: Do you think that it might be a better case
12 for you to serve as a juror than something involving a wrongful
13 death?

14 PROSPECTIVE JUROR ESPARZA: That's kind of different.

15 MR. BASILE: How so?

16 PROSPECTIVE JUROR ESPARZA: It's kind of -- I am kind of
17 for the working person, but it's going to be kind of -- I'm sure
18 I could do it fairly.

19 MR. BASILE: You're sure or you're not sure.

20 PROSPECTIVE JUROR ESPARZA: I'm sure I could do it
21 fairly.

22 MR. BASILE: Good. That's what I wanted too hear.
23 That's what I wanted to hear.

24 Now, let me ask you this, but I'm directing it to
25 everyone. I have some questions for you too, Mr. Goldstein.

26 You heard me talk about you have to judge both those
27 relationships separately, the value of 32 years taken from a
28 wife, 32 years taken from a son separately.

1 If you're in the jury room and you're discussing the
2 value of those, it's tens of millions of dollars. The jurors in
3 there are saying, oh, my God, I get it. I can see it's tens of
4 millions for each.

5 Would just the fact that it's a large number make you
6 hesitate from doing that? Because, I mean, your sister couldn't
7 do this. Would that make you hesitate if you heard this cases?

8 PROSPECTIVE JUROR ESPARZA: Kind of, yeah.

9 MR. BASILE: Because your sister couldn't?

10 PROSPECTIVE JUROR ESPARZA: Yeah.

11 MR. BASILE: I really understand that.

12 How about the rest of you folks that are up here now? If
13 you're in there and you hear who this man was -- you hear who
14 the relationship is, you hear what they went through and what it
15 is and it's, all right, I did it, it could be tens of millions
16 for each relationship, just the fact that it's that big a
17 number, would that cause you hesitation, anyone?

18 Mr. Goldstein? Would you hesitate? Just because of the
19 size of the number?

20 PROSPECTIVE JUROR GOLDSTEIN: Actually, the opposite.

21 I had such a terrible experience, a shockingly terrible
22 experience with the legal system that if I thought -- like, for
23 instance, in my case, the people were guilty of what they did.
24 It was clear. There was money at stake, but they made up a
25 bunch of shit, lied, and went through the whole thing to try to
26 get out of it.

27 We settled at the end and then they never paid me a dime.

28 But the point was that they just did all this, put me

1 through hell and cost me a lot of money to try to mitigate and
2 somehow try to get out of it.

3 So if I felt that Mitsubishi was lying and they were
4 doing that, that they just were liable and they were playing
5 some sort of game. As he mentioned a great word, he said
6 strategy. I wouldn't award tens of millions. I would award a
7 billion dollars.

8 Every one of those goofy things you hear about. I'd be
9 so pissed off based on my experience, that there wouldn't be
10 enough money to put people what I went through. There wouldn't
11 be enough money to put everyone through this instead of settling
12 it properly.

13 MR. BASILE: Two things there. I think you answered the
14 first one for sure. The size of the number wouldn't give you
15 any hesitation if the evidence showed it.

16 PROSPECTIVE JUROR GOLDSTEIN: That's correct.

17 MR. BASILE: The second thing is lawyers are officers of
18 the court. And we have a duty to be straight. If we're not,
19 the chips fall where they may. That's where I want to do in
20 this case.

21 You can wait, hear the evidence -- no matter what the
22 strategy or the lawyer says, you can look at the evidence and
23 make a determination whether someone is fudging, someone is
24 making stuff up, someone is twisting.

25 If it's not, like the judge, I think, mentioned,
26 evaluating evidence to someone else this morning, you can
27 totally disregard that and just go with the other side.

28 So I'll offer you this. This might be an opportunity for

1 you to see how it's supposed to work.

2 THE COURT: There is a third point, Mr. Basile. There is
3 a third point. Mitsubishi is not a named defendant in this
4 case.

5 MR. BASILE: That's right. Mitsubishi is not a named
6 defendant in this case. It's a subsidiary.

7 PROSPECTIVE JUROR GOLDSTEIN: That's okay. It's the same
8 difference.

9 THE COURT: There will be future instructions on that
10 point, who the parties are in the suit that you're being asked
11 to decide on here.

12 MR. BASILE: Do you think you can do that, just judge it
13 on the facts? I know you've all had life experiences.

14 PROSPECTIVE JUROR GOLDSTEIN: I think based on my
15 experience, if I felt that the same thing was happening here in
16 any way that happened to me, I wouldn't give a shit about
17 anything else. I'd be pissed about that thing. That would be
18 the thing.

19 MR. BASILE: It's all right to be --

20 PROSPECTIVE JUROR GOLDSTEIN: I really had a bad
21 experience.

22 MR. BASILE: For what it's worth, for being a lawyer for
23 40 years, I'm really sorry you had that experience. It dings
24 the whole profession.

25 PROSPECTIVE JUROR GOLDSTEIN: The crux of my experience
26 was the legal system didn't seem to care. Leading up to it --
27 they did the craziest things you could ever imagine. We did
28 discovery and they brought all kind of records that was the

1 equivalent of emptying a garbage can in there.

2 Then when we tried to get them they said, you can't, you
3 stole them from us in deposition so we don't actually have them
4 now.

5 The court didn't do anything about that. Then they sued
6 me in the cross-complaint for the equivalent of me being a
7 nine-foot tall -- the person with red hair. It was just making
8 stuff up that think one could see. It didn't matter.

9 So my experience is that if someone is trying to get out
10 of something that they are liable for and they're pulling some
11 kind of stuff, I would see red. That's all I would see. I
12 wouldn't care about any instruction or anything else.

13 MR. BASILE: It's only if the other side is lying, right?

14 PROSPECTIVE JUROR GOLDSTEIN: If they're lying, right.

15 MR. BASILE: That will be part of your job.

16 I do want a -- that's a tough call. I mean, most people
17 stand here and say, hey, Mr. Goldstein is great. How can you
18 let him go after all of that. I don't want that to cause
19 problems so I guess we'll wait and see.

20 I personally feel that I would like to have the
21 opportunity to increase your faith in the legal system, you
22 know? That's all about waiting to see.

23 Really, you said it's how you evaluate the evidence,
24 right?

25 PROSPECTIVE JUROR GOLDSTEIN: No. It depend on whether I
26 feel that the attorneys are telling the truth or not.

27 MR. BASILE: Well, that will be based on the evidence
28 because that's all we can argue. That's all we can present is

1 the evidence.

2 So you can wait and here the evidence, right? Then I'll
3 let the chips fall where they may if you can do that. If you
4 can't wait to hear the evidence, then I'll ask to excuse you,
5 but I'd like an opportunity for you to judge this case on the
6 facts. And my wish is you would leave at the end of this case
7 feeling a little bit better about our system of justice.

8 So do you think you can do that?

9 PROSPECTIVE JUROR GOLDSTEIN: I heard what you just said.
10 I hope you heard what I just said.

11 So do I think -- I can certainly listen until someone
12 said something that hit a button, and that would be that for me
13 if I felt they were playing games to try to get out of
14 something.

15 PROSPECTIVE JUROR AGUILAR: Can I be excused?
16 Unemployment is calling me. They have their appointment set.

17 THE COURT: We will all have to wait while you step
18 outside.

19 PROSPECTIVE JUROR AGUILAR: This is my income. If I get
20 denied, I don't have any.

21 MR. BASILE: Your Honor, I can pass for cause if you
22 wanted to take a recess.

23 THE COURT: Pass for cause.

24 And we'll return at 11:30.

25 Thank you. You have a recess. 11:30, if you would
26 please come back.

27 (Proceedings held out of the presence of the
28 prospective jurors as follows:)

1 THE COURT: Counsel, we'll resume at 11:30.

2 We are in recess.

3 (Recess.)

4 (Proceedings held out of the presence of the
5 prospective jurors as follows:)

6 THE COURT: Okay. We are we back on the record in
7 Collins versus DG Corp Incorporated.

8 We are outside the presence of prospective jurors with
9 the exception of Juror Number 10, Ms. Aguilar.

10 Ms. Aguilar, so it's not lost on the Court that you do
11 have -- there is some sacrifice being made here. However, as
12 you shared with us yesterday, you work for the school district.

13 This Court is well aware that the school district, water
14 district, Costco, there are a couple local employers that do pay
15 for jury duty. So it certainly lessens the financial impact,
16 but it seems like you have approximately a three-week window
17 from July 8th to I guess the beginning of August where they're
18 not willing to pay for your jury duty.

19 PROSPECTIVE JUROR AGUILAR: That is correct.

20 THE COURT: And instead you've already started the
21 application process for unemployment?

22 PROSPECTIVE JUROR AGUILAR: I started the application
23 process, yes.

24 THE COURT: So the way the Court understands it, that's
25 going to lessen the financial hardship which you could have
26 claimed on the hardship form that everyone filled out yesterday
27 morning.

28 So the Court has distinguished your situation from those

1 of the other prospective jurors. The others were young
2 college-age students living with their parents and assisting
3 with bills at home and they didn't have the benefit of, like you
4 do, having an employer that pays for jury duty.

5 PROSPECTIVE JUROR AGUILAR: I understand that.

6 When I put that I was available for the three to five,
7 those three to five days I'm still in summer school.

8 After summer school, I'm not going to get paid if I don't
9 do -- like, I'm on call. If I can't accept work, I can't get
10 paid for those days.

11 I don't have a problem serving. If I was in school and I
12 was getting paid for my work, that is sometimes six and a half
13 to eight hours. I would be okay with that. I don't have a
14 problem with that. If I'm not available with work, I can't get
15 work. I can't get any income.

16 My unemployment, I have to open a case one employment,
17 but this summer I'm going to be on time out for something that
18 happened like a few years ago. So basically if they approve me,
19 I'm still not going to get any income because it's a timeout
20 through unemployment, so I'm not getting any income.

21 I need to have that. I need to get approved so they can
22 put me on that time out.

23 That is why I'm saying even if I have no income in
24 unemployment, I still have to accept the summer work because I
25 need to work to get my income.

26 THE COURT: And we're asking you not to accept work
27 Monday through Wednesday for the next month.

28 PROSPECTIVE JUROR AGUILAR: So for summer work, how it

1 works with the district is they have -- they can call you and
2 say we have an assignment for, you know, five days, seven days,
3 12 days, two days, however many days it is. You have to show up
4 for every single day they have available. If you miss, they
5 give it to somebody else.

6 THE COURT: When does school start again?

7 PROSPECTIVE JUROR AGUILAR: I believe August 11th.

8 THE COURT: Okay. So what we're going to do, since you
9 start that time, I'll leave it up to you. You can either stay
10 here knowing what the variables are that we'll be in session
11 Monday through Wednesday and through July 29th or we'll go ahead
12 and order that you go to Indio courthouse on August 15th.

13 Once you start your season, your full-time employment
14 again, and that will cover however many weeks or days they give
15 you on a criminal case.

16 PROSPECTIVE JUROR AGUILAR: Can I choose a different
17 date, because that's the start of school.

18 THE COURT: That's when we're going to need jurors.

19 I'm giving you the option. You can either stay with us
20 or you can -- I'm asking when you start school again so the
21 financial part is no longer an issue. It's always going to be a
22 sacrifice to be here.

23 Do you want to make the sacrifice now or August 15th?

24 PROSPECTIVE JUROR AGUILAR: I would rather do it
25 August 15th. I can't afford to financially do it now.

26 THE COURT: I understand. Your concerns weren't lost on
27 the Court. That's why I wanted to bring you in.

28 PROSPECTIVE JUROR AGUILAR: I appreciate it. I was

1 feeling a little sad about it. The Court felt it wasn't a
2 financial burden, whatever words you used.

3 THE COURT: It a hardship.

4 PROSPECTIVE JUROR AGUILAR: Everybody has things to pay
5 for. It doesn't matter if you live with your parents or not.

6 THE COURT: Thank you, Ms. Aguilar, being here for the
7 last two days.

8 The Court will excuse you and order you to the Larson
9 Justice Center Monday the 15th, 8:00 a.m.

10 You don't have to call in the day before. They'll just
11 be expecting you that morning.

12 PROSPECTIVE JUROR AGUILAR: Thank you.

13 THE COURT: Thank you.

14 Have a nice day.

15 Counsel, I'm sorry for that. I know I didn't give you
16 any indication, but it was going to be a reoccurring issue. You
17 have a limited amount of peremptories. I didn't want to put
18 that on the parties.

19 MR. REID: Thank you, your Honor.

20 THE COURT: So it was getting there.

21 MR. SULLIVAN: Is the Court going to fill that spot with
22 somebody from the gallery or are they going to --

23 THE COURT: No. Since Mr. Basile has finished his voir
24 dire and it's Mr. Schumann and Mr. Reid's turn, once they
25 conclude their voir dire, we will go ahead and fill it with
26 Juror Number 13.

27 MR. BASILE: We kind of like screwed up this morning,
28 didn't we? When we lost people up here, we should have been

1 pulling up the first one from here. We called them from the
2 audience to go into the box as one of the 12. I don't have a
3 problem with it.

4 THE COURT: We hadn't started selection, so it's one of
5 those -- it's one of those things --

6 MR. SULLIVAN: Can I offer a suggestion that might allow
7 us to get a jury without running out of people this morning?

8 If we fill that spot right now, we have them go through
9 the questionnaire, have Mr. Basile ask only questions of that
10 new juror, which won't take more than a few minutes.

11 That way we have an extra person that is available as we
12 start figuring out the strikes and whatnot.

13 THE COURT: That's not going to be the most efficient use
14 of time, though. Let's go ahead and start exercising
15 peremptories after you're done.

16 MR. SULLIVAN: Okay.

17 THE COURT: Mr. Schumann, you'll be up next. It will
18 just be up to the six and Juror Number 9, Ms. Allen.

19 I'm sorry, Mr. Mortimer as well, 8 and 9.

20 Eight, 9, 12 and the ones in front.

21 MR. SCHUMANN: Could I ask that we deal with
22 Mr. Goldstein right now? He is clearly not fit for the job.

23 THE COURT: You don't want to rehabilitate him?

24 MR. SCHUMANN: There is no rehabilitating him, your
25 Honor. I'm sorry. He wants to punish my client. I wouldn't
26 give an --

27 THE COURT: Mr. Basile, do you have anything to add?

28 MR. BASILE: I did what I did. That's fine. No use

1 letting him sit around.

2 THE COURT: Both sides stipulate to make it easier?

3 MR. REID: Yes, your Honor.

4 MR. BASILE: Yes.

5 THE COURT: So we'll go ahead and excuse.

6 MR. BASILE: Then we'll have two empty seats.

7 Let's have Mr. Goldstein remain, but I won't direct any
8 questions to him.

9 If we excuse him in front of the other jurors, it will
10 just keep this avalanche coming. But Mr. Schumann will accept
11 your stipulation. He will be excused at the lunch break.

12 MR. SCHUMANN: Okay.

13 THE COURT: Thank you for bringing that up.

14 MR. SCHUMANN: Thank you.

15 THE COURT: Let's bring in the jurors. Thank you.

16 (Proceedings held in the presence of the prospective
17 jurors as follows:)

18 THE COURT: Everyone is back. We did address something
19 with Juror Number 10. We're back on the record.

20 Mr. Schumann?

21 MR. SCHUMANN: Thanks, your Honor.

22 THE COURT: Thank you.

23 MR. SCHUMANN: Thank you all for being here.

24 All the new jurors, I hope you understand that things
25 that have been discussed over the last two days are not
26 evidence. They are just discussions for us to find out who you
27 all are.

28 The evidence will be shown later, starting this

1 afternoon.

2 Mr. Esparza.

3 PROSPECTIVE JUROR ESPARZA: Yes.

4 MR. SCHUMANN: Have you already kind of prejudged my
5 client in this case, meaning do you already feel that my client
6 has done something wrong?

7 PROSPECTIVE JUROR ALLEN: Were you speaking to me?

8 MR. SCHUMANN: No, I'm sorry. Mr. Esparza.

9 THE COURT: Mr. Schumann, one moment.

10 MR. SCHUMANN: Did you hear my question?

11 PROSPECTIVE JUROR ESPARZA: Do --

12 MR. SCHUMANN: Do you feel that my client already did
13 something wrong without having heard the evidence?

14 PROSPECTIVE JUROR ESPARZA: No.

15 MR. SCHUMANN: Okay. You could wait to hear all the
16 evidence and then make a decision?

17 PROSPECTIVE JUROR ESPARZA: Yeah.

18 MR. SCHUMANN: Unfortunately, the murder that you
19 experienced, would that affect your ability to be an impartial
20 juror? Would you be able to set that aside?

21 PROSPECTIVE JUROR ESPARZA: I could set that aside.

22 MR. SCHUMANN: You indicated it was hard -- it might be
23 hard for you to be a juror in this case.

24 Can you expand to that a little bit?

25 PROSPECTIVE JUROR ESPARZA: It just -- I guess you could
26 say it's because of the murder. And that's all I got.

27 MR. SCHUMANN: Okay. What is it about the murder that
28 makes it maybe difficult for you to be on this jury?

1 PROSPECTIVE JUROR ESPARZA: Death.

2 MR. SCHUMANN: Okay. So dealing with death and dealing
3 with family members?

4 PROSPECTIVE JUROR ESPARZA: Yeah.

5 MR. SCHUMANN: Would that in some way maybe cause you to
6 not listen to the evidence or want to fight for someone? How do
7 you think this issue of death make it hard for you to be on this
8 jury? How does that affect the evidence and my client?

9 PROSPECTIVE JUROR ESPARZA: It would make it hard for me
10 to decide on it. You know, like you said, the evidence.

11 MR. SCHUMANN: You said it would be hard for you to
12 decide. I'm trying to understand exactly.

13 Does that mean you have a predisposition already or what
14 is it that you think would be hard?

15 Go ahead.

16 PROSPECTIVE JUROR ESPARZA: Probably the predisposition
17 you said. Like death.

18 MR. SCHUMANN: In your line of work, do you feel that the
19 employee, the person you're working with, your co-workers, that
20 they have a responsibility to you as well as you do to them?

21 PROSPECTIVE JUROR ESPARZA: Yes.

22 MR. SCHUMANN: And do you feel that your co-workers need
23 to follow the best safety practices that they can?

24 PROSPECTIVE JUROR ESPARZA: Yes.

25 MR. SCHUMANN: Do you think it's okay to expose co-worker
26 to a dangerous situation?

27 PROSPECTIVE JUROR ESPARZA: No, I don't think it's okay.

28 MR. SCHUMANN: Have you ever been in a situation where

1 co-worker did something that you thought was unsafe?

2 PROSPECTIVE JUROR ESPARZA: No.

3 MR. SCHUMANN: Have you heard -- have you been involved
4 in any situation where that happened with a friend?

5 PROSPECTIVE JUROR ESPARZA: No.

6 MR. SCHUMANN: What would you say to co-worker if you
7 thought someone was doing something unsafe?

8 PROSPECTIVE JUROR ESPARZA: I would let them know or tell
9 me supervisor.

10 MR. SCHUMANN: What would you expect your supervisor to
11 do, then?

12 PROSPECTIVE JUROR ESPARZA: Have a talk with them.

13 MR. SCHUMANN: Okay. And you would expect your coworker
14 to be safe every day, every morning, every afternoon?

15 PROSPECTIVE JUROR ESPARZA: Every day.

16 MR. SCHUMANN: Year in, year out?

17 PROSPECTIVE JUROR ESPARZA: Yeah.

18 MR. SCHUMANN: You wouldn't want a co-worker to cut
19 corners that might expose you to dangers, would you?

20 PROSPECTIVE JUROR ESPARZA: I wouldn't want them to cut
21 corners.

22 MR. SCHUMANN: Mr. Epstine, is my client starting a
23 little bit behind in this case from what you've heard so far?

24 PROSPECTIVE JUROR EPSTINE: Is your client starting
25 behind?

26 MR. SCHUMANN: Yes.

27 PROSPECTIVE JUROR EPSTINE: A little bit, yeah.

28 MR. SCHUMANN: Tell me why that is.

1 PROSPECTIVE JUROR EPSTINE: Well, I think that
2 yesterday -- it seems so long ago. It's only yesterday.
3 Yesterday I believe you said that your clients weren't at the
4 facility where Mr. Collins passed away.

5 MR. SCHUMANN: Okay.

6 PROSPECTIVE JUROR EPSTINE: So I assume, therefore, they
7 weren't responsible.

8 When I was relating the facility I worked at with the
9 young woman suicided, that was the same thing we heard from the
10 company that was above us. We are not responsible because we
11 weren't there. We had nothing to do with this.

12 But I felt they were responsible.

13 MR. SCHUMANN: Okay.

14 PROSPECTIVE JUROR EPSTINE: It kind of like triggered me
15 but, you know, the situations are different. Like you said, you
16 haven't presented any evidence yet. You're just getting to know
17 us.

18 MR. SCHUMANN: Yes. And you could hold your judgment and
19 wait for me to present?

20 PROSPECTIVE JUROR EPSTINE: So, yeah. It just kind of
21 triggers me but, yes, I've heard that before, "we weren't
22 there." But I think I could be objective about it.

23 MR. SCHUMANN: And what was it that made you feel that
24 the other company should have been responsible?

25 PROSPECTIVE JUROR EPSTINE: Well, the facility I worked
26 in made a lot of money, and that money went up the chain to that
27 company.

28 The company I worked for did cut a lot of corners, had a

1 very undertrained staff which, I believe, why this happened to
2 the young woman.

3 It goes up the food chain. If you're just raking in
4 money from some treatment facility and you're taking the money
5 when times are good, when something happens, an untoward
6 outcome, as they would call it in medicine, then you have to --
7 you're responsible because, you know, you got the money from
8 that company and you didn't look into what they were doing.

9 MR. SCHUMANN: Okay. So I'm paraphrasing only.

10 Do you have a feeling that if you may being money off of
11 an investment and something happens with that investment, you,
12 the investor, should then have some fault?

13 PROSPECTIVE JUROR EPSTINE: What I feel is if Mr. Collins
14 passed at his job and the company he was working for made money
15 from his labor that then went up these food chains into other
16 corporations and then he passed because of -- I guess through no
17 fault of his own, let's put it that way, yes, then that company
18 above, I think they're making money off of him, his labor.

19 Yes, if something happened to him that was not his fault,
20 yes, they would be held -- this is just how I feel.

21 MR. SCHUMANN: And let me -- let's continue this a little
22 bit.

23 PROSPECTIVE JUROR EPSTINE: Okay.

24 MR. SCHUMANN: So if he was partly at fault for -- say in
25 your situation the person was partly at fault themselves for
26 causing an injury and the person's employer was completely at
27 fault as well, would you still feel that the investor who had no
28 say with what they did, that they would also be responsible?

1 PROSPECTIVE JUROR EPSTINE: If the company was at fault?

2 MR. SCHUMANN: Yes, if the company he worked for.

3 PROSPECTIVE JUROR EPSTINE: Yeah, I would. I'm sorry.

4 That's just how I feel.

5 MR. SCHUMANN: No. We want to hear what you feel.

6 If the law was told to you that a company is entitled to
7 protections just as well as a person is entitled to protections,
8 would you be able to separate this feeling and say I can't find
9 against this investor?

10 PROSPECTIVE JUROR EPSTINE: Well, you know, there is the
11 law and then there is what's justice and what's right.
12 Sometimes those are two different things.

13 So we're dealing, like, in hypotheticals. If somebody
14 said this is the law, Jack, this is the law, then I would
15 probably go with the law. It doesn't mean that it's right or
16 just, it just means that's the law.

17 But many times to me those things are not the same,
18 justice and the law.

19 MR. SCHUMANN: So you said if the two collided, in your
20 personal opinion, and you -- in your personal belief, you said
21 you would probably go with the law --

22 PROSPECTIVE JUROR EPSTINE: Yeah. If the law is X and
23 it's been proven to me that X happened, I might not think it's
24 just or right, but that's the law. That's, I suppose, what
25 we're guided by here, so, yeah, I would go along with that.

26 MR. SCHUMANN: You would go along with it and not vote
27 with your otherwise feeling or conscience?

28 PROSPECTIVE JUROR EPSTINE: Yeah. I assume it's not

1 really bad feelings. It's about what the law is, but it still
2 may not be just. But, yeah, I'd go along with it.

3 MR. SCHUMANN: Okay. Mr. Pratt, you deal in contracts, I
4 assume?

5 PROSPECTIVE JUROR PRATT: Not really, only tangentially.

6 MR. SCHUMANN: Do you have any opinions on when two
7 parties enter into a contract, whether it's a binding deal, if
8 they signed on the dotted line or whether it's just a document,
9 unenforceable?

10 PROSPECTIVE JUROR PRATT: Well, in my profession, we
11 do -- I deal with institutions who deal with third parties. And
12 it is -- we don't evaluate what the third-party did. We -- if
13 there is a breach of the contract, if the third party failed for
14 some reason, we hold the institution that we're examining
15 responsible.

16 MR. SCHUMANN: Got it.

17 Do you have any opinions for or against enforcing
18 contractual arrangements?

19 PROSPECTIVE JUROR PRATT: I don't have, no. I mean, in
20 my professional capacity?

21 MR. SCHUMANN: Or personal.

22 PROSPECTIVE JUROR PRATT: I mean, you sign a contract,
23 you should abide by it.

24 MR. SCHUMANN: So if you signed a contract and you should
25 abide by it, the terms should be able to be enforced, correct?

26 PROSPECTIVE JUROR PRATT: Yes.

27 MR. SCHUMANN: And let me ask you this. I know this is
28 outside the scope of your business, but -- actually, let me ask

1 the group first of the new people.

2 Has anyone hired a contractor to either build something
3 or build a house or an addition, anything like that on their
4 property?

5 Okay. So quick question, Ms. Leskoviansky. What was
6 built?

7 PROSPECTIVE JUROR LESKOVIANSKY: When I was married to my
8 first husband, we built a home. We subcontracted.

9 With that, we were -- we pulled the license, the
10 different licenses during that build and we hired the
11 contractor, the subcontractors to build our house.

12 MR. SCHUMANN: And I assume you probably signed some kind
13 of contracting agreement?

14 PROSPECTIVE JUROR LESKOVIANSKY: Yes, we did.

15 Even though we did have contracts with those
16 subcontractors, we had to watch over them constantly.

17 MR. SCHUMANN: The contracts that you signed, it was, I
18 assume you thought I am going to enforce this? This is
19 enforceable?

20 PROSPECTIVE JUROR LESKOVIANSKY: Absolutely.

21 MR. SCHUMANN: So is the contractor that built your
22 house, did you expect that contractor to build it to code so
23 that it was safe for you and your family?

24 PROSPECTIVE JUROR LESKOVIANSKY: Yes, we did. And to
25 follow the floor plan as such.

26 MR. SCHUMANN: And follow the floor plan.

27 PROSPECTIVE JUROR LESKOVIANSKY: Uh-huh.

28 MR. SCHUMANN: You didn't expect you would have to come

1 back after you got the house and then start looking for things
2 that might be dangerous?

3 PROSPECTIVE JUROR LESKOVIANSKY: That's correct.

4 MR. SCHUMANN: Bringing that question a little bit
5 broader into construction of large projects -- for example, a
6 power plant -- would you expect the construction company and the
7 architect who built a giant facility to build it properly?

8 PROSPECTIVE JUROR LESKOVIANSKY: Yes, I would.

9 MR. SCHUMANN: And would you expect them to not build it
10 in such a way that it might be dangerous to the people who were
11 there?

12 PROSPECTIVE JUROR LESKOVIANSKY: Absolutely.

13 MR. SCHUMANN: Mr. Epstine, I'll pick your brain again.

14 PROSPECTIVE JUROR EPSTINE: Okay.

15 MR. SCHUMANN: I wrote something down about you had an
16 experience with an LLC.

17 PROSPECTIVE JUROR EPSTINE: LLC? Oh, yeah.

18 MR. SCHUMANN: Tell me, what was that experience? It was
19 a bad experience, I understand.

20 PROSPECTIVE JUROR EPSTINE: For me it was, yeah.

21 MR. SCHUMANN: What was it that was bad?

22 PROSPECTIVE JUROR EPSTINE: Are you talking about what
23 was bad, where I worked?

24 I worked for a treatment center that was part of a chain
25 of treatment centers, but each treatment center was an LLC. It
26 was explained to me that if they were sued, they could only sue
27 that facility and not the whole chain of facilities, even though
28 we got our orders and, you know, we were told what to do by that

1 chain.

2 I found this out when this person had suicided, that they
3 could only sue that one facility for damages.

4 MR. SCHUMANN: Got it.

5 PROSPECTIVE JUROR EPSTINE: That is how it was explained
6 to me.

7 MR. SCHUMANN: And the facility, what kind of facility?

8 PROSPECTIVE JUROR EPSTINE: It was a treatment center.

9 MR. SCHUMANN: A treatment center.

10 Sorry. I'm just double-checking here.

11 Just a question to all the new ones.

12 Can everyone wait to hear the evidence before making any
13 determinations about my client's involvement?

14 PROSPECTIVE JUROR WEISER: Yes.

15 MR. SCHUMANN: Is there anyone that could not?

16 I heard you loud and clear there, sir.

17 Okay. Thanks, your Honor. I think it's right on the
18 dot.

19 THE COURT: Pass for cause?

20 MR. SCHUMANN: May I have a second to confer, your Honor?

21 THE COURT: Of course. If you want to have a seat, let
22 me know.

23 Meanwhile, what we will do, Juror Number 13, Ms. Weiser,
24 we'll go ahead and have you please take seat number 10.

25 PROSPECTIVE JUROR WEISER: Okay.

26 THE COURT: Thank you so much.

27 MR. SCHUMANN: If we could have a chambers conference.

28 THE COURT: Sure. Let's go ahead and we'll take our

1 lunch break.

2 Then everyone will be back at 1:29 and then hopefully
3 we'll get started at 1:30.

4 Same admonishment as yesterday. You're starting to
5 receive more information now regarding facts in this case. I
6 want to remind you that you're not to discuss either amongst
7 yourselves or anybody else any subject connected with this
8 trial, that you're not to conduct any sort of research and you
9 are not to form or express any opinion concerning the trial
10 until the cause has been submitted to you for decision.

11 Again, discuss with each other where to go for lunch,
12 what's good, but please don't discuss the case, any of the
13 attorneys or any of the facts involved.

14 Have a nice lunch.

15 Mr. Goldstein, if you could remain behind, please, for
16 one moment.

17 (Proceedings held out of the presence of the
18 prospective jurors as follows:)

19 THE COURT: All prospective members of the panel have now
20 left with the exception of Juror Number 8, Mr. Goldstein.

21 Mr. Goldstein, thank you so much for your time. We're
22 going to ahead and excuse you.

23 PROSPECTIVE JUROR GOLDSTEIN: Thank you.

24 THE COURT: Thank you.

25 Mr. Goldstein has now left the courtroom. We can handle
26 briefly any challenges for cause.

27 MR. SCHUMANN: Yes, your Honor, I think Mr. Epstine
28 initially stated that I started out -- I'm starting out behind,

1 that the corporation -- the LLCs are kind of a sham.

2 He talked about investors in businesses basically still
3 have to pay even though they might have had nothing to do with
4 the incident.

5 Yes, he stated later that he would try to be fair. And
6 one of the words he used was he would "do his best."

7 I still think that I'm starting out behind already. He
8 admitted to that.

9 I have the right to not start out behind. I think that's
10 kind of the key. That's the big one for me.

11 THE COURT: Okay. Thank you. I do recall the latter
12 part about with the LLC, he was just giving you his personal
13 experience. You're going to have jurors that have come from
14 different backgrounds, and so that just happened to be something
15 of his.

16 Then with the benefit of the real time, you asked the
17 open-ended question to the group afterwards if they could wait
18 to hear the evidence, and he didn't respond in the negative with
19 anything to that.

20 In the first conversation, exchange you had with him,
21 what caught the Court's attention initially was that there was
22 the law and there's justice. So it kind of starts opening the
23 door are we going down the jury nullification route, but
24 ultimately, in true attorney speak, he -- where is it?

25 MR. BASILE: What I had, your Honor, is "I would go with
26 what the law says."

27 THE COURT: Yes, that's to paraphrase it. It was more
28 specific than that. But if the law is X --

1 MR. SCHUMANN: I would probably go with the law.
2 Something like that.

3 MR. REID: Your Honor, the quote I wrote down is, "There
4 is the law and then there is justice. I would probably go with
5 the law." But he also said if they're making money, then they
6 have responsibility.

7 THE COURT: The end of that exchange ended with
8 Mr. Schumann -- because it kept going back and forth. That is
9 ultimately kind of the problem with these is when we keep going
10 on the exchange and the jurors keep waffling.

11 It ultimately concluded with Mr. Schumann asking, "If the
12 two collided, in your personal opinion and your personal belief,
13 you said you would probably go with the law?"

14 He responded, "Yeah. If the law is X and it's been
15 proven to me that X happened, I might not think it's just or
16 right, but that's the law. That's, I suppose, what we're guided
17 by here, so, yeah, I would go along with that."

18 With that, the Court modified its note because he was
19 going down that path, Mr. Schumann. It looks like it corrected
20 itself.

21 Then you moved on to Mr. Pratt right after that.

22 So that motion is denied.

23 MR. SCHUMANN: Thank you, your Honor.

24 MR. BASILE: Thank you, your Honor. 1:30.

25 THE COURT: 1:28 for you 1:28 for you, 1:29 for the
26 jurors.

27 Please enjoy the lunch.

28 Maybe 1:25 for everybody else.

1 Sorry. We are in recess.

2 (Noon recess.)

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1 JUNE 28, 2022 - AFTERNOON SESSION

2 THE COURT: Back on the record on Collins versus DG Corp.
3 Mr. Schumann.

4 MR. SCHUMANN: Thanks, your Honor.

5 After having discussed this case with my client over
6 lunch, we have to make a motion and ask the Court to excuse this
7 entire jury.

8 We've been completely prejudiced already. The Mitsubishi
9 issue that came up in motions in limine is now so persuasive
10 within this entire jury that they clearly all think that
11 Mitsubishi is involved, that my client is somehow Mitsubishi.

12 You heard from -- I can't remember his name now, the guy
13 that got excused for cause.

14 THE COURT: Mr. Goldstein.

15 MR. SCHUMANN: He could care less if it was Mitsubishi or
16 not. When I stood up and started asking questions, they all
17 thought I was Mitsubishi. I just think the whole jury is
18 tainted, so I would ask that we unfortunately get a new panel.

19 THE COURT: The motion is denied.

20 Some of this was -- I mean, obviously you have some
21 jurors, and that is why we do the voir dire process to see what
22 is in their background. A lot of the commentary to Mitsubishi
23 seemed to be limited.

24 If I recall, some of the engagement seemed to be from
25 defense's mini opening. A lot of them seemed to take issue
26 with -- what was the language -- "my client wasn't there." They
27 kept bringing that up. It's unfortunate, but that was your mini
28 opening. That was something they brought up.

1 The Mitsubishi thing, the Court interjected with
2 Mr. Basile this morning. He didn't bring it up.

3 Again, this one client brought it up again -- not one
4 client, one prospective juror brought it up. The Court did
5 remind them that their duty here was to resolve the dispute
6 between the parties that are in this suit now and that
7 Mitsubishi is not named.

8 The so the Court did interject there, but other than
9 those two instances where it's come up, a lot of the pushback
10 seems to have been from counsel's mini opening.

11 There is understandably some strong feelings since that
12 is wrongful death suit. If you want to bring a formal motion,
13 you're welcome to, but that motion is denied.

14 MR. REID: If I may, just to add, during motions in
15 limine and during this whole discussion the issue of Mitsubishi
16 came up. The Court specifically instructed that Mitsubishi
17 would not be mentioned.

18 Yesterday in voir dire Mr. Basile specifically brought up
19 Mitsubishi against the Court's order and, yes, the Court did say
20 something, but the jury now has Mitsubishi in their mind. And
21 there's no way to unring that bell at this point. We're stuck
22 with it.

23 THE COURT: Mr. Reid, which motion in limine was that?

24 MR. REID: It wasn't a motion in limine, your Honor. It
25 was a discussion about exhibits and what were appropriate
26 exhibits. I can tell you right now some of the exhibits that
27 they plan on using, they've just edited out Mitsubishi and put
28 Diamond Generating Corporation in, corporate language.

1 This is a theme. This is intentional on the plaintiff's
2 part. And, your Honor, again, we just believe there is no way
3 to get a fair trial here at this point.

4 THE COURT: So the Court wasn't privy to -- when we
5 concluded -- I'm losing track of time. When we were here last
6 Monday, we left and there was an order to meet and confer
7 regarding the exhibits, for the parties to work it out and to at
8 least narrow down the amount of exhibits that might be at issue.

9 I recall plaintiff mentioning that some of those
10 exhibits, especially on --

11 MR. BASILE: The red flagging exhibits.

12 THE COURT: That they have Mitsubishi on them. It's
13 already part of the exhibit.

14 If you came to a subsequent agreement to redact that, the
15 Court wasn't aware. So when the Court heard reference to
16 Mitsubishi one time yesterday afternoon the Court was thinking
17 back. Well, they are already likely going to see an exhibit
18 with that logo? It's not something that is going to be
19 emphasized. Certainly the Court wasn't going to allow that, but
20 something they were going to become aware of.

21 You're presenting a complex structure to this jury, so
22 they're naturally asking questions about it.

23 I don't know how you preclude that through a court order
24 and through a voir dire.

25 MR. REID: Thank you, your Honor.

26 With the Court's ruling, we are going to ask to draft a
27 special instruction regarding it and we'll submit it to the
28 Court regarding Mitsubishi and their role.

1 THE COURT: Certainly you can modify that.

2 There is the 200 series instruction on it, on other
3 parties that are not present, don't speculate as to why they may
4 or may not be here.

5 If you want to do a modification of that, that's
6 certainly something the Court would consider.

7 MR. REID: Thank you, your Honor.

8 MR. SCHUMANN: Thanks.

9 THE COURT: Deputy Lee, sorry. You can go ahead and
10 bring in the jurors.

11 For now, counsel, it looks like -- if it helps put your
12 mind at ease, I recall being in that same seat. Don't worry
13 about opening today. We'll figure out a way to use time, but
14 the earliest will be tomorrow morning.

15 MR. REID: With that, your Honor, can I let Mr. Johnson
16 know that he does not need to be here?

17 THE COURT: Yes, yes.

18 MR. REID: Thank you.

19 THE COURT: Thank you, but I just didn't want that in the
20 back of your mind if that helps.

21 (Proceedings held in the presence of the prospective
22 jurors as follows:)

23 THE COURT: All prospective jurors have returned. We do
24 have Jurors 1 through 18 back.

25 If I recall, Mr. Weiser hasn't moved from the seat. We
26 were here at 1:29, but I'll just need to have counsel come in
27 earlier than 1:25 next time.

28 Okay. We left off, defense has passed for cause at this

1 point and from yesterday's notes, unless I'm mistaken, that
2 leaves the next peremptory with plaintiff.

3 MR. BASILE: That's correct, your Honor. Thank you, your
4 Honor.

5 We would thank and excuse Ms. Weiser.

6 PROSPECTIVE JUROR WEISER: Okay.

7 THE COURT: Ms. Weiser, thank you.

8 PROSPECTIVE JUROR WEISER: Okay. Sure.

9 THE COURT: Have a nice day.

10 PROSPECTIVE JUROR WEISER: Thank you.

11 MR. BASILE: Thank you.

12 Ms. Souza, if you would please take seat number 10.

13 Mr. Schumann, when you're ready.

14 MR. SCHUMANN: Yes, your Honor. We'd like to thank and
15 excuse Juror Number 3, Mr. Reising.

16 THE COURT: Mr. Reising, thank you again for your time
17 yesterday afternoon, today, this afternoon.

18 PROSPECTIVE JUROR REISING: Sure.

19 THE COURT: Have a nice afternoon.

20 Mr. Epstine, if you could please take seat number 3.

21 Thank you, Mr. Epstine.

22 Mr. Basile, when you're ready.

23 MR. BASILE: Your Honor, we're satisfied with this panel
24 as presently constituted.

25 THE COURT: Thank you, Mr. Basile.

26 Mr. Schumann, take your time. Whenever you're ready.

27 MR. SCHUMANN: The defense is satisfied, too.

28 Thank you, your Honor.

1 THE COURT: All right. Do you accept the panel as
2 presently constituted?

3 MR. SCHUMANN: Yes, your Honor.

4 THE COURT: Okay. Jurors number 1 through 12, you'll be
5 sworn in here in just a moment. But I probably should have said
6 this yesterday morning. Speak now or forever hold your peace.
7 I think we're past that point at this point, so thank you.

8 We'll go ahead and do the swearing.

9 THE CLERK: Jurors 1 through 12, could I please have you
10 stand and raise your right hands.

11 You and each of understand and agree that you will well
12 and truly try the cause now pending before the Court and a true
13 verdict render according only to the evidence presented to you
14 and to the instructions of the Court?

15 If so, say I will.

16 (Jurors responded in the affirmative.)

17 THE CLERK: Thank you. You may be seated.

18 THE COURT: Thank you.

19 We now have to use our remaining time to select a couple
20 alternates. A lot can happen between now and July 29th, so we
21 need to have a couple backup options just in case.

22 Alternates are just as much part of the process. If
23 whatever unfortunate circumstances result in us losing a juror
24 from 1 through 12, then we do a random draw.

25 So if you're an alternate on this case, you're number 1,
26 2, 3, 4, your number does not specify the order in which you'll
27 be called upon if we need to replace a juror. So please keep
28 that in mind.

1 Alternates 1 through 4, you are just as likely to be a
2 replacement as any of the others.

3 Let's continue the musical chairs.

4 Mr. Esparza, if I could please have you come down to seat
5 number 13.

6 And then, thank you, Ms. Leskoviansky.

7 We have four seats remaining so we'll call the next four
8 from our panel.

9 THE CLERK: Tracy Everett, E-V-E-R-E-T-T.

10 Sven Vennen, V-E-N-N-E-N.

11 Donald Jolly, J-O-L-L-Y.

12 David Benitez, B-E-N-I-T-E-Z.

13 THE COURT: It would be to have that for seat number 2 so
14 we can do questioning.

15 THE BAILIFF: We don't have an alternate 2.

16 THE COURT: I'm sorry.

17 THE CLERK: I'm sorry, your Honor.

18 THE COURT: Go ahead.

19 THE CLERK: Andre Alcantar, A-L-C-A-N-T-A-R.

20 THE COURT: And Ms. Allen, I did see your hand. If
21 there's an emergency, we'll address it at the break.

22 Beginning with Tracy Lee Everett. Hi, good afternoon.

23 How was your lunch?

24 PROSPECTIVE JUROR EVERETT: It was good. I went home and
25 watched a little bit of the Trump fiasco.

26 THE COURT: So I think we've answered questions number 1
27 and 2. If you went home, you live in Palm Springs.

28 PROSPECTIVE JUROR EVERETT: I do.

1 THE COURT: So let's start with question number 3.

2 PROSPECTIVE JUROR EVERETT: I am an operations
3 administrator for FedEx and also an on-call minister.

4 THE COURT: Okay. Please go on.

5 PROSPECTIVE JUROR EVERETT: Four, I live alone.
6 No kids.

7 I have served on a jury in Orange County, Westminster
8 Superior Court. It was a civil case, and we did come to a
9 verdict.

10 I have master's degree in theology.

11 No family or friends associated with the Court or legal
12 system.

13 Never sued anyone or been sued.

14 Yes, I can be fair.

15 THE COURT: All right. Thank you.

16 So you work and live in Palm Springs?

17 PROSPECTIVE JUROR EVERETT: Yes.

18 THE COURT: Do you work at the local FedEx office?

19 PROSPECTIVE JUROR EVERETT: The one out in the middle of
20 nowhere.

21 THE COURT: You need all that space.

22 And you mentioned you're -- what do you do there? You're
23 an administrator.

24 PROSPECTIVE JUROR EVERETT: Operations administrator.

25 THE COURT: Operations administrator.

26 And how long have you been in that position?

27 PROSPECTIVE JUROR EVERETT: Seven years.

28 THE COURT: Okay. And prior to that?

1 PROSPECTIVE JUROR EVERETT: Paramedic.
2 THE COURT: Locally?
3 PROSPECTIVE JUROR EVERETT: Long Beach.
4 THE COURT: Long Beach.
5 Was that with a county agency or private?
6 PROSPECTIVE JUROR EVERETT: L.A. County.
7 Great. Thank you, Mr. Everett.
8 Question number 10 you did answer, yes, I can be fair?
9 PROSPECTIVE JUROR EVERETT: Yes.
10 THE COURT: Thank you, Mr. Everett.
11 PROSPECTIVE JUROR EVERETT: You're welcome.
12 THE COURT: That brings us to Sven --
13 PROSPECTIVE JUROR VENNEN: Sven Vennen, Swedish.
14 THE COURT: I apologize.
15 PROSPECTIVE JUROR VENNEN: No problem.
16 THE COURT: Sven Vennen. I live in Palm Springs. I'm a
17 realtor. I have been for 30 years. I do not live with an
18 adult. I have no children.
19 My partner died suddenly last year. And this is maybe
20 where the family is finally getting it together this July to
21 scatter his ashes, people coming from Florida, people coming
22 from Portland, Oregon to go to Michigan, Luddington.
23 I leave on the 10th and I come back the 21st.
24 I put on my sheet that I would be happy to work beyond
25 the jury for ten to 15 days. I thought it would have not been
26 any issue, but knowing that it's this long, I just can't do it.
27 THE COURT: Thank you. I appreciate your candor.
28 Convenient time?

1 PROSPECTIVE JUROR VENNEN: The 8th of August.

2 THE COURT: Mr. Vennen, I'm ordering you to go to Larson
3 on the second floor.

4 I thought you said July 8th. No, you're leaving on the
5 10th? Okay. Thank you for your candor.

6 PROSPECTIVE JUROR VENNEN: Thank you.

7 THE COURT: So, wait. We're going to do August 8th.

8 PROSPECTIVE JUROR VENNEN: August 8th.

9 THE COURT: Okay. As soon as you get back.

10 PROSPECTIVE JUROR VENNEN: Thank you.

11 THE COURT: August 8th, 8:00 a.m., Larson, second floor.

12 PROSPECTIVE JUROR VENNEN: Get that in.

13 THE CLERK: Paul McCreesh, M-C-C-R-E-E-S-H.

14 THE COURT: Good afternoon.

15 PROSPECTIVE JUROR McCREESH: Good afternoon.

16 THE COURT: Paul Joseph McCreesh?

17 PROSPECTIVE JUROR McCREESH: Yes.

18 THE COURT: If you could start with question number 2
19 when you're ready.

20 PROSPECTIVE JUROR McCREESH: I live in Cathedral City.

21 I'm a licensed general contractor. I live with my husband. We
22 live and work together.

23 We share the business that we run. No children. We live
24 just the two of us.

25 Never served on a jury.

26 I have a BS in food marketing.

27 No to number 8.

28 I am currently in the middle of a lawsuit similar to

1 this.

2 THE COURT: Related to your business?

3 PROSPECTIVE JUROR McCREESH: Yes.

4 THE COURT: Is that locally here in the Riverside County?

5 PROSPECTIVE JUROR McCREESH: Yes.

6 THE COURT: Okay.

7 PROSPECTIVE JUROR McCREESH: And do you think I'll be a
8 fair judge? It will be difficult.

9 THE COURT: A little too close to home right now?

10 PROSPECTIVE JUROR McCREESH: Yes.

11 THE COURT: Okay. Thank you for that, Mr. McCreesh. The
12 attorneys may have some follow-up or not.

13 PROSPECTIVE JUROR McCREESH: Thank you.

14 THE COURT: That brings us to Donald Jolly.

15 Good afternoon.

16 PROSPECTIVE JUROR JOLLY: I live in Palm Springs.

17 Number 2.

18 Number 3, I am retired, but I was a director of student
19 services and special education for a school district.

20 My husband and I live together in a home. We do not have
21 any children. I have never served on a jury.

22 I have a master's degree in special education and school
23 administration.

24 I do not have any family or friends that are in the legal
25 system.

26 I have never had any experience with a lawsuit of any
27 kind.

28 And, yes, I think I can be fair.

1 THE COURT: Great. Thank you, Mr. Jolly.
2 That brings us to David Benitez.
3 PROSPECTIVE JUROR BENITEZ: Good afternoon, your Honor.
4 I live in the City of La Quinta. I'm a peace officer for
5 the State of California, Department of Corrections.
6 I live alone.
7 No kids.
8 Never been on a jury.
9 College.
10 I do have close friends and family in the legal system.
11 And I could be fair.
12 THE COURT: Great. How long have you been with CDCR?
13 PROSPECTIVE JUROR BENITEZ: Seventeen years.
14 THE COURT: Ironwood and Chuckwalla?
15 PROSPECTIVE JUROR BENITEZ: Correct.
16 THE COURT: And your employer pays for jury duty?
17 PROSPECTIVE JUROR BENITEZ: Correct.
18 THE COURT: Mr. McCreesh.
19 PROSPECTIVE JUROR McCREESH: I thought it would be on
20 here. July 25th I leave on vacation for five weeks.
21 THE COURT: Okay. Thank you, Mr. McCreesh.
22 PROSPECTIVE JUROR McCREESH: But I'm willing to do this.
23 THE COURT: Thank you.
24 PROSPECTIVE JUROR McCREESH: Okay.
25 THE COURT: Mr. Alcantar?
26 PROSPECTIVE JUROR ALCANTAR: Good afternoon.
27 Let's see. My full name is Andre Jess Alcantar.
28 I live in Palm Springs. My current occupation is a

1 P.B.X. operator or Agua Calliente in Rancho Mirage.

2 I do have a roommate. He's retired. He worked for the
3 school district in Orange County.

4 I have no children.

5 I've never served on a jury.

6 Highest level of education is 12th grade plus I've -- I
7 have my real estate license and barber's license as well.

8 I have one relative that is an attorney, but I'm not
9 really close to him. He's actually my cousin's son, and they do
10 live here in the Valley, but I really don't have any connection
11 with him at all.

12 Also I've never -- my family or myself has never been in
13 a lawsuit.

14 On the question number 10, I don't really know if I can
15 be fair because in the last day and a half since we've been
16 here, you know, I've been thinking about those people right
17 around the corner here.

18 To me life is very precious, and I think it's sad that
19 they have to come and try and get -- do what they're doing, you
20 know. I just feel horrible about it. You know, it's sad. Any
21 life is precious, and it's really, really sad that, you know --
22 I mean, if it was me, it would be horrible to have to do that.

23 So that's it.

24 THE COURT: Again, thank you for your honesty.

25 In criminal cases often in jury selection the charges are
26 read, and if it's murder, if there are criminal streaking
27 allegations, if it's a sexual assault case and certain charges
28 are read, the panel all raises their hand and says I'm not in

1 favor of murderer, I'm not in favor of those charges. It's
2 understandable.

3 But in that context, the state still has to prove that
4 those charges are true in that case beyond a reasonable doubt.

5 In this case liability must be proven, and that's a
6 burden for the plaintiff's side. Mr. Basile has told you that
7 he's aware of and that he accepts.

8 Just because there are certain allegations, allegations
9 in and of themselves do not prove anything and they are not
10 evidence.

11 PROPECTIVE JUROR ALCANTAR: Yeah, I understand that. But
12 I don't think it will change the way I think.

13 THE COURT: I appreciate your honesty.

14 You're right, all life is precious, so thank you for you
15 sharing that.

16 PROPECTIVE JUROR ALCANTAR: Uh-huh.

17 THE COURT: Mr. Basile, the floor is open to you as to
18 Jurors Number 15 through 18. I'm sorry, 15 through 19. Just
19 keep in mind Mr. Alcantar is in the back.

20 MR. BASILE: I'm going to try to be quick with you new
21 people.

22 Hearing everything that we've been talking about, is
23 there something you feel I need to know?

24 I appreciate what you said. I might have a couple for
25 you.

26 Anyone else?

27 Mr. McCreesh?

28 PROSPECTIVE JUROR MCCREESH: McCreesh.

1 MR. BASILE: You said you would have some struggles with
2 being fair in this case. I appreciate that. That's what we
3 want to hear.

4 Can you tell me why or what's bothering you?

5 PROSPECTIVE JUROR McCREESH: Because of the case that I'm
6 in right now, the similarity here seems that there is a
7 plaintiff is casting a wide net to see who they can extract
8 money from.

9 MR. BASILE: Is that what's happening to you?

10 PROSPECTIVE JUROR McCREESH: Yes, uh-huh.

11 MR. BASILE: I really appreciate that. That will be in
12 the back of your mind the whole time and make it difficult for
13 you to hear the evidence in this case?

14 PROSPECTIVE JUROR McCREESH: Yes.

15 MR. BASILE: And follow the law?

16 PROSPECTIVE JUROR McCREESH: as I'm in the department of
17 it.

18 MR. BASILE: To follow the law. That's really open and
19 honest. I appreciate that. I thank you for saying that. I
20 hope it comes out well and you have appreciation when your case
21 is over with. Thank you for that.

22 Mr. Everett?

23 PROSPECTIVE JUROR EVERETT: Yes.

24 MR. BASILE: You're a part-time minister, right?

25 PROSPECTIVE JUROR EVERETT: Yes.

26 MR. BASILE: Can you tell me a little bit more about
27 that.

28 PROSPECTIVE JUROR EVERETT: I work with the United Church

1 of Christ. I'm also on call for the Unitarian Church, mainly
2 out of Riverside proper. Mostly baptisms, funerals, weddings,
3 stuff like that.

4 MR. BASILE: Do you ever get called for when there's been
5 a need for a family notification of a death?

6 PROSPECTIVE JUROR EVERETT: No. That's usually handled
7 by the chaplains in the hospitals.

8 MR. BASILE: Now, you're going to be sitting here if
9 you're an alternate, if you get on the jury, in judgment. I
10 know that's a big part in Christianity, religion and sitting in
11 judgment of others.

12 How do you feel about sitting in judgment of a
13 corporation, first of all?

14 PROSPECTIVE JUROR EVERETT: I don't have a problem.

15 MR. BASILE: Okay. Because some people feel that, you
16 know, the final judgment should be done upstairs. We shouldn't
17 be doing it down here, any judgment. You're okay with that?

18 PROSPECTIVE JUROR EVERETT: Yes.

19 MR. BASILE: How about any other things that I spoke
20 about. You're okay with corporate responsibility and you're
21 willing to look at corporations, management and oversight of the
22 safety system and seeing if they did it right and what was going
23 on?

24 PROSPECTIVE JUROR EVERETT: It's part of my time at
25 FedEx?

26 MR. BASILE: Thank you for bringing that up. How is that
27 part of your job?

28 PROSPECTIVE JUROR EVERETT: I sit at the safety committee

1 at the warehouse. I do some of the safety training at the
2 facility.

3 I review the policies and procedures.

4 MR. BASILE: We could call you as an expert in this case.

5 PROSPECTIVE JUROR EVERETT: You could.

6 MR. BASILE: Do you feel that corporations that are
7 engaged in the business that's hazardous should make an effort
8 to train -- make an effort to consider human error in your
9 training?

10 PROSPECTIVE JUROR EVERETT: I think corporations do
11 consider human error, but eventually it falls to the human
12 itself.

13 MR. BASILE: Yes, it does.

14 Some people -- how important do you feel training is?

15 PROSPECTIVE JUROR EVERETT: It's of the utmost
16 importance.

17 MR. BASILE: Tell me a little bit more about that.

18 PROSPECTIVE JUROR EVERETT: Everybody's goal in life is
19 to come back from work that day, whether you're a fire fighter,
20 cop, school teacher. Now your goal is to come home from work.
21 You don't go to work thinking you're going to die unless you --
22 you go into that profession knowing there's a chance you won't
23 come home from work.

24 Most professions people go into, they think it will be a
25 relatively safe profession. They know that there are some risks
26 associated with it.

27 I mean, whether you die of an industrial accident or a
28 mass shooting or something, there's some things that are

1 preventable, others aren't.

2 MR. BASILE: And training?

3 PROSPECTIVE JUROR EVERETT: Training is key. That's why
4 corporations and businesses, mom and pop shops, anybody has
5 training in place.

6 I mean, your parents taught you not to play in traffic.
7 Obviously you didn't because you're standing here. If you take
8 the training and adhere to the training, there is a good chance
9 you'll survive. But if you try to scapegoat on the training or
10 you find a shortcut in the training, then you're taking your
11 risk of upping your chance to not come home that night.

12 MR. BASILE: Right. Does FedEx -- in your experience, do
13 you have annual training or refresh training?

14 PROSPECTIVE JUROR EVERETT: We have daily training. We
15 do safety training every day.

16 MR. BASILE: And do you have any special activities at
17 work that you design policies and procedures on?

18 PROSPECTIVE JUROR EVERETT: I mostly work with hazmat.

19 MR. BASILE: So it's the materials.

20 PROSPECTIVE JUROR EVERETT: I train the staff on hazmat,
21 how to handle it, how to deal with hazmat emergencies and such,
22 but we're also trained to shut the systems down, how to override
23 the systems in the event of an emergency, maintenance on the
24 systems, what certain levels can do and certain levels can't,
25 lockout/tagouts and such.

26 MR. BASILE: So you do the lockout/tagout?

27 PROSPECTIVE JUROR EVERETT: Yes.

28 MR. BASILE: Was there a single verifier?

1 PROSPECTIVE JUROR EVERETT: We have a verifier. I mean,
2 that's of the most important things in the warehouse. You will
3 lose your job if you're turning that equipment back on
4 without -- basically our rule is you turn it off, you turn it
5 back on.

6 MR. BASILE: So you guys have pretty solid training and
7 review of the system.

8 PROSPECTIVE JUROR EVERETT: Yes.

9 MR. BASILE: If there is a near miss or something, you
10 make sure it doesn't happen again.

11 PROSPECTIVE JUROR EVERETT: If we have any type of
12 accident, we have a review board. We review it. Corporate
13 reviews it. OSHA reviews it.

14 MR. BASILE: Now, there's going to be a lot of testimony
15 about exactly those things in this case. So I already mentioned
16 that you could be an expert in this case. But the challenge you
17 may have is not being an expert in this case because you know so
18 much, because you have to base it on what you're going to hear,
19 people that are familiar with these things, the evidence.

20 That's what I'm wondering. How do you do that? I mean,
21 this is right down your alley and you're going to be there in
22 the jury room talking about it.

23 How can you not say "at FedEx this is what we would have
24 done"?

25 PROSPECTIVE JUROR EVERETT: FedEx is FedEx. Every
26 company has their own policies and procedures.

27 I mean, what happens at Walt Disney World is not going to
28 be the same as what happens at FedEx. What happens at UPS is

1 not going to be the same as FedEx. Granted, they'll be similar
2 because of the nature of the business, but they won't be the
3 same.

4 MR. BASILE: You could look at -- you could look at this
5 case based on what you hear here?

6 PROSPECTIVE JUROR EVERETT: Yes.

7 MR. BASILE: Take your life experience and keep it there?

8 PROSPECTIVE JUROR EVERETT: Yes.

9 MR. BASILE: Okay. Thank you.

10 Mr. Benitez, right?

11 PROSPECTIVE JUROR BENITEZ: Right.

12 MR. BASILE: Because you work in the prison system,
13 right?

14 PROSPECTIVE JUROR BENITEZ: Yes.

15 MR. BASILE: You must have a lot of training with
16 dangerous stuff, weapons, mace, emergencies and how to deal with
17 those things. You have an extensive range, right?

18 PROSPECTIVE JUROR BENITEZ: Yes.

19 MR. BASILE: You rely on that?

20 PROSPECTIVE JUROR BENITEZ: Yes.

21 MR. BASILE: Is there anything that I've discussed that
22 you want to tell me that you think I should know?

23 PROSPECTIVE JUROR BENITEZ: No.

24 MR. BASILE: How about you, Mr. Jolly?

25 PROSPECTIVE JUROR JOLLY: Nothing comes to mind.

26 MR. BASILE: You guys that are up here, are you okay with
27 having that task, to put a price on those two relationships, 32
28 years? I mean, 32 years, evaluating two separate relationships,

1 husband and wife, father and son, 32 years each. Are you guys
2 all right with that?

3 I understand -- I'll be with you in a second. You guys
4 okay?

5 And you're not going to get -- if the evidence shows that
6 it's, you know, a big number, the fact that it's a big number,
7 that alone won't make you back off?

8 I mean, if you see judgments of tens of millions of
9 dollars, could you do that?

10 Could you do that, sir?

11 PROSPECTIVE JUROR JOLLY: I believe so.

12 MR. BASILE: Mr. Alcantar, I appreciate you saying what
13 you do, but you feel you just can't be fair in this because of
14 the gravity of the loss, is that it?

15 PROSPECTIVE JUROR ALCANTAR: Yeah. Even with the
16 numerical amount of money, you know, how much is too much or how
17 much is not enough or that relationship.

18 MR. BASILE: I think you hit the nail on the head there.
19 How much is enough is the test, right? Not how much is too
20 much, because you can't put a price on it, right? Is that what
21 you're telling us? And you said, no, I can't put a price
22 between me and my father, that relationship, so, no.

23 MR. BASILE:

24 So that would really give you a strong --

25 PROSPECTIVE JUROR ALCANTAR: Yeah.

26 MR. BASILE: It would be hard to follow the law as it
27 applies to that?

28 PROSPECTIVE JUROR ALCANTAR: Well, I just wouldn't want to

1 have to figure something like that out.

2 MR. BASILE: I really appreciate that. Thank you.

3 How do you feel, then, about if there is a responsible
4 party for a wrongful death. Do you still feel they should be
5 held responsible in some way?

6 PROPECTIVE JUROR ALCANTAR: Yes, of course. Yes.

7 MR. BASILE: And it's okay to feel sympathy. I mean,
8 that's what we're here for. It's about responsibility, and if
9 you find them responsible, holding them accountable for all the
10 harm that they've caused.

11 PROPECTIVE JUROR ALCANTAR: Yeah, I agree.

12 MR. BASILE: But that's just not a job you want to
13 undertake?

14 PROPECTIVE JUROR ALCANTAR: No. I think there is a
15 reason why the two parties are here.

16 MR. BASILE: So you really struggle following the law. I
17 get it. I've heard enough.

18 PROPECTIVE JUROR ALCANTAR: Okay.

19 MR. BASILE: I won't torture you anymore.

20 All right. Thank you.

21 THE COURT: Pass for cause?

22 MR. BASILE: No, I don't. I'm sorry.

23 THE COURT: Thank you, Mr. Basile. We'll reserve on that
24 one. I suspect a similar one will be made.

25 MR. BASILE: Yes.

26 THE COURT: Mr. Schumann.

27 MR. SCHUMANN: Thank you.

28 Mr. Alcantar?

1 PROPECTIVE JUROR ALCANTAR: Uh-huh.

2 MR. SCHUMANN: You said there's a reason why the two
3 parties are here.

4 PROPECTIVE JUROR ALCANTAR: Yeah.

5 MR. SCHUMANN: Can you tell me what's behind that? What
6 are you thinking?

7 PROPECTIVE JUROR ALCANTAR: Well, you wouldn't be here,
8 is what I'm thinking, if there wasn't a problem. I think that's
9 the best I can say for right now.

10 I mean, you guys are not telling us some of the stuff.
11 That's what I want to say right now.

12 MR. SCHUMANN: You understand that we're -- that this is
13 not the time for us --

14 PROPECTIVE JUROR ALCANTAR: I do.

15 MR. SCHUMANN: -- to tell the facts.

16 Do you feel you're holding it against us that we're not
17 able to tell you the facts?

18 PROPECTIVE JUROR ALCANTAR: No.

19 MR. SCHUMANN: All right. Mr. Everett?

20 PROSPECTIVE JUROR EVERETT: Yes.

21 MR. SCHUMANN: So as to safety, you have the training
22 daily, weekly, yearly. It comes down to the individual
23 performing the task in a proper manner as well?

24 PROSPECTIVE JUROR EVERETT: Yes.

25 MR. SCHUMANN: You can have all the training in the world
26 and if someone cuts a corner the training is out the window.

27 PROSPECTIVE JUROR EVERETT: Basically, yes.

28 MR. SCHUMANN: You can have a FedEx driver decide to go

1 95 miles and hour on the 10 Freeway, crash into someone and the
2 training says don't go over 55.

3 PROSPECTIVE JUROR EVERETT: That's the responsibility of
4 the driver. It all falls back on the driver.

5 MR. SCHUMANN: So even with as much training as FedEx
6 gives, there are -- FedEx has accidents.

7 PROSPECTIVE JUROR EVERETT: Uh-huh. We have accidents
8 almost every day, whether they be minor or resulting in the
9 death of someone.

10 MR. SCHUMANN: So every time there's an accident, you
11 investigate it and try and figure out a way to teach that driver
12 or other drivers, hey, we have to learn from this person who
13 made a mistake or this area and we can better it over here and
14 over there and safety develops.

15 PROSPECTIVE JUROR EVERETT: We have to look at the
16 vehicle maintenance records. We have to see -- compare it with
17 the report from the police department or whatever agency
18 responded.

19 We need to see if it is a driver error, if it's a
20 mechanical error. You have to investigate it and get down to
21 it.

22 MR. SCHUMANN: So you do like a root cause analysis and
23 get to the bottom of it?

24 PROSPECTIVE JUROR EVERETT: I do not.

25 MR. SCHUMANN: But FedEx does?

26 PROSPECTIVE JUROR EVERETT: FedEx does, yes.

27 MR. SCHUMANN: Mr. McCreesh, sorry to bring up a sore
28 subject for you.

1 So you're a general contractor and you're being sued for
2 construction defect?

3 PROSPECTIVE JUROR McCREESH: No, something that happened
4 on a job site from my client's boyfriend, not even my client.

5 MR. SCHUMANN: Okay. So the plaintiff in that, you said,
6 is throwing a wide net.

7 PROSPECTIVE JUROR McCREESH: Yes.

8 MR. SCHUMANN: Basically suing everyone. And you fall
9 within the everyone category?

10 PROSPECTIVE JUROR McCREESH: No. I think he should just
11 be suing me, but he's suing other people which is bringing them
12 in under me which is upsetting.

13 MR. SCHUMANN: Who else are they suing in your case?

14 PROSPECTIVE JUROR McCREESH: My understanding is the
15 subcontractor and homeowners' insurance, when it's the
16 boyfriend's sheer neglect.

17 MR. SCHUMANN: So the person that's suing was the person
18 that caused the incident?

19 PROSPECTIVE JUROR McCREESH: Yes.

20 MR. SCHUMANN: And so that's upsetting to you, being that
21 you feel you did the right thing?

22 PROSPECTIVE JUROR McCREESH: Correct. And that I just
23 think he's looking for money instead of taking the onus of the
24 responsibility on himself.

25 MR. SCHUMANN: So our facts are very different from
26 yours.

27 PROSPECTIVE JUROR McCREESH: Uh-huh.

28 MR. SCHUMANN: Are you able to just listen to the facts,

1 set aside your own biases and listen to the law that the judge
2 will give you and be objective and keep your personal lawsuit
3 outside the courtroom?

4 PROSPECTIVE JUROR McCREESH: Yes. Yeah.

5 MR. SCHUMANN: Okay. That's all we wanted to know, if
6 you can be fair, follow the law, you can leave it out the door.

7 PROSPECTIVE JUROR McCREESH: Yes.

8 MR. SCHUMANN: Okay. Thank you.

9 Thank you, everyone.

10 Thanks, your Honor.

11 THE COURT: Thank you.

12 Pass for cause?

13 MR. SCHUMANN: Can we put a pin in cause and talk about
14 that?

15 THE COURT: Yes. Okay.

16 MR. SCHUMANN: Don't ask.

17 THE COURT: Thank you, Mr. Schumann.

18 We're going to take a brief break. Please everyone stand
19 and stretch. We'll be back momentarily.

20 Counsel, we'll see you in the jury room.

21 (Recess.)

22 (Proceedings held out of the presence of the
23 prospective jurors as follows:)

24 THE COURT: Okay. We're back on the record. We're
25 outside the presence of the jury.

26 We're in the process of selecting three to four
27 alternates. And I think there are mutual challenges for cause
28 here.

1 Mr. Basile, thank you for waiting. So we'll go with you
2 first.

3 MR. BASILE: McCreesh. I have a question. He clearly
4 said to me -- here's how it goes. Once they express a bias,
5 your Honor, and he had a pretty strong bias, and I know what the
6 last questions were, but I'm at a disadvantage on the defense
7 always gets to go second.

8 There is still a clearly expressed bias that has been
9 expressed on his part. And I believe, particularly in light of
10 some other cause challenges that have been granted in this case,
11 that is clearly a cause challenge.

12 THE COURT: Mr. Schumann, I think you're going to say
13 since I have the benefit of realtime, the way the Court looked
14 at it, obviously it's something that he's going through right
15 now. It seemed like he just was upset about it. Then
16 ultimately came around on it. I'm kind of limited to the cold
17 transcript, if you will. And the cold transcript right now does
18 reflect his ability to set aside his strong personal feelings
19 because of his business situation.

20 I think once it came out a little bit more, it wasn't so
21 much that he's being sued, which I guess would be -- there would
22 be no -- it would be just between him and another party.

23 He seemed to be upset, not just that it was him and other
24 people were being brought in, like business partners and other
25 relationships being affected by a suit that he felt should have
26 just been between him and the alleged injured party.

27 MR. BASILE: I think the Court has to look at the whole
28 voir dire. He came out --

1 THE COURT: He came out as unfair.

2 MR. BASILE: When they come out without anybody even
3 asking them, and it wasn't like someone offering something to
4 let me get out of here.

5 I think he really had some very strong things.

6 You know, either side, plaintiff or defense, can always
7 try to do that leading rehabilitation. You've probably seen it
8 hundreds of times with criminal defense lawyers. They can do
9 that leading rehabilitation, which is really not effective, in
10 my opinion, when you have such strong stuff out of the chute and
11 how he clearly said -- I asked him like once or twice, you won't
12 follow the law? He said, no, no. What's turning the light
13 switch on like that?

14 THE COURT: It's usually the prosecutors trying to
15 rehabilitate those jurors.

16 As you mentioned, I have to look at it in the whole
17 context. He did come out on fire. I'm not sure once he got it
18 off his chest and it was explained a little bit better to him,
19 but based on what's in the transcript and what I heard, I'm
20 going to deny that motion.

21 Do you have a second one?

22 MR. BASILE: I think we're going to pass.

23 THE COURT: Mr. Schumann, any additional ones?

24 MR. SCHUMANN: I think Alcantar is a cause. "I cannot be
25 fair." He was not going to change the way he thinks. That was
26 pretty clear. He cannot be fair. He said that several times.

27 MR. BASILE: I don't know if he said that. I think he
28 said I don't want the job, I don't think I can do this.

1 I'll submit.

2 THE COURT: You'll stipulate to him?

3 MR. BASILE: Do you want me to? Sure.

4 THE COURT: That's what I'm leaning towards anyway.

5 MR. BASILE: Sure.

6 THE COURT: I just noted it right now. You have ink
7 right there.

8 MR. BASILE: I can't do anything about it.

9 THE COURT: I'm sure.

10 MR. BASILE: I didn't mean any disrespect.

11 THE COURT: I wanted you to be aware.

12 MR. BASILE: It was pointed out to me. I think a pen
13 leaked earlier.

14 THE COURT: It's a nice suit, too.

15 Anything else, Mr. Schumann?

16 MR. SCHUMANN: No, that's it.

17 THE COURT: So that leaves us with Mr. Alcantar will be
18 excused. That leaves us with that front row of five. Are we
19 going with three or four? Logistically, I think we have how
20 many people on the panel, two left?

21 THE CLERK: Three, your Honor.

22 THE COURT: We have two contempt hearings down the road?

23 THE CLERK: Just one, your Honor.

24 THE COURT: Oh, just one.

25 THE CLERK: It was an error on my part. They had been
26 previous dismissed for hardship.

27 THE COURT: That leaves us with three.

28 Assuming they don't have their own issues, that leaves us

1 a maximum of eight jurors. If we do three alternates, and
2 unless you agree -- unless there are three alternates you can
3 stipulate to and then I can leave you in here for a couple
4 minutes if you want to discuss that.

5 MR. BASILE: Let's go through the preempts to get three.

6 THE COURT: Worst case scenario, you each use your three.
7 That's six. That is going to leave us with two alternates.

8 MR. BASILE: If we use --

9 THE COURT: If everyone uses the three.

10 THE CLERK: Three.

11 THE COURT: I have five.

12 THE CLERK: Plus another three.

13 THE COURT: That's six, right? Six peremptories, two
14 left?

15 THE CLERK: They have three peremptories to their
16 alternates.

17 THE COURT: So three peremptories and three peremptories.
18 That's six. That would get rid of six of the eight.

19 I'm not counting. That's nine, right? I'm not counting
20 Mr. Esparza. I was only counting the people we were voir diring
21 this afternoon.

22 MR. BASILE: We have six.

23 THE COURT: Six plus three equals nine. Let's go ahead
24 and use the peremptories and see if we get to these last three.

25 MR. BASILE: Why don't we do it in here? You can go
26 ahead and excuse them. Or you want to do it in open court?

27 THE COURT: Just for note keeping, it would be easier
28 that way, but we'll move through it quickly.

1 (Proceedings held in the presence of the prospective
2 jurors as follows:)

3 THE COURT: Going on the record in Collins versus DG
4 Corp.

5 We're going to select three alternates. And we're going
6 to proceed with these peremptory challenges.

7 Plaintiff?

8 MR. BASILE: Your Honor, are they directed at the first
9 three or the entire since we have three alternates? I'm
10 assuming we're directing it to the first three; is that right?

11 THE COURT: Yes. You can go in order. We're left with
12 three, the same as if we were doing a 18 pack.

13 MR. BASILE: We would thank and excuse Mr. Esparza.

14 THE COURT: Okay. Thank you, Mr. Esparza. Thank you for
15 your time yesterday and today.

16 PROSPECTIVE JUROR ESPARZA: Okay.

17 THE COURT: You're excused.

18 PROSPECTIVE JUROR ESPARZA: Okay. Thank you.

19 THE COURT: Mr. Schumann?

20 MR. SCHUMANN: We accept the panel as is.

21 THE COURT: Just so we're clear, that would be the next
22 three in order.

23 It would be Ms. Leskoviansky -- I know that wasn't right.
24 Mr. Everett and Mr. McCreesh.

25 Okay.

26 MR. BASILE: We'd thank and excuse Mr. McCreesh.

27 PROSPECTIVE JUROR MCCREESH: Okay. Okay to go?

28 THE COURT: Yes, thank you, Mr. McCreesh, sorry. You got

1 ahead of me on my notes.

2 Thank you. Have a nice day.

3 PROSPECTIVE JUROR McCREESH: Yes, sir.

4 THE COURT: Mr. Schumann, that leaves us with
5 Ms. Leskoviansky, Mr. Everett and Mr. Jolly.

6 MR. SCHUMANN: We accept the panel.

7 MR. BASILE: Your Honor, we'd thank and excuse
8 Mr. Everett.

9 PROSPECTIVE JUROR EVERETT: Thank you.

10 THE COURT: Thank you, Mr. Everett.

11 Let's go with Ms. Leskoviansky and Mr. Jolly and
12 Mr. Benitez.

13 MR. SCHUMANN: We'd like to thank and excuse Mr. Jolly.

14 THE COURT: Okay. And Mr. Alcantar, the Court thanks and
15 excuses you for your time.

16 PROSPECTIVE JUROR ALCANTAR: Thank you, your Honor. It's
17 a delight to be here. You're very professional and I appreciate
18 it.

19 THE COURT: Thank counsel too. And we thank you.

20 That leaves us with Mr. Jolly. The Court also thanks and
21 excuses you. I appreciate your time yesterday and today. Have
22 a nice day.

23 PROSPECTIVE JUROR JOLLY: Thank you.

24 THE COURT: And Mr. Benitez, if I could please have
25 everyone move over just one seat.

26 Thank you.

27 Okay. We'll call the remainder of the panel to select
28 one person.

1 THE CLERK: Sarah Sanchez, S-A-N-C-H-E-Z.

2 James Kelly, K-E-L-L-Y.

3 And last but not least, John Burke, B-U-R-K-E.

4 THE COURT: And that is the entire panel? All right.

5 You are our last three. Sometimes the entire panel, you
6 don't get called up, but everyone is here. Perfect.

7 And the list here.

8 Sarah Sanchez, good afternoon.

9 PROSPECTIVE JUROR SANCHEZ: I live in La Quinta. Current
10 occupation is safety supervisor and Old Dominion Freight Line.

11 I live with my wife and my adult son.

12 He's 22 and he works for a moving company.

13 My wife works in specialized insurance for Wilmington
14 Trust Bank in corporate banking.

15 I have never served on a jury before.

16 Highest level of formal education, I have a bachelor's
17 degree in sociology.

18 I do have a couple close friends in the legal system but
19 not in California.

20 I've never been sued and I don't know of anybody close to
21 me who has been or anything related to that.

22 And I am not sure I can be a fair judge of facts in this
23 case based on my safety background.

24 I'm also a retired combat vet who worked in logistics and
25 safety and lost many people due to safety issues at the time in
26 the military.

27 THE COURT: Which branch of the military?

28 PROSPECTIVE JUROR SANCHEZ: I was in the Army, your

1 Honor.

2 THE COURT: Okay. And, first, thank you for your
3 service.

4 What time period did you serve?

5 PROSPECTIVE JUROR SANCHEZ: I was in from 2001, two weeks
6 before 9/11 to 2012.

7 THE COURT: So understandably you mentioned the reason
8 you have some very strong feelings about safety.

9 PROSPECTIVE JUROR SANCHEZ: That's correct. That's my
10 job.

11 THE COURT: So you've seen when it's obviously had some
12 severe consequences.

13 PROSPECTIVE JUROR SANCHEZ: I've been in legal issues
14 with the military side of things when I was in that had severe
15 consequences in several different cases back in the early 2000s.
16 That's what I strive to do for my daily job now to make sure
17 that people are safe.

18 THE COURT: Okay. I'm sure that the attorneys will have
19 follow-up questions in terms much your strong feelings and what
20 the issues may be in this case and whether you would be able to
21 be a fair judge of that.

22 PROSPECTIVE JUROR SANCHEZ: Absolutely.

23 THE COURT: Anything else we should know?

24 PROSPECTIVE JUROR SANCHEZ: No.

25 THE COURT: Thank you for your time.

26 James Kelly.

27 PROSPECTIVE JUROR KELLY: James Kelly.

28 Live in Palm Springs. I'm retired. I was an

1 administrator before my retirement.

2 I live with my husband. He's also retired. He's an
3 appraiser of fine art and antiques. I have no children.

4 I've previously served on a jury in L.A. County. Maybe
5 ten years ago. I've served on a couple. They were both
6 criminal courts where I served.

7 We did arrive -- okay.

8 My highest level of education, I have a master's degree.

9 I do not have -- number 8 would be no.

10 And number 9 would be no.

11 Number 10, I don't know if I could be a fair judge on the
12 facts of this case.

13 THE COURT: Your master's, was that in business
14 administration?

15 PROSPECTIVE JUROR KELLY: It was in health services
16 administration.

17 THE COURT: And then you mentioned you're not certain if
18 you could be a fair judge in this case based on the little bit.

19 PROSPECTIVE JUROR KELLY: It's hard to hear you.

20 THE COURT: It's okay. You mentioned that you're not
21 sure if you could be a fair judge based on the little that we've
22 told you about the case?

23 PROSPECTIVE JUROR KELLY: Yeah. After listening to the
24 last couple days with some of these attorneys here, I find it --
25 essentially on the Collins side, the dollar amount being thrown
26 around, oh, \$10 million this, \$10 million that, I think that's
27 very greedy.

28 You know, it bothers me, you know.

1 I know that on the other attorneys on other side that --
2 my understanding is that it's investor -- they're representing
3 an investor. I'm not sure if that is one investor or several
4 investors or if they even show up here.

5 That's part of it. Some of these things have been
6 brought up that bothers me, and I don't know if I would be in
7 some of their best interests.

8 Also from past jury experience, I would hate to be
9 represented by a jury if I had a case, because from experience,
10 one of my last cases, which was a homicide, some of the jurors
11 lied. It was found out during the case.

12 It seemed like some people like to just get off work and
13 they want to come and they'll do anything, say anything. Then
14 when it comes down to deliberations, you know, sometimes it's a
15 different thing.

16 THE COURT: Thank you for your honesty.

17 PROSPECTIVE JUROR KELLY: Sure.

18 THE COURT: On that latter point, I'm sorry that was your
19 experience. As I mentioned at the beginning of the day
20 yesterday, if you're seated on this jury, I'm sure these
21 attorneys have -- I recall when being in practice and having
22 tried many cases, many cases, and speaking with jurors
23 afterwards, the majority, they found it to be an interesting
24 experience despite their desire to probably not be on the jury
25 at the onset. So I'm sorry that was your experience of the
26 court.

27 The latter point in terms -- you mentioned some bias and
28 strong feelings you have. I'll let the attorneys talk to you

1 about that. Please know the attorneys are restricted not by
2 this Court but by the Rules of Court in terms of what they can
3 discuss with you. That's why they have a mini opening.

4 The Court can tell you in general terms what the case is,
5 but we don't permit the attorneys to tell you in a paragraph
6 here's the case. Now, how would you vote. It wouldn't be fair
7 to either party because the only thing you're to consider is the
8 evidence you hear in the courtroom.

9 You know, you have the sterile confines here. Everything
10 else, all the noise, all that is put aside. You need the
11 witness testimony to come in, and then you may be an
12 evaluation, judge credibility, and then the Court will give you
13 instructions about what elements must be proven in this case by
14 the plaintiff. Then you may be your determination there
15 independently and also with your fellow jurors.

16 But it's not the attorneys. It's not that they don't
17 want to tell you more. Believe me, they can't wait to tell you
18 in representing their respective cases, but every court is the
19 same, whether it's criminal or civil. We can't tell you the
20 facts of the case and just ask you on the spot how do you vote.
21 It just doesn't work that way.

22 It's not on them, though.

23 Thank you for that, though, Mr. Kelly.

24 PROSPECTIVE JUROR KELLY: You're welcome.

25 THE COURT: Next, last but not least, we have?

26 PROSPECTIVE JUROR BURKE: John Burke.

27 THE COURT: John Jeffrey Burke.

28 PROSPECTIVE JUROR BURKE: Yes.

1 THE COURT: I'm sorry. I thought we were -- ultimately
2 we ended up with 44 jurors, but you were actually Juror 64 on
3 the list. Okay.

4 PROSPECTIVE JUROR BURKE: Thank you.

5 I just want to make a comment. I do have a conflict on
6 Monday, July 25th, where I would be flying back from a trip.

7 THE COURT: Okay.

8 PROSPECTIVE JUROR BURKE: Hopefully we won't go that
9 long.

10 THE COURT: But that might be something we can work with.
11 Perhaps the parties can work on final instructions or something.
12 We can work with that, but you being gone for two weeks will be
13 something else.

14 Thank you for sharing that, though.

15 PROSPECTIVE JUROR BURKE: I live in Palm Springs. I am
16 currently retired. My former job, I was a defense electronics
17 program manager.

18 I do live with my husband and he is a hotel concierge.

19 We have no children. I served on a jury once around 15
20 years ago in Dallas, Texas. It was a civil case involving a
21 traffic accident. We did arrive at a verdict.

22 My highest level of education is a bachelor of science
23 and physics.

24 I do not have any close friends that are in the Court or
25 legal system. I do want to note I do have a close friend who is
26 a lawyer, but he is a corporate intellectual property lawyer.

27 I do have a sister who was involved in a lawsuit
28 concerning a medical malpractice matter around 2007. To the

1 best of my knowledge, it was settled satisfactorily, but I don't
2 know the details of it.

3 Yes, I do believe I can be fair judge of the facts in
4 this case.

5 THE COURT: All right. Thank you, Mr. Burke.

6 Mr. Basile?

7 MR. BASILE: Yes, thank you.

8 I'm going to be a two for one because I feel it's the
9 same issue for both you too, Ms. Sanchez and Mr. Kelly. Thank
10 you, though, for sharing.

11 Ms. Sanchez, with your experience in safety and saying
12 what happens when safety systems aren't followed and fall apart,
13 the decision in this case that you're going to have to make is
14 not whether safety is important. It's whether a corporation was
15 irresponsible in managing and overseeing a safety system at one
16 of their plants. That's it.

17 Even though you have strong feelings about safety, could
18 you just focus on the task as a juror?

19 PROSPECTIVE JUROR SANCHEZ: I don't think I can, to be
20 completely honest.

21 Being in safety and knowing and losing the people that I
22 lost to safety issues specifically, it's inbred in me. So I'm
23 saying I don't think I can.

24 MR. BASILE: I'm sorry. Was that during your time in the
25 service?

26 PROSPECTIVE JUROR SANCHEZ: That is correct.

27 MR. BASILE: I'm very sorry for your loss. I appreciate
28 you saying that.

1 If you feel that will keep you from being able to follow
2 the law in this case, then that's what we need to hear.

3 PROSPECTIVE JUROR SANCHEZ: That's correct.

4 MR. BASILE: Do you think it will keep you from following
5 the law?

6 PROSPECTIVE JUROR SANCHEZ: That's correct, sir.

7 MR. BASILE: Does the same thing apply to you, Mr. Kelly?

8 I appreciate you saying that, although I have to be
9 straight with you. You're straight with me. I'll be straight
10 with you.

11 It doesn't make me feel good to be called greedy.

12 PROSPECTIVE JUROR KELLY: That's how I feel. It seems
13 greedy when you throw out \$10 million. I think that's really
14 wrong.

15 Go ahead.

16 MR. BASILE: Please. Your turn.

17 PROSPECTIVE JUROR KELLY: I just feel like it turns -- it
18 turns me off to it.

19 I think your clients who you're representing, you know,
20 it does a dissatisfaction to them.

21 MR. BASILE: Let me share with you something -- what I'm
22 trying to do by saying those numbers. I have to question jurors
23 to see if they will follow the law and the evidence. That's
24 all. And the jury is going to decide how much money it is, not
25 me.

26 PROSPECTIVE JUROR KELLY: I understand.

27 MR. BASILE: Understand that?

28 Now --

1 PROSPECTIVE JUROR KELLY: But you're putting something in
2 their heads, you know.

3 MR. BASILE: Well, that's true. That's true.

4 But what I have to do is see if there is anything that's
5 going to hold them back from following the law.

6 Let me start with this. Would you agree that the loss of
7 a long-term relationship, a marriage, is huge, is big?

8 PROSPECTIVE JUROR KELLY: Yeah, I would. It depends on
9 the situation, too.

10 MR. BASILE: You need to know more?

11 PROSPECTIVE JUROR KELLY: Some people are married just
12 out of convenience.

13 MR. BASILE: That is what I mean. You need to learn
14 about the relationship.

15 Would you agree that the loss of a father to someone
16 else's wrongful conduct is a huge loss too? Would you agree
17 with that.

18 PROSPECTIVE JUROR KELLY: I would think, yeah.

19 MR. BASILE: My question with those numbers is can people
20 keep an open mind, leave room for the possibility. That's all.
21 Trust this jury. Leave room for the possibility that the
22 evidence and the law may be a big number for lots of harm.
23 That's all.

24 But you feel there is, no matter what the evidence and
25 the law is -- I really appreciate you saying that, that you
26 couldn't follow it if it's beyond a certain amount; is that
27 right?

28 PROSPECTIVE JUROR KELLY: I would find it difficult, I

1 really would. You know, again, you have to measure what was the
2 person's -- yeah, I would find it difficult to follow it.

3 MR. BASILE: So you would have a bias.

4 PROSPECTIVE JUROR KELLY: Yeah, I would have a bias.

5 MR. BASILE: No matter what anybody else asks you, you've
6 had that for a long time, that feeling?

7 PROSPECTIVE JUROR KELLY: Yeah.

8 MR. BASILE: No matter what anybody is going to say or
9 what happens in this courtroom, it's not going to change your
10 mind?

11 I appreciate that, sir.

12 PROSPECTIVE JUROR KELLY: Probably not.

13 MR. BASILE: Okay.

14 PROSPECTIVE JUROR KELLY: Honestly.

15 MR. BASILE: Thank you. That's what I appreciate.
16 Thanks.

17 Mr. Burke.

18 PROSPECTIVE JUROR BURKE: Burke, B-U-R-K-E.

19 MR. BASILE: I have two hearing aids.

20 PROSPECTIVE JUROR BURKE: I learned long ago to make the
21 correction early so we can get it fixed.

22 MR. BASILE: Sorry about that.

23 Anything you think I need to know about things like
24 Ms. Sanchez or Mr. Kelly said? Anything you think I need to
25 know.

26 PROSPECTIVE JUROR BURKE: I think that it's a jury trial
27 and we need to listen to the evidence that's presented and
28 render what we think the answer is.

1 MR. BASILE: Okay.

2 PROSPECTIVE JUROR BURKE: It can't be done until you
3 listen to the facts.

4 MR. BASILE: Absolutely.

5 Would you after listening to the facts and hearing the
6 law from the judge, if the evidence shows, be able to hold this
7 corporation fully accountable for all the harm that they've
8 caused?

9 PROSPECTIVE JUROR BURKE: If that's what you prove,
10 certainly.

11 MR. BASILE: Thank you.

12 I'm fine, your Honor.

13 THE COURT: Thank you.

14 MR. BASILE: I'm not passing.

15 THE COURT: Thank you, Mr. Basile.

16 Mr. Schumann?

17 MR. SCHUMANN: Yeah, thank you.

18 Mr. Kelly.

19 PROSPECTIVE JUROR KELLY: Yes.

20 MR. SCHUMANN: You understand that whatever plaintiff's
21 counsel requests from you, \$10 million, that that's not the law.

22 PROSPECTIVE JUROR KELLY: Yeah. I understand that.

23 MR. SCHUMANN: And you understand that you can disagree
24 with that number and come up with your own number?

25 PROSPECTIVE JUROR KELLY: Right.

26 MR. SCHUMANN: Do you understand that?

27 PROSPECTIVE JUROR KELLY: Yeah.

28 MR. SCHUMANN: So if you sat on the jury, would you be

1 able to follow the law even though you would disagree on
2 whatever the number the plaintiff's lawyer asks for?

3 PROSPECTIVE JUROR KELLY: I'm not sure.

4 MR. SCHUMANN: What is it about that you're not sure?

5 PROSPECTIVE JUROR KELLY: You're saying if they come up
6 with a figure?

7 MR. SCHUMANN: Let's give the example. They ask for
8 \$10 million and you end up on the jury. And you've told us that
9 in your opinion you don't like that number already, correct?

10 PROSPECTIVE JUROR KELLY: Right. I don't.

11 MR. SCHUMANN: You understand you have the right not to
12 agree.

13 PROSPECTIVE JUROR KELLY: Yeah.

14 MR. SCHUMANN: You can disagree with that number and you
15 can think that number is much too high and you can decide your
16 own number.

17 PROSPECTIVE JUROR KELLY: Right.

18 MR. SCHUMANN: Okay. So with that premise, could you
19 still sit on the jury, listen to whatever number they say and
20 then make up your own mind as to what you might feel if you
21 decided that there was a number that should be given?

22 PROSPECTIVE JUROR KELLY: Yeah.

23 MR. SCHUMANN: So you might say -- I'll just be extreme.
24 You might say one dollar and that's your prerogative.

25 PROSPECTIVE JUROR KELLY: Right.

26 MR. SCHUMANN: So do you still think you could be fair
27 and give some number, whatever you feel is the right number for
28 the value of loss if you even got to that point?

1 PROSPECTIVE JUROR KELLY: Yeah, I could do that.

2 But, you know, I know that, like, your company or -- is
3 that who you represent, somebody out there?

4 MR. SCHUMANN: Yeah, my client is over there.

5 PROSPECTIVE JUROR KELLY: Which one is it?

6 MR. SCHUMANN: My client here.

7 PROSPECTIVE JUROR KELLY: She owns a percentage of the
8 company?

9 MR. SCHUMANN: I'm sorry. I'm not allowed to answer the
10 question. That's reserved for when we start the evidence, as
11 his Honor said. It's difficult to ask questions because we
12 don't -- we can't tell you the whole story yet, so we're just
13 trying to get to know you and find out can you be open,
14 objective, listen to the evidence before we make a decision,
15 listen to his Honor's instructions of the law and then apply the
16 law to those facts.

17 PROSPECTIVE JUROR KELLY: I can listen to it, but I can
18 understand the judge's direction, but you know I still have a
19 bias in this case.

20 MR. SCHUMANN: Okay. You have a bias in the dollar
21 request?

22 PROSPECTIVE JUROR KELLY: With the what?

23 MR. SCHUMANN: With the dollar amount.

24 PROSPECTIVE JUROR KELLY: Not just that. I would say
25 also from your side I know that you're trying to not pay
26 anything out, but, you know --

27 MR. SCHUMANN: I haven't said that yet.

28 PROSPECTIVE JUROR KELLY: That is what it comes down to.

1 MR. SCHUMANN: If I asked you at the end of the day -- if
2 I had proven my case, would you be able to give nothing to the
3 plaintiffs?

4 PROSPECTIVE JUROR KELLY: I don't think so.

5 MR. SCHUMANN: You think you would feel even if I proved
6 my case you would feel you would have to give them something?

7 PROSPECTIVE JUROR KELLY: It's beyond -- I don't know.

8 MR. SCHUMANN: Okay. I'm just trying to figure out if
9 you have that bias right now towards both of us a little bit.

10 PROSPECTIVE JUROR KELLY: Yeah, I do.

11 MR. SCHUMANN: Okay. I think that's it.

12 Thank you, your Honor.

13 THE COURT: The Court is going to briefly -- I'll allow
14 both counsel to follow up with limited scope.

15 Mr. Kelly, just a couple more questions.

16 I believe both Mr. Basile and Mr. Schumann were trying to
17 follow up on this. They're both correct. There is not an
18 instruction that tells you if you find this true, then you give
19 \$100 or \$100,000 or a million dollars or \$10 million. It's
20 ultimately what you determine an amount to be if certain things
21 are proven.

22 What the parties are trying to figure out is if do you
23 have a bright-line rule where you say it doesn't matter what I
24 hear, I will never award more than a hundred dollars in this
25 type of case. I'll never award more than a hundred thousand.
26 I'll never award more than a million, 10 million, whatever it
27 may be. In your mind, you have a set figure that you're not
28 going to go below or above just because of whatever your

1 personal experience is.

2 PROSPECTIVE JUROR KELLY: No, I don't. No, I don't.

3 THE COURT: All right. So, again, if you could explain
4 for us the bias that you indicated.

5 PROSPECTIVE JUROR KELLY: Okay. Again, going back to
6 my -- I know it's a terrible thing to lose somebody, because
7 I've lost individuals in my life. But, you know, again, I think
8 about, you know, the individual, you know, what was their net
9 earnings, what were their future earnings going to go, but, you
10 know, I look at that.

11 It bothers me on this side where with those numbers have
12 been thrown out.

13 On the other side -- it bothers me, over the other side,
14 is where, you know, even if they were responsible, they probably
15 feel they shouldn't pay anything.

16 THE COURT: That being said, obviously you have an
17 opinion, and you're allowed to have opinions.

18 With those opinions, are you able to set those aside and
19 follow the instructions that the Court would give you if you're
20 ultimately on this jury?

21 PROSPECTIVE JUROR KELLY: I would find it very difficult.

22 THE COURT: To follow the Court's instructions?

23 PROSPECTIVE JUROR KELLY: Well, I could sit here and
24 listen to it, but I would find it, you know, very hard.

25 THE COURT: There's finding it difficult and hard and
26 then not being able to do it.

27 PROSPECTIVE JUROR KELLY: Are you talking about specific
28 instruction or overall --

1 THE COURT: All the instructions that ultimately you
2 would receive.

3 PROSPECTIVE JUROR KELLY: I guess I could follow them if
4 that's what I'm being instructed to do.

5 THE COURT: So you could follow the Court's instructions
6 and put aside whatever strong opinions you have?

7 PROSPECTIVE JUROR KELLY: I don't think I could put aside
8 my strong opinions, but --

9 THE COURT: Okay. Mr. Basile, if you would like briefly
10 to follow up on this limited inquiry.

11 MR. BASILE: Nothing is going to change, like I said
12 before. This probably isn't the right case for you. You'd
13 agree with that?

14 PROSPECTIVE JUROR KELLY: Probably not. I would say no.

15 MR. BASILE: Because you're going to struggle with this,
16 it isn't going to leave you. You will struggle with following
17 the law?

18 PROSPECTIVE JUROR KELLY: I think so.

19 MR. BASILE: Thank you. That's honest.

20 THE COURT: Mr. Schumann?

21 MR. SCHUMANN: No questions.

22 THE COURT: Let's take a couple minutes here.
23 We're -- we have discussion, yes?

24 MR. SCHUMANN: Yes.

25 THE COURT: Okay. Let's -- it's 2:50. Let's -- not
26 counsel, but prospective jurors -- not prospective. You have 12
27 now and then the prospective alternates. Let's go ahead and
28 take a 15-minute break. If we could please have you come back

1 at 3:04. Let's try. One of these days we'll get it.

2 Please do not discuss the facts of the case or any of the
3 parties with each other.

4 See you at 3:04.

5 (Proceedings held out of the presence of the
6 prospective jurors as follows:)

7 MR. BASILE: Your Honor, we're trying to work out a
8 stipulation here. I made an offer.

9 THE COURT: Let the record reflect all members of the
10 jury and the prospective alternates have left the courtroom so
11 we're outside the presence of the jury.

12 There are discussions regarding what to do here, a
13 potential challenge for cause as to some of the alternates.

14 MR. SCHUMANN: I think counsel and I have discussed
15 that -- we can probably both agree that Sanchez and Kelly are
16 lost causes.

17 THE COURT: That leaves us with one question,
18 Mr. Schumann.

19 MR. SCHUMANN: And no -- we accept.

20 MR. BASILE: We're willing to accept them.

21 THE COURT: You won't use your last peremptory?

22 MR. SCHUMANN: I think two left. I guess I can mess it
23 up big time and make madam clerk bring up more people tomorrow.
24 We'll accept the jury as is, your Honor.

25 THE COURT: We'll let them know when they come back in.
26 So the alternates, Ms. Leskoviansky, Benitez and Burke.

27 MR. BASILE: How do you call them up?

28 THE COURT: We do it randomly. We have a hat, straws.

1 As I mentioned earlier, it won't be by you. They are alternate
2 numbers 1 through 3. Fingers crossed, try not to bring anything
3 intentionally into the courtroom. It's happening countywide.

4 MR. BASILE: What?

5 THE COURT: To have an interruption because of
6 quarantine.

7 MR. REID: COVID stuff.

8 THE COURT: COVID stuff, yes.

9 Please enjoy your break. We'll see you at 3:04 .

10 MR. SCHUMANN: Three o'clock?

11 THE COURT: Three o'clock is fine.

12 Thank you, Mr. Schumann.

13 MR. SCHUMANN: Thank you.

14 (Recess.)

15 (Proceedings held out of the presence of the
16 prospective jurors as follows:)

17 THE COURT: Quickly, let's go back on the record on
18 Collins versus DG Corp.

19 Mr. Reid, I keep getting confused because I keep reading
20 some of the pending motions. You ask to be called DG Corp,
21 correct?

22 MR. REID: Yes, your Honor.

23 THE COURT: Then I keep reading Diamond Generating
24 Incorporated.

25 MR. REID: We'll clean it up, your Honor.

26 THE COURT: Just some consistency.

27 In terms of scheduling, so we're going to bring in the
28 jurors. We'll go ahead and swear in the alternates. Then the

1 Court will go ahead and read the 100 series instructions.

2 Then we'll plan on opening statements for tomorrow.

3 Once the jurors leave this afternoon, I don't have
4 anything final for you on some of the pending motions, but I do
5 have some questions. And perhaps you can help the Court with
6 some additional material, although I hope I don't regret asking
7 for more.

8 MR. BASILE: You will.

9 THE COURT: So that's the plan.

10 Anything to add to that?

11 MR. SCHUMANN: No. Just whatever the question might be,
12 I know we would prefer to put our response in writing.

13 THE COURT: Yes. It's not anything for the 100 series so
14 we'll deal with that.

15 Then we'll get -- Mr. Basile, we'll get your witness
16 order for tomorrow.

17 Sorry, Deputy Lee.

18 Thank you.

19 (Proceedings held in the presence of the
20 prospective jurors as follows:)

21 THE COURT: Back on the record. Collins versus DG
22 Corporation.

23 Mr. Kelly and -- sorry. Ms. Sanchez and Mr. Kelly, thank
24 you for your time. You are excused.

25 PROSPECTIVE JUROR SANCHEZ: Thank you, your Honor.

26 THE COURT: Thank you again for your 11 years of service.

27 PROSPECTIVE JUROR KELLY: Do we check out?

28 THE COURT: No, you're free to go.

1 Thank you, Mr. Burke. You'll be one -- you'll be
2 alternate number 3.

3 As I mentioned to the alternates. You will be sworn in
4 here in just a moment. Your number does not reflect what order
5 you would be called upon if we do need you, so you all have an
6 equal chance if we do need to call upon you. So thank you.

7 Actually, if you would like to go ahead and take your
8 seats for the remainder of this trial.

9 Ms. Leskoviansky, if you could have seat number one.

10 Mr. Benitez, if you would have seat number 2.

11 Then, Mr. Burke, we have a seat here. That will be
12 alternate number 3.

13 PROSPECTIVE JUROR BURKE: Okay.

14 THE COURT: Although with the witness, will we ultimately
15 be able to move it over to that corner.

16 THE CLERK: We can move it.

17 THE COURT: When you want to see witness' testimony,
18 we'll move that chair over for you.

19 PROSPECTIVE JUROR BURKE: Does this belong to somebody?

20 THE COURT: To you. We'll talk to you about that in a
21 moment.

22 THE CLERK: Alternates, if I could have you stand and
23 please raise your right hands.

24 (Alternate jurors sworn.)

25 (Jurors responded in the affirmative.)

26 THE COURT: Thank you. So we'll be done here shortly.

27 The plan is for tomorrow the parties will go ahead and
28 give you their opening statements, their good faith belief in

1 terms of what evidence they expect you will hear during the
2 coming weeks.

3 Then plaintiffs will begin their case in chief with
4 witness testimony.

5 So we can get started, and from here on now it will
6 become more interesting. Of course, it's interesting to hear
7 what your fellow members of the community, what they do, their
8 backgrounds, where people are from. While that is interesting,
9 I know it does kind of get long, so the case will start now. I
10 hope you do find that more interesting.

11 That being said, I have a series of instructions to read
12 you. I'll try to go relatively quickly through them so we get
13 these on the record.

14 Okay. You have now been sworn as jurors in this case. I
15 want to impress upon you the seriousness and importance of
16 serving on a jury.

17 Trial by jury is a fundamental right in California. The
18 parties have a right to a jury that is selected fairly, that
19 comes to the case without bias, and that will attempt to reach a
20 verdict based on the evidence presented.

21 Before we begin I need to explain how you must conduct
22 yourself during the trial.

23 Do not allow anything that happens outside this courtroom
24 to affect your decision.

25 During the trial do not talk about this case or the
26 people involved in it with anyone, including family and persons
27 living in your household, friends and co-workers, spiritual
28 leaders, advisors or therapists.

1 You may say you're on a jury and how long the trial may
2 take, but that is all. You must not even talk about the case
3 with other jurors until after I tell you that it's time for you
4 to decide the case.

5 This prohibition is not limited to face-to-face
6 conversations. It also extends to all forms of electronic
7 communications.

8 Do not use any electronic device or media such as a
9 cellphone or smartphone, PDA, computer, the internet, any
10 internet service, any text or instant messaging service, any
11 internet chatroom, log or website including social networking
12 websites or online diaries to send or receive any information to
13 or from anyone about this case or your experience as a juror
14 until after you have been discharged from your jury duty.

15 During trial you must not listen to anyone else talk
16 about the case or the people involved in this case. You must
17 avoid any contact with the parties, the lawyers, the witnesses
18 and anyone else who may have a connection to the case.

19 If anyone tries to talk to you about this case, tell that
20 person that you cannot discuss it because you're a juror.

21 If that person keeps talking to you, simply walk away and
22 report the incident to the courtroom assistant, Ma. Youngberg,
23 or to Deputy Lee as soon as you can.

24 After the trial is over and I've released you from your
25 jury duty, you may discuss the case with anyone, but you are not
26 required to do so.

27 During the trial do not read, listen to or watch any news
28 reports about this case. I have no information that there will

1 be news reports concerning this case. This prohibition extends
2 to the use of the internet in any way, including reading any
3 blog about the case or about anyone involved with it.

4 If you receive any information about this case from any
5 source outside of the courtroom, promptly report it to the
6 Court.

7 It is important that all jurors see and here this same
8 evidence at the same time.

9 Do not do any research on your own or as a group. Do not
10 use dictionaries, the internet or other reference materials.

11 Do not investigate the case or conduct any experiments.

12 Do not contact anyone to assist you such as a family
13 accountant, doctor or lawyer.

14 Do not visit or view the scene of any -- sorry, or view
15 the scene of any events involved in this case or use Google maps
16 or mapping programs or any other program or device to search for
17 or to view any place discussed in the testimony.

18 If you happen to pass by the scene, do not stop or
19 investigate.

20 If you do need to view the scene during trial, you will
21 be taken there as a group under proper supervision.

22 If you violate any of these prohibitions on
23 communications and research, including prohibitions on the
24 electronic communications and research, you may be held in
25 contempt of court or face other sanctions. That means that you
26 may have to serve time in jail, pay a fine or face other
27 punishment for that violation.

28 It is important that you keep an open mind throughout

1 this trial. Evidence can only be presented a piece at a time.

2 Do not form or express an opinion about this case while
3 the trial is going on. You must not decide on a verdict until
4 after you have heard all of the evidence and have discussed it
5 thoroughly with your fellow jurors in your deliberations.

6 Do not concern yourself with the reasons for the rulings
7 I will make during the course of the trial.

8 Do not guess what I may think your verdict should be from
9 anything I might say or do.

10 When you begin your deliberations, you may discuss the
11 case only in the jury room and only when all jurors are present.

12 You must decide what facts are in this case.

13 Do not let bias, sympathy, prejudice or public opinion
14 influence your verdict.

15 At the end of the trial, I will explain the law that you
16 must follow to reach your verdict. You must follow the law as I
17 explain it to you even if you do not agree with the law.

18 To assist you in your task as jurors, I will now explain
19 how the trial will proceed.

20 I will begin by identifying the parties to the case.

21 Denise Collins and Christopher Collins filed this
22 lawsuit. They are called plaintiffs. They seek damages from
23 Diamond Generating Corporation, who is called defendant.

24 Denise Collins was the wife of Daniel Collins while
25 Christopher Collins is Daniel Collins's son.

26 They have filed this wrongful death action claiming that
27 Diamond Generating Corporation undertook a specific task and
28 performed it in a negligent manner, which was the cause of the

1 Daniel Collins's death.

2 Defendant Diamond Generating Corporation disputes that
3 they were negligent in performing the specific tasks and also
4 disputes the nature and extent of the harms caused by Daniel
5 Collins's death.

6 They also claim Daniel Collins' own negligence and the
7 negligence of others contributed to his death.

8 First, each side may make an opening statement, but
9 neither side is required to do so. An opening statement is not
10 evidence. It is simply an outline to help you understand what
11 the party expected the evidence to show.

12 Also because it is often difficult to give you the
13 evidence in the order we would prefer, the opening statement
14 allows you to keep an overview of the case in mind during the
15 presentation of the evidence.

16 Next the jury will hear the evidence. Denise Collins and
17 Christopher Collins will present evidence first.

18 When Denise Collins and Christopher Collins are finished,
19 Diamond Generating Corporation will have an opportunity to
20 present evidence.

21 Each side will be questioned by the side who asked the
22 witness to testify. This is called direct examination.

23 Then the other side is permitted to question the witness.
24 This is called cross-examination.

25 Documents or objects referred to during trial are called
26 exhibits.

27 Exhibits are given a number so that they may be clearly
28 identified.

1 Exhibits are not evidence until I admit them into
2 evidence.

3 During your deliberations you will be able to look at all
4 exhibits admitted into evidence.

5 There are many rules that govern whether something will
6 be admitted into evidence. As one side presents the evidence,
7 the other side that is the right to object and to ask me to the
8 evidence is permitted by these rules. Usually I will decide
9 immediately, but sometimes I may have to hear arguments outside
10 your presence.

11 After the evidence has been presented, I will instruct
12 you on the law that applies to the case and the attorneys will
13 make closing arguments.

14 What the parties say in closing argument is not evidence.
15 The arguments are offered to help you understand the evidence
16 and how the law applies to it.

17 You have been given notebooks and may take notes during
18 the trial. Do not take the notebooks out of the courtroom or
19 jury room at any time during the trial.

20 You may take your notes into the jury room during
21 deliberations. You should use your notes only to remind
22 yourself of what happened during the trial.

23 Do not let your note-taking interfere with your ability
24 to listen carefully to all the testimony and to watch the
25 witnesses as they testify, nor should you allow your impression
26 of a witness or other evidence to be influenced by whether or
27 not the jurors are taking notes.

28 Your independent recollection of the evidence should

1 govern your verdict and you should not allow yourself to be
2 influenced by the notes of other jurors if those notes differ
3 from what you remember.

4 The court reporter is making a record of everything that
5 is said. If during deliberations you have a question about what
6 a witness said, you should ask that the court reporter's records
7 be read to you. You must accept the court reporter's record as
8 accurate.

9 At the end of the trial, your notes will be collected and
10 destroyed.

11 A corporation, Diamond Generating Corporation, is a party
12 in this lawsuit. Diamond Generating Corporation is entitled to
13 the same fair and impartial treatment that you would give to an
14 individual. You must decide this case with the same fairness
15 that you would use if you were deciding the case between
16 individuals.

17 When I use words like person or he or she in these
18 instructions to refer to a party, those instructions also apply
19 to Diamond Generating Corporation.

20 You must not consider whether any of the parties in this
21 case have insurance. The presence or absence of insurance is
22 totally irrelevant.

23 You must decide this case based only on the law and the
24 evidence.

25 You must decide what the facts are in this case only from
26 the evidence you see or hear during the trial. Sworn testimony,
27 documents or anything else may be admitted into evidence.

28 You may not consider as evidence anything that you see or

1 hear when the Court is not in session, even something done or
2 said by one of the parties, attorneys or witnesses.

3 What the attorneys say during the trial is not evidence.

4 In their opening statements and closing arguments the
5 attorneys will talk to you about the law and the evidence. What
6 the lawyers say may help you to understand the law and the
7 evidence, but their statements and arguments are not evidence.

8 The attorney's questions are not evidence. Only the
9 witnesses' answers are evidence. You should not think that
10 something is true just because an attorney's question suggests
11 that it is true.

12 However, the attorneys for both sides can agree that
13 certain facts are true. This agreement is called a stipulation.

14 No other proof is needed and you must accept those facts
15 as true in this trial.

16 Each side has the right to object to evidence offered by
17 the other side. If I do not agree with the objection, I will
18 say it is overruled.

19 If I overrule an objection, I will say it is -- sorry.
20 If I overrule an objection, the witness will answer and you may
21 consider the evidence. If I agree with the objection, I will
22 say it is sustained. If I sustain an objection, you must ignore
23 the question. If the witness did not answer, you must not guess
24 what the witness might have said or why I sustained the
25 objection. If the witness has already answered, you must ignore
26 the answer.

27 An attorney may make a motion to strike testimony that
28 you have heard. If I grant the motion, you must totally

1 disregard that testimony. You must treat it as though it did
2 not exist.

3 A witness is a person who has knowledge related to this
4 case. You will have to decide whether you believe each witness
5 and how important each witness' testimony is to the case. You
6 may believe all, part or none of a witness' testimony.

7 In deciding whether to believe a witness' testimony, you
8 may consider, among other factors, the following: How well did
9 the witness see, hear or otherwise sense what the witness
10 described in court; how well did the witness remember and
11 describe what happened; how did the witness look, act and speak
12 while testifying; did the witness have any reason to say
13 something that was not true.

14 For example, did the witness show any bias, prejudice or
15 have a personal relationship with any of the parties involved in
16 the case or have a personal stake in how the case is decided,
17 and what was the witness' attitude towards this case or about
18 giving testimony.

19 Sometimes a witness may say something that is not
20 consistent with something else the witness said. Sometimes
21 different witnesses will give different versions of what
22 happened. People often forget things or make mistakes in what
23 they remember. Also, two people may see the same event but
24 remember it differently.

25 You may consider these differences, but do not decide the
26 testimony is untrue just because it differs from other
27 testimony.

28 However, if you decide that a witness did not tell the

1 truth about something important, you may choose not to believe
2 anything that witness said.

3 On the other hand, if you think the witness did not tell
4 the truth about some things but told the truth about others, you
5 may accept the part you think is true and ignore the rest.

6 Do not make any decisions simply because there were more
7 witnesses on one side than on the other. If you believe it is
8 true, the testimony of a single witness is enough to prove a
9 fact.

10 As an alternate juror you are bound by the same rules
11 that govern the conduct of the jurors who are sitting on this
12 panel. You will observe the same trial and should pay attention
13 to all of my instructions just as if you were sitting on the
14 panel.

15 Sometimes a juror needs to be excused during a trial for
16 illness or for some other reason. If that happens, then an
17 alternate will be selected to take that juror's place.

18 Each one of us has biases about or certain perceptions or
19 stereo types of other people. We may be aware of some of our
20 biases, although we may not share them with others.

21 We may not be fully aware of some of our other biases.
22 Our biases often affect how we act favorably or unfavorably
23 towards someone.

24 Bias can affect our thoughts, how we remember, what we
25 see and hear, whom we believe or disbelieve and how we make
26 important decisions.

27 As jurors, you are being asked to make very important
28 decisions in this case. You must not let bias, prejudice or

1 public opinion influence your decision. You must not be biased
2 in favor of or against parties or witnesses because of their
3 disability, gender, gender identity, gender expression, race,
4 religion, ethnicity, sexual orientation, age, national origin or
5 socioeconomic status.

6 Your decision must be based solely on the evidence
7 presented. You must carefully evaluate the evidence and resist
8 any urge to reach a verdict that is influenced as for or against
9 any party or witness.

10 I know that many of us are used to communicating and
11 perhaps even learning by electronic communications and research.
12 However, there are good reasons why you must not electronically
13 communicate or do any research on anything having to do with
14 this trial or the parties.

15 In court jurors must make important decisions that have
16 consequences for the parties. Those decisions must be based
17 solely on the evidence you hear in this courtroom.

18 The evidence as presented in court can be tested. It can
19 be shown to be right or wrong by either side. It can be
20 questioned and it can be contradicted by other evidence.

21 What you might read or hear on your own could easily be
22 wrong, out of date or inapplicable to this case.

23 The parties can receive a fair trial only if the facts
24 and information on which you base your decisions are presented
25 to you as a group with each juror having the same opportunity to
26 see, hear and evaluate the evidence.

27 Also the trial is a public process. That depends on
28 disclosure in the courtroom of facts and evidence. Using

1 information gathered in secret by one or more jurors undermines
2 the public process and violates the rights of the parties.

3 That concludes our introductory instructions.

4 We thank you again for your time this afternoon. We will
5 see everyone back tomorrow morning at 9:59 a.m. We will start
6 at 10:00 a.m.

7 One moment.

8 Again, the same admonishment. You have now been sworn in
9 as members of this jury. Please do not discuss this case with
10 anyone, the facts or the parties involved.

11 You're welcome to discuss things with each other, just
12 please don't talk about the case.

13 With that -- Alternate Number 3?

14 PROSPECTIVE JUROR BURKE: I just had a quick question
15 reconciling the calendar with your planned schedule.

16 So we will be here tomorrow?

17 THE COURT: Yes.

18 PROSPECTIVE JUROR BURKE: And then we won't be here until
19 the following Tuesday, July 5th; is that correct?

20 THE COURT: I forgot this is 4th of July weekend. That's
21 correct.

22 PROSPECTIVE JUROR BURKE: I just wanted to know.

23 THE COURT: Absolutely. At the end of each day, we will
24 let you know and confirm you'll be back the next day, but I know
25 how important your schedules are. The parties certainly
26 appreciate that. Counsel does.

27 It's Monday through Wednesday. And you've seen that
28 we're trying. We start right at time and maximize your time

1 that you're here.

2 So we'll start tomorrow at 10:00 go to noon, pick up at
3 1:30 and we'll see everybody back the following Tuesday.

4 Please plan accordingly. We're trying to make this as
5 convenient as possible.

6 PROSPECTIVE JUROR EPSTINE: We can keep parking out
7 there? Do we need a special sticker for the car or it's okay to
8 park in the front?

9 THE COURT: This parking lot is different than Larson.
10 You don't need any special permit.

11 If you get here before 8:15 or so -- I'm not sure, if we
12 start at ten, you might get one of those solar panel packing
13 spaces, but after that it's unlikely.

14 Okay. Well, thank you, again, everyone. We'll see you
15 tomorrow morning.

16 (Proceedings held out of the presence of the
17 prospective jurors as follows:)

18 THE COURT: We're outside the presence of the jury.

19 Now, Mr. Basile, your witnesses for tomorrow? I suppose
20 if we start at ten, we can plan safely if you want an hour,
21 maybe have a witness ready for the morning to begin.

22 MR. BASILE: It's Dennis Johnson. Then it will be Albert
23 Palalay.

24 THE COURT: One moment. If you could please spell that
25 for the record.

26 MR. BASILE: P-A-L-A-L-A-Y.

27 Depending on where we're at, your Honor, this is the
28 ideal. You always have your ideal.

1 I want to go with Dennis Johnson, and then we're going to
2 play the deposition of plant manager Tom Walker and then go to
3 Palalay, and then the video deposition of Gonzales and then
4 Delaney.

5 THE COURT: Let's just talk about tomorrow.

6 So we have Dennis Johnson, who will be live?

7 MR. BASILE: Yes. And then Tom Walker will be video.
8 It's a one-hour video.

9 THE COURT: That's my next question. Video, one hour.
10 And we're going to play that. Is it synchronized?

11 MR. BASILE: Yeah, it's all cued up. It's all ready
12 to go.

13 THE COURT: Is there going to be a stipulation that the
14 court reporter need not take the testimony?

15 MR. BASILE: Sure.

16 THE COURT: Mr. Reid, Mr. Schumann?

17 MR. REID: The video testimony?

18 THE COURT: Yes. Of course I don't mean the live
19 testimony of a witness. The video, since there is presumably a
20 transcript of it. That way we can give the court reporter a
21 break.

22 MR. REID: That's fine, your Honor.

23 THE COURT: Okay.

24 MR. REID: One thing with the video testimony, your
25 Honor.

26 We had planned on having Mr. Walker here in person and
27 Mr. Stanley here in person. Mr. Stanley because of the delays
28 and his new job is now not able to travel to California.

1 Depending on when we play Mr. Walker's testimony, we may or may
2 not be able to get him here in time. It just depends with the
3 4th of July holiday, generally.

4 THE COURT: This is who?

5 MR. REID: Tom Walker, the former plant manager.

6 MR. BASILE: We're playing his depo.

7 MR. REID: They're planning on playing his deposition.

8 With the 4th of July holiday, if his deposition is being
9 shown on the 5th, it's almost impossible for him to get here.
10 We can probably have him hear on the 6th without any trouble.

11 Mr. Stanley, we're going to ask that he be allowed to
12 testify by Zoom. I don't know that the -- we've discussed it
13 with counsel. They haven't given us an answer.

14 THE COURT: The Court doesn't have any objection as long
15 as you can work out the technical aspects of it. That seems
16 efficient. This will be subject to cross-examination. We call
17 calendar every morning on Zoom.

18 As long as you handle the tech part. Don't put that onus
19 on the Court to set up the Zoom.

20 MR. REID: We'll handle it. Is that for both Mr. Walker
21 and Mr. Stanley? Because Mr. Stanley can't come. He's not able
22 with his new job to fly out.

23 MR. BASILE: Your Honor, I would like to be heard on
24 this.

25 THE COURT: Sure. So Mr. Walker I understand is being
26 called by plaintiffs, yes?

27 MR. BASILE: Your Honor, may I?

28 THE COURT: Let's deal with Mr. Walker first. You're

1 calling that witness?

2 MR. BASILE: Yes. First Johnson live under 776. I would
3 ask the Court explain 776 to the jury so they know I'm leading
4 him.

5 Then it will be Walker's testimony.

6 Now, concerning Walker and Stanley, that's what's been
7 brought up here. I just want to remind the Court how that came
8 about.

9 Mr. Walker was the plant manager at the time this
10 happened. Through COVID, asking them to produce him, they can't
11 produce him, we want to do it live.

12 We sent a notice. It was not for a deposition. It was
13 in lieu of trial testimony. That's a key factor. We're flying
14 back to take Mr. Walker's testimony in lieu of trial testimony.

15 Notice was given to them to ask what questions at that
16 time that they want. We did that properly. We submitted it to
17 you.

18 So I get to put on my case. My case is we're going to
19 put Walker on. We can't stop my case until they get Mr. Walker
20 here now and put him on in their case. He is not going to be
21 available anyhow.

22 So I want to to play Walker's testimony right after
23 Johnson because we've given them notice that it was trial
24 testimony.

25 Mr. Reid was there. He could have asked whatever he
26 wanted.

27 THE COURT: The Court sees this -- thank you, Mr. Basile.

28 The Court sees this as two separate issues.

1 MR. BASILE: Stanley is the same way.

2 THE COURT: The Court doesn't want to interfere in how
3 you present your case. You have a right. I can't remember the
4 exact language, but you have a right to present your case in the
5 way that you feel would be most effective. And I can't remember
6 the exact case citation.

7 So the Court is not going to interfere with that.

8 In terms of Mr. Walker, if defense wishes to bring him in
9 as their own witness and use Zoom, that's fine. But we're not
10 going to jump in in the middle of plaintiff's case waiting for
11 that.

12 To your request, Mr. Reid, whatever witnesses you would
13 like to call in that regard, you're welcome to use Zoom. I
14 understand they are across the country. You set it up and we'll
15 accommodate that. That's fine.

16 MR. REID: What you're saying, your Honor, is we'll be
17 able to use him in our case in chief but not necessarily as
18 rebuttal to their video.

19 THE COURT: Correct. You can ultimately use him in
20 rebuttal, but we're not going to put plaintiff's case on pause
21 or dictate how they wish to present their case.

22 MR. REID: Understood, your Honor. Thank you.

23 THE COURT: It would be the same. I won't have the same
24 happen to you. You're welcome to put your case on how you wish
25 as well. I won't have plaintiff put a pause to your case.

26 MR. REID: Thank you, your Honor.

27 THE COURT: Okay. Back to the original inquiry. We have
28 Dennis Johnson live. Then we'll play the Thomas Walker video

1 deposition.

2 Then I still don't have an exhibit binder. So is that
3 going to be marked as an exhibit? Is there an attached
4 transcript that your client will send back to the jury room?

5 MR. BASILE: For Walker?

6 THE COURT: Yes.

7 MR. BASILE: No. There's exhibits that are in there.
8 They've already been done.

9 We've worked out a stipulation to exhibits, and we'll
10 have the list for you that we stipulated to admissibility on
11 these. That will be it.

12 After Walker, just to have people lined up, hopefully
13 we'll get to him. I don't know how long. I don't know if
14 they're going to examine Johnson in my case or wait until they
15 do their case. I don't know what the plan is on that.

16 Just for tomorrow we have Dennis Johnson, the video
17 deposition of Thomas Walker and Albert Palalay.

18 THE COURT: Is that video or live?

19 MR. BASILE: He's live.

20 THE COURT: I think that's pretty much all we'll have
21 time for tomorrow.

22 MR. REID: And we do plan on cross-examining Mr. Johnson
23 and Mr. Palalay. We may call Mr. Johnson again in her case in
24 chief.

25 MR. BASILE: Your Honor, I'm a little concerned about
26 that comment. It's not cross-examination. He was their
27 witness. He was represented by them.

28 He's a party affiliated witness. They cannot lead him.

1 It's direct. I'm calling him under 776.

2 THE COURT: Well, I guess he will be subject to recall so
3 we'll see.

4 Mr. Schumann, is that satisfactory --

5 MR. SCHUMANN: I know the Court had made a commitment to
6 make sure we would know the witness order for the following day.
7 You will see the exhibit binders are in the back in the corner
8 there. We're changing out a couple of exhibits based upon our
9 meet and confer, but they'll be ready to go tomorrow, your
10 Honor.

11 THE COURT: Whatever the agreement is. Just provide a
12 list of what we still need to discuss, because that brings me to
13 my last topic of the day because we still have things to do.

14 Not included in the 3401 binder, the trial binder,
15 were -- well, there was instructions which we just read, and the
16 Court previously told -- we made a record last week which 100
17 series we were going to read and they were not modified by the
18 Court.

19 Then there were the jury instructions, the jointly agreed
20 upon, and then there were separate plaintiffs' and defense ones.

21 Since that time while we were on break, while you didn't
22 file any ex parte motions there were several briefs and
23 supplemental briefs going back and forth on this Privette issue.

24 Here is the Court's current position. I wanted to give
25 the tentative to you on that. However, initially the Court's
26 inclination was to deny defense request in looking at it because
27 it did appear that ultimately it's plaintiffs' election. Right
28 or wrong -- it's a matter of opinion -- but the undertaking

1 instruction under 450(c).

2 So the Court's initial inclination was to deny the
3 request. However, the Court did take notice of Justice
4 Cuellar's opinion. It's cited here. I think it was the
5 supplemental supplemental brief, Mr. Schumann.

6 Let's see. There was the first motion.

7 I recall now it was in the proposed instructions.

8 Mr. Basile -- I apologize.

9 MR. SULLIVAN: Mr. Sullivan.

10 THE COURT: I did forget at this moment. It's been a
11 long day.

12 MR. SULLIVAN: I've been quiet for the last couple days.
13 It's understandable.

14 THE COURT: What I have for you -- it's not in your
15 opposition, but I would like you to address Sandoval versus
16 Qualcomm, 12 Cal.5th 256.

17 MR. BASILE: Again, your Honor.

18 THE COURT: 12 Cal.5th 256.

19 And it is in -- it's not in the supplemental or the
20 supplemental supplemental. It's Diamond Generating
21 Corporation's proposed supplemental documents regarding the
22 Privette doctrine.

23 Initially as I mentioned, the Court's inclination is to
24 deny the request. We're not saying where a homeowner hires a
25 roofer to go up. We have a different situation here.

26 However, Justice Cuellar does write -- or did write
27 pretty informative opinions. So the Court is finding that
28 persuasive, not so much as to 1009A but as to 1009B.

1 Just so we're clear, Mr. Schumann, that's an instruction
2 you're requesting?

3 MR. REID: Yes.

4 THE COURT: And you're requesting that instruction as
5 proposed. However it's your position and you indicated in your
6 moving papers that plaintiff hasn't disagreed that if one of
7 those Privette instructions were to apply that 450(c) does not
8 apply then?

9 MR. REID: I don't think that would be a fair
10 interpretation, your Honor. But it would be our argument that
11 if Privette applies, 450(c) does not -- 1009B, your Honor. I
12 apologize. I don't mean to be contradicting something that was
13 said, but I don't recall off the top of my head at the moment.

14 THE COURT: It's right here at the end of page 14 of the
15 supplemental trial brief supporting request for instructions.

16 It says because -- it's heading number 2. "Because the
17 Privette doctrine applies, plaintiffs' jury instruction based on
18 CACI 450(c) should not be given."

19 Then the last sentence says, "As plaintiffs' requested an
20 instruction based on 450(c) did not come within the scope of the
21 two narrow recognized exceptions, the Privette instruction
22 should not be given."

23 MR. REID: Thank you, your Honor.

24 THE COURT: There was a portion where plaintiffs almost
25 conceded that; is that true, Mr. Basile?

26 MR. BASILE: No, it's not, your Honor.

27 THE COURT: This is a straight 450(c) case. We'll take a
28 look at the case the Court cited. I appreciate you giving us

1 the opportunity to look at that. We'll look at it, but it's a
2 straight 450(c) case.

3 The only thing that I would address at this time, your
4 Honor, 450A and B, it's good to take a glance at those. Those
5 are defenses. Those are a Good Samaritan defense case, the
6 defense must prove.

7 450(c) is an affirmative cause of action that we have.

8 So I know it's under 450. This is not in the traditional
9 sense of what Good Samaritan law is. This is not that.

10 This is when someone takes steps to undertake what we're
11 saying is safety here. That's what it is. And they give those
12 three questions at the back. So a whole specificity thing is
13 covered in that instruction.

14 That's where I stand right now. We'll take a look at
15 what you have, what you've instructed.

16 MR. BASILE: The other thing that I would do, your Honor,
17 is direct the Court's attention to the points and authorities
18 that the defendants filed in relation to the summary judgment
19 motion that was denied in this case; specifically on page 13,
20 subparagraph number 2, where they lay out the case specifically
21 convincing this Court that they are not an owner of the Sentinel
22 Energy Center, which the cases make pretty clear that one of the
23 conditions and the requirements of that is to establish that
24 there was an ownership interest there.

25 In their points and authorities that we had an
26 opportunity to respond to, they cited the Ruiz case in an effort
27 to try to establish the proposition that somehow because these
28 guys had a financial interest in a company that owned a company

1 that owned 50 percent of the Sentinel Energy Center, that
2 somehow or another that was supposed to allow that delegation or
3 whatever to move up the line.

4 Well, the Ruiz case doesn't say that. What the Ruiz
5 specifically found was that when you had a situation where you
6 had this person here who was the primary responsible person who
7 hired this person over here to do some work and then an employee
8 for them got injured, in that case there was an agent hired by
9 the person that they were claiming responsibility, the original
10 hire, and there was an agency relationship between them and that
11 other person.

12 What was happening was the people injured over here were
13 claiming that these people over here were vicariously liable for
14 the negligence of their agent. Therefore under that
15 circumstance the Court felt it was appropriate to extend the
16 rules as it relates to the Privette doctrine down to that agent.

17 There is no agency relationship between Diamond
18 Generating Corporation and CPV Sentinel, which is a party that's
19 a party to the contract. There is no agency relationship there.

20 In fact, the defendants have gone out of their way to
21 create all of these layers of all of these different
22 corporations. It's not as simple as Diamond Generating
23 Corporation owning CPV LLC.

24 They own Diamond Generating LLC that owns another
25 company, CPV Sentinel or Sentinel LLC, that then owns an
26 interest in these other folks. So there is no agency --

27 THE COURT: You own 100 percent company that owns
28 50 percent of the company in this interest. So there is an

1 extra layer, too.

2 Take a look. That's the way the Court currently sees it.
3 No further argument. Sorry. We have calendar tomorrow.

4 MR. BASILE: It's not argument. I'm just pointing out.

5 THE COURT: No, please put it in writing.

6 Sorry, Mr. Basile. We have limited hours. If I don't
7 turn in paperwork, Ms. Youngberg leaves me and the calendar gets
8 much longer tomorrow.

9 We have limited hours, I'm sorry.

10 Please limit your respective papers to, say, two pages.
11 You could try to boil down this issue.

12 The way the Court currently sees it, Qualcomm is
13 essentially DG Corp or Mitsubishi in this case.

14 I did see the papers. 1009B seems to be more applicable
15 instruction.

16 Mr. Schumann, I would also ask for authority in terms
17 of -- the Court's concern is that it sounds like your request is
18 trying to tell plaintiffs what theory they should proceed under.
19 So if you have authority on, you know, how that's permissible,
20 the Court is also struggling with that portion of it too.

21 But the Qualcomm case was very recent. It's from the Cal
22 Supreme, so the Court should take notice.

23 MR. BASILE: Just to clarify -- I won't argue.

24 Are you saying you'll give both 450(c) and 1090B?

25 THE COURT: I want to give this due consideration. This
26 is obviously important to both sides. I don't want to make a
27 ruling just based on currently what I have. I would like the
28 parties to provide more help to the Court.

1 MR. BASILE: Yes, sir.

2 THE COURT: That was the best tack to take at this point.
3 Keep that in mind. I'm sorry if it does interfere. Keep
4 that in mind with your opening statements tomorrow. You may be
5 telling the jurors something on an instruction that may or may
6 not be given.

7 MR. SCHUMANN: Okay.

8 THE COURT: Again, remember opening statement isn't
9 argument and you're not supposed to tell them about the law.

10 MR. BASILE: It sets up everything of how we have to
11 present our case.

12 MR. REID: Your Honor, I don't want to discuss it right
13 now, but there are exhibits that are being used in their opening
14 that we object to. I don't know when we can address that.

15 THE COURT: You don't have to share your PowerPoints or
16 whatever you're going to do. But I did ask when we talk about
17 this -- when you share your exhibits, deal with it.

18 MR. BASILE: Your Honor, we gave them those on Sunday.
19 They've had them since Sunday.

20 MR. SULLIVAN: This is the first we're hearing about an
21 objection. We told them about our objection.

22 MR. BASILE: It's a good faith belief, and I have them in
23 all. I want this case moving forward.

24 THE COURT: We'll see you at 9:45.

25 (Proceedings concluded.)

26 (Next Volume is Volume 4, Page 601.)

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REPORTER'S CERTIFICATE

DENISE COLLINS and CHRISTOPHER)	
COLLINS,)	
)	
Plaintiffs,)	
)	
vs.	)	CASE NO. PSC1901096
)	
DIAMOND GENERATING CORPORATION,)	
)	
Defendant.)	

I, DAVID A. SALYER, Certified Shorthand Reporter
No. 4410, hereby certify:

On June 28, 2022, in the County of Riverside, State of
California, I took in stenotype a true and correct report of the
testimony given and proceedings had in the above-titled case,
pages 401-547, and that the foregoing is a true and accurate
appeal transcript of my stenotype notes and is the whole
thereof.

DATED: Palm Springs, California; January 28, 2023.



DAVID A. SALYER, CSR 4410

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COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT - DIVISION TWO
APPEAL FROM THE SUPERIOR COURT OF RIVERSIDE COUNTY

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DENISE COLLINS and CHRISTOPHER)
COLLINS,)
) DCA No. E080233
Plaintiffs/Respondents,)
) Riverside County
vs.) Case No. PSC1901096
)
DIAMOND GENERATING CORPORATION,)
) Volume 4 of 19
) Pages 601-681
Defendant/Appellant.) (682-700 Blocked)
)

REPORTER'S TRANSCRIPT OF APPEAL
BEFORE THE HONORABLE MANUEL BUSTAMANTE, DEPARTMENT PS2
JUNE 29, 2022 (PART 1)

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SUPERIOR COURT - STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

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DENISE COLLINS and CHRISTOPHER)
COLLINS,)
)
Plaintiffs,)
)
vs.) CASE NO. PSC1901096
)
DIAMOND GENERATING CORPORATION,)
)
Defendant.)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE MANUEL BUSTAMANTE - DEPARTMENT PS2

JUNE 29, 2022 - PART 1

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(Appearances continued on next page.)

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JUNE 29 - MORNING SESSION

BEFORE THE HONORABLE MANUEL BUSTAMANTE

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(Proceedings out of the presence
of the jury as follows:)

THE COURT: Let's formally call the matter of the Collins
versus DG Corp.

MR. BASILE: Good morning, your Honor. Jude Basile on
behalf of the Denise and Christopher Collins who are present.

THE COURT: Good morning.

MR. SULLIVAN: Good morning, your Honor. David Sullivan,
also appearing on behalf of Denise and Christopher Collins.

THE COURT: Good morning, Mr. Sullivan.

MR. SCHUMANN: Good morning, your Honor. Kim Schumann
for the defendant.

MR. REID: Good morning, your Honor. David Reid for DG
Corp.

We have Jane Cubos here as a representative of the
company.

THE COURT: We're going to bring the jury in in about 90
seconds. In that 90 seconds, a couple things I wanted to bring
up.

Number 1, the Court is still reserving ruling on expert
witness Kenan Stevick, so please do not make reference. If you
do so, you do at your own peril.

Thank you, counsel.

I did receive the additional briefing on Privette. As I
mentioned, because of that, you're not really supposed to

1 discuss the law, anyways, in opening, but I wanted you to be
2 aware of that because that still is an open issue.

3 MR. BASILE: I'm confident the opening will help instruct
4 the Court also.

5 THE COURT: Then, finally, there was -- I'm informed
6 there was a request in terms of, I guess, the parameters of the
7 well.

8 MR. BASILE: A couple things, your Honor.

9 If I could move this just for opening so they can see.

10 THE COURT: That's fine. So you're not going to be
11 utilizing the overhead projector?

12 MR. BASILE: Yes. No, not the overhead projector, just
13 the screen. And I'll be referring to that.

14 I just want to make sure. Can I step back and make sure
15 the alternate can see past that?

16 THE COURT: Sure.

17 MR. BASILE: While we're at that, your Honor, is there
18 any way we can put this alternate over here if the sight
19 lines --

20 THE COURT: No. No, because the bench blocks the view of
21 the witnesses.

22 MR. BASILE: That might be too close.

23 THE COURT: Yes.

24 MR. BASILE: So then just for purposes of questioning,
25 I'll have to squeeze here. I can make it work.

26 THE COURT: That podium can slide back there.

27 MR. BASILE: Or over there if they want it.

28 THE COURT: We'll go ahead and bring in the jurors and

1 get started.

2 Thank you, Deputy Lee.

3 (Proceedings in the presence of the
4 jury as follows:)

5 THE COURT: Good morning. Welcome back.

6 Counsel is already here. We already did a couple things
7 before you came in.

8 Did anyone get the parking under the solar panels?

9 Great. So you were here at 8:00 a.m.?

10 Okay. Thank you. Welcome back.

11 We'll proceed with opening statements this morning. Then
12 the plaintiff will begin their case in chief.

13 When you're ready, Mr. Basile. You have permission to
14 use the well.

15 MR. BASILE: Thank you, your Honor.

16 May it please the Court, your Honor. This is the first
17 time people are going to hear this case. When I stand up to
18 tell it, I get excited I finally get to talk like this.

19 When this case is over, the 12 of the jurors are going to
20 know more about our plant safety than most people in California.
21 With that knowledge comes the responsibility not only to judge
22 corporate conduct and safety at that power plant but also to
23 determine accountability.

24 Nine months after the explosion that killed Daniel
25 Collins, Denise and Christopher were sitting with the only
26 information they had received from the company, and that was
27 that Daniel died in an accident. There was some gas that was
28 trapped and an explosion and it killed him.

1 They wondered for nine months and wanted to know how this
2 happened, why this happened, can anything be done so it doesn't
3 happen again. A family friend referred them to Mr. Sullivan.

4 Mr. Sullivan, like many of you, at that time didn't know
5 much about power plants or anything. He found a report and it
6 mentioned Diamond Generating Corporation in a report. So he
7 initiated this lawsuit to investigate. That's what needed to be
8 done.

9 During the course of that, Diamond Generating Corporation
10 handed over, produced 46,000 documents.

11 Mr. Sullivan, myself, others meticulously went through
12 them and found a few that opened the window to truth in this
13 case.

14 We then took witness statements under oath, put together
15 the story I'm about to tell.

16 This is the name of the case there.

17 Diamond Generating Corporation, we learned, operates
18 power plants throughout the United States and Mexico, 14 power
19 plants. Many of them are high-pressure gas power plants.

20 On their website they claim that they are a worldwide
21 leader in safe electricity generation and energy services.

22 This is the plant, just outside of town here off Melissa
23 Lane. It's what's called a peaker plant. It's a high-pressure
24 gas plant, as we're told. It's the largest in the world,
25 according to them. I questioned their corporate executives and
26 they claim even on their website it's the largest plant of this
27 type in the world.

28 The reason it is is because if you look -- where is my

1 laser.

2 If you look at these stacks here, folks -- do you see the
3 stacks in this area, a stack in this area? Each one of these
4 stacks represents an area that is a separate power plant in and
5 of itself. So there are eight combined power plants into one
6 huge. That's why they claim it's the largest plant of its kind
7 in the world.

8 Now, I want to -- we're going to focus on just one of
9 these power plants in that huge plant.

10 This is an area of one of them. Eight separate ones.

11 Are you okay? You guys let me know if I get in your way.

12 This is one of those areas.

13 As you might imagine, high-pressure gas plants are
14 complex. There are a lot of different systems within that.

15 There is the gas system that comes in here. There are
16 ammonia systems, there are cooling systems, there are electric
17 systems. There is a lot of complexity in one of these things.

18 It can be simplified down in this case because right in
19 this area is where the explosion takes place, and that's what
20 we're going to be talking about. This is what's called the fuel
21 filter skid, right in here.

22 I'll give you a closeup of that area. This is the fuel
23 filter skid, and it's at unit five, where this explosion took
24 place.

25 How this operates is along the bottom here high-pressure
26 gas comes in. I'll talk about that in a minute. Very
27 high-pressure gas comes in here and goes up through this filter
28 tank.

1 Inside this tank are filters.

2 Then it comes out the top and down and then over to the
3 turbine. It's compressed after it goes through those filters.
4 It's compressed so that when it's lit there is a big explosion
5 that spins the turbines and generates electricity.

6 But for our purposes we're going to be talking about the
7 safety and the safety system, not just for the whole plant but
8 particularly about this fuel filter skid.

9 Here is the lid that is on top of that. That shows how
10 much pressure the tank holds.

11 The lid on top here, that tank is about seven or
12 eight feet tall, about this tall. The tank is about this big
13 around, about 18 inches across. And the lid on it weighs over
14 100 pounds with all these bolts around it here.

15 Now, what are the dangers of high-pressure gas?
16 Obviously, the pressure alone is a danger.

17 The pressure at this plant is 900 pounds per square inch
18 of pressure. Now, to give you an idea of what that is, that is
19 900 pounds of force on a square inch this big on every pipe,
20 every vessel that it's running through, 900 pounds per square
21 inch.

22 To give you an idea of how much that is, the gas lines
23 that run in our homes are one-half of one pound per square inch.
24 So tremendous pressure. 1,800 times what we normally have in
25 our homes.

26 So if it was just air, that was danger, but it's gas.
27 And the gas is flammable. It can burn. The gas is explosive.
28 Not just it will burn, but it can suddenly erupt and explode.

1 Also it's toxic to breathe. So this is, needless to say,
2 a hazardous operation.

3 Now, when corporations are in the business of producing
4 and selling electricity, they must have a safety system in
5 place. And that safety system, everyone agrees who will testify
6 in this case -- I'd be surprised if anyone changes their minds
7 and disagrees -- that the safety system at a plant like this,
8 that the corporations that are running it, producing it, have to
9 develop safety policies and procedures. It's a must. They have
10 to train workers on the policies and procedures.

11 Perhaps just as important, if not more important, they
12 have to review those procedures to see if they're being
13 followed, to see if we can make them safer, to see if there's
14 any screwups or anything in there, to see if there is, if
15 something happens, we can correct it, do an analysis and make
16 sure it doesn't happen again.

17 So as I talk through the rest of this case, DTR is a
18 thing to keep an eye on. Were there procedures, what was the
19 training like, what was the review of these procedures.

20 I made a note here on the board this morning just so as I
21 talk to you you can keep that in mind. Develop, train and
22 review.

23 So back to the overhead.

24 Like I said earlier, a very complex system there that's
25 going to require a lot of procedures and things.

26 Now, how does this operate and how does it apply?

27 Well, what you want to do on a system like this right
28 here, the standards are that you have a separate energy control

1 procedure, it's called. It's called an energy control
2 procedure, where it's common sense -- it makes sense -- you have
3 to isolate that flow of gas, stop it from coming in and going
4 out.

5 You have to drain what's in there out.

6 Then you have to confirm that it's empty.

7 Now, to do that, here is an example. Here's the skid.

8 Do you guys follow me? It's coming in here and coming out here.

9 Now, a simple way to do that is to have what's called an
10 energy control procedure that is just focused on this particular
11 hazardous area.

12 How that would operate would be you'd close the valve
13 there, right here. Do you see that valve? You close that, stop
14 the flow coming in.

15 Then you would close this valve up here to stop it coming
16 out.

17 Then open the vents, open there and there.

18 Now, on our diagram we've simplified things, as you can
19 see, because there are multiple -- two vents that are coming up
20 over there on there and there is some additional valves. These
21 are the red valves, here. That would be a simple, appropriate
22 energy-control procedure.

23 What is done in that to do it properly, usually, and what
24 should be done is what's called -- you've heard us talking
25 earlier about this lockout/tagout procedure.

26 How that should be done would be there's first an
27 installer who would go out, and down there at ISO valve 1, ISO,
28 you guys saw that, he would go out and he would be following

1 directions to a LOTO sheet, and it would say close ISO valve 1.

2 He would close ISO valve 1, and then he puts a lock on it
3 so no one else can do it, and then he puts on one of these tags
4 and tags it. That's why it's called a lockout/tagout procedure.
5 You lock it and you tag it.

6 Then you initial the tag -- and this is the important
7 thing. You put a time on the tag when you're doing that first
8 step so that if anyone is reviewing it, they know this stuff is
9 done in order.

10 Now, so he would do that there. Then he would do it on
11 the second one, following the sheet. Then he would do two and
12 three and open the valves, putting a lock and a tag on each.

13 The first person would be the installer who would install
14 this. Because this is so hazardous, the appropriate, safe way
15 is to have a separate person then verify. So there should be
16 just one installer, not different people doing different things,
17 and there should be one verifier, then, that goes through, looks
18 at the tags, checks the time, makes sure it was done in order,
19 makes sure everything is good.

20 Then a supervisor is supposed to walk the line, they call
21 it. The supervisor doesn't initial anything but just confirms
22 that everything is done in order on this and everything is safe
23 to go.

24 Then they can tell workers, okay, go ahead in the filter
25 tank. Take that big lid off. Now it's time to work.

26 That is an energy control procedure and how it should be
27 done.

28 The Diamond Generating Corporation's plant there had no

1 separate energy procedure. They had it combined with all the
2 other systems I showed you on that skid on the long list.
3 Instead of four or six steps, which is the energy control
4 procedure, their sheet had 21 steps or more that included
5 different sections of that skid, where workers would have to go
6 to the ammonia section, this section, that section. They had no
7 separate energy control procedure.

8 Now, just as a review, it makes sense -- I mean, it's
9 required, in this lockout/tagout procedure there is a single
10 installer, that there is a single verifier who then follows
11 through, that there are times on those tags so that when someone
12 is reviewing it, were they done in order, and a supervisor logs
13 the LOTO.

14 That's the appropriate way to do these things. That's
15 what's done. You're going to hear a lot about this coming up in
16 what's coming.

17 Now, another thing, not only wasn't there a separate
18 energy control procedure, none of these valves were marked.
19 None of them were marked. Workers -- I'm going to talk about
20 their training, how they were trained on this initially. They
21 were shown what to do. They had to know how it was.

22 There was no -- there was one hands-on training. I don't
23 want to get ahead of myself. I'm going to show you what the
24 records show on training in a minute.

25 But unmarked were the valves on this.

26 Let's move to undertaking safety at the Sentinel Energy
27 Center. That's what we've been talking about in voir dire,
28 undertaking management and safety at the Sentinel Energy Center.

1 Exhibit 368 -- I don't have the big board. It's all
2 wrapped up. If you can do it quietly. It's just we have a big
3 board of this. It will make it easier for you to follow who's
4 who testifying in this case.

5 But this is Diamond Generating Corporation.

6 Their corporate offices are in this highrise on the 27th
7 floor in Downtown L.A.

8 At the time when this plant started up and they were
9 hiring managers, these were the people that were involved in the
10 plant up until the explosion.

11 Satoshi Hamada was the CEO.

12 Bohan -- he goes by Bo -- Buchynsky was the senior vice
13 president of engineering up to today, he was, 2011 through 2019.
14 This happened in 2017.

15 Paul Shepard is the vice-president of portfolio and asset
16 management. He's still there today doing that.

17 Audun Aaberg, vice-president of operations and
18 maintenance.

19 Wayne Forsyth, he was in operations, and he was the main
20 safety man at Diamond Generating Corporation.

21 Michael Kromer, vice-president of operations. He came in
22 after Mr. Aaberg retired.

23 So how Diamond Generating Corporation is set up, I told
24 you they have 14 different power plants. They're up here.
25 They're the corporation at the top.

26 What they do then is they set up a wholly owned -- I mean
27 they wholly own DGC Ops. It's 100 percent. They own
28 100 percent of the stock in DGC Ops. DGC Operations is this

1 corporation that, then, are the hands-on day-today people that
2 run all the power plants. I didn't draw them all, but they're
3 in New York. They're in Massachusetts. There are like four
4 right around here. There are two in Mexico. So that's how
5 Diamond Generating Corporation is set up.

6 So when they were setting up this Sentinel Energy plant,
7 they had to hire a manager, Diamond Generating Corporation did.

8 These guys here, with the exception of Mr. Forsyth, these
9 five gentlemen here hired this man as the plant manager of that
10 plant that's in the background, which is the Sentinel Energy
11 Center. His name is Tom Walker. He no longer works for
12 Sentinel Energy or for Diamond Generating Operations.

13 During the course of this, as we said, we had a few of
14 these documents that open the window to the truth. We learned
15 he was the manager.

16 We asked them -- when we take a deposition, they say he
17 no longer works for us. Then we had the COVID issues.

18 MR. SCHUMANN: Argumentative and improper opening, your
19 Honor.

20 THE COURT: Sustained.

21 MR. BASILE: We found him. He was back in North
22 Carolina, was it?

23 Mr. Sullivan and I flew back there in January and told
24 them that we were going to -- since he's back there and COVID
25 issues and all of that.

26 MR. SCHUMANN: Improper opening, your Honor.
27 Argumentative.

28 THE COURT: Sustained.

1 MR. BASILE: We were taking his deposition to play for a
2 jury for trial testimony. That's what we did.

3 So we went back to North Carolina and we videotaped his
4 trial testimony since he's back there that we'll be playing for
5 you this afternoon, we believe.

6 Now, he was hired as a Sentinel plant manager. His hire
7 date was August, 2012. He hired by Diamond Generating
8 Corporation, and most importantly he reports directly to Diamond
9 Generating Corporation's VP of operations and maintenance.

10 First that person was Audun Aaberg. Then after he
11 retired it was Michael Kromer, who are Diamond generating
12 corporate executives. Those were his bosses. That's who he
13 reported to.

14 They gave him -- Mr. Walker told us when we deposed him,
15 and you're going to hear his testimony -- he said that Diamond
16 Generating Corporation gave him safety policies to be used at
17 the plant. And he was instructed to use the safety policies
18 that Diamond Generating Corporation gave him to develop safety
19 procedures for the plant is what they gave him.

20 Taking their policies, he developed -- or people there
21 developed the lockout/tagout safety policy which defines some of
22 the things I told you, single installer, single verifier, but
23 also defines what training is required. It also defines what
24 reviews of the safety system is required. That's what I want to
25 talk about.

26 But the interesting thing about this, and the reason the
27 date is up here, is because you're going to learn from one of
28 their own people that when they reviewed this with this

1 explosion happening in 2017, they found it highly unusual that
2 the safety procedure that went into effect in 2013 had not been
3 updated or changed in four years when this happened.

4 So what was in this? In that training, in the
5 requirements of their own standards, there are requirements for
6 lockout/tagout training that I went through, that it be done
7 initially upon hire. When someone is hired, they had to go
8 through initial training.

9 The initial training had to be basically two steps. What
10 is a lockout/tagout -- kind of a longer version of what we did
11 here this morning. What is a lockout/tagout for and how do you
12 do it. What's the purpose of it, single installer, keeping the
13 times on the tag and all that. That would be the initial
14 training you would have.

15 Then you'd have annual training, a refresher, because
16 what went wrong this year, what went right. Where are we going.
17 Let's keep people up to date, let's keep people in tune on
18 what's happening. Annual training.

19 And then hands-on training is what is so important, that
20 you actually take them out to the equipment, the people that are
21 doing it, and walk them through it. That's what it takes to be
22 a qualified installer, a qualified person. A safety system
23 operates appropriately that way.

24 And from their own standards and in the industry, if they
25 change the procedure, you have to train. If we change something
26 different, you have to have training.

27 With the complexities of everything, you can see why all
28 that stuff is important.

1 Now, we asked for all the training records. We went
2 through all the training records. And here's what the training
3 records showed that they produced.

4 They had initial training in 2013. That's when the plant
5 opened. And the records of that training showed there was a
6 75-minute training on nine different policies. One of those
7 policies was the lockout/tagout. So we know that lockout/tagout
8 training certainly wasn't 75 minutes on that one, but it was
9 covered.

10 Then on March 28th of 2013, just when the plant -- before
11 it was opening, there was a three-hour LOTO training.

12 One of the sheets of the people who attended that.
13 That's 2013, four years before this explosion. That's when that
14 was done.

15 Then there was a 45-minute LOTO training in April of that
16 same year, 2013. The records for 2014, no documented LOTO
17 training for the whole year of 2014. No documented LOTO
18 training for 2015.

19 Then in January of 2016 there was general training via a
20 PowerPoint presentation and a handout. It was one of those -- I
21 think some people spoke of them during the jury selection, where
22 you just sit and watch a PowerPoint. It wasn't hands-on. It
23 was just a general, like it's time to look at this and go over
24 it and check it. A good thing to do, but nothing specific to
25 what was going on here. It was just check the boxes, take the
26 test and let's go.

27 Same thing here. They did an online training on the
28 5th of January, 2017, where a whole bunch of guys went online,

1 watched an online video or slide show, read, you know, this is
2 the purpose of a LOTO, this is what it does. Nothing
3 plant-specific on any of those trainings. Nothing
4 plant-specific on those trainings.

5 Also contained in there is a requirement of an annual
6 review of the whole system. This is the most important part.
7 Is our safety system that we have in place working. Is there an
8 issue with it, is there a problem with it, do we need to make
9 changes, do we need more training?

10 That's why in their own standards it says that the plant
11 manager is responsible for performing an annual review audit of
12 the current and previously issued LOTOs in the program. It's
13 supposed to be done annually.

14 He shall not delegate the task to another employee.
15 That's important. Good standard to have. Good policy.

16 And the annual lockout/tagout audit shall include a
17 review of random LOTOs from the previous 12 months and also a
18 review of the current active LOTO. This is the annual review.

19 It points out the advantage of it shall be to ascertain
20 the knowledge level of each person involved, to ascertain if
21 everyone has been trained up to date that's involved in this,
22 and it should be reviewed and correct any deviations. If there
23 is more than one installer out there, we have to correct that.
24 More than one verifier. Are the times on the tags. They have
25 to look at those things. If it's not right, we have to get it
26 right. That's what this annual review is supposed to be.

27 So it would be like this. These are the LOTO sheets
28 here.

1 The manager would look at is this being done.

2 Now, I'm going to point this out to you now but there's
3 going to be more coming. This is the line on that sheet where
4 they've gone down and the installer is to initiate -- when he
5 does his isolation of valve one, when you do that, you put your
6 initials on this and you initial the tag also and it's done.
7 It's supposed to be one installer.

8 Well, if you're auditing this, you're going to go, well,
9 wait a minute. It looks like there is more than one installer
10 there. Look at those initials. Over here, wait, there's more
11 than one verifier. That should be a red flag.

12 Now, each year -- I mentioned earlier each year each of
13 these get shut down one at a time, and they have those
14 procedures for shutting them down one at a time. They usually
15 do that in the cooler months of the year. In late December
16 through March is usually when that's done.

17 So there would be -- because there are eight of them,
18 there would be eight of these procedures filled out each year
19 for each unit, and these are what are supposed to be reviewed by
20 the plant manager each year to see if this system is in place
21 and working.

22 It would be something like this. It would be what we
23 have here. This is the date of the outage, 2/13/14. This is
24 when they would do the outage. So it's usually about one a
25 week. They would do one of those plants per week. So there are
26 eight, basically, for each year.

27 This is from February 14th. The next week they did unit
28 one. The next unit two, unit four, unit five, six, seven,

1 eight. So they would do that and there would be a sheet like
2 this for each.

3 Now, I haven't pointed this out yet, but each sheet for
4 all these years that have these directions on it is a Diamond
5 Generating Corporation document. It says Diamond Generating
6 Corporation on it. It does not say Diamond Generating
7 Operations. It says Diamond Generating Corporation on the
8 documents that were being used on this.

9 So what if an audit -- well, let me tell you this.

10 There was never an annual audit done. The manager never
11 did it. The system was never reviewed. There are no records of
12 it being done. That system was not done. Had it been done, you
13 would look for these things. You would take the sheet from the
14 2/23/14 and you would look, is there a single installer, is
15 there a single verifier. And then you get the tags that are
16 taken off and attached to it after it's all done. Were the
17 times on the tags? Were the people installing and verifying it,
18 were they up-to-date with their training, thereby qualified on
19 it? And the verifier, too.

20 Those are the things you would look at.

21 We'll probably have a witness in here that goes through
22 this, but if they had done a proper audit, it would have shown
23 all these red flags on each of those that something is cooking,
24 something is building, something is wrong.

25 But what did they do, Diamond Generating Corporation?
26 They had hired the manager and given him policies to provide
27 procedures, and the manager was reporting directly to Diamond
28 Generating Corporate officers, Audun Aaberg, and he did an

1 annual review of the manager.

2 The manager, Tom Walker, told us when he had his annual
3 review they had free access to everything. They could look at
4 the LOTO sheets. They could ask if he did annual reviews. They
5 could review anything. It was an open office there.

6 In fact, these officers would come out to the plant
7 there. They would come out. And they reviewed him annually.

8 Here's what the annual review showed. The responsibility
9 here on the sheet -- and you're going to see the whole sheet.
10 The responsibility is ensure safe operation of employees and
11 contractors during the mobilization and the beginning of
12 commercial operation.

13 This was his first review after that first year of 2014,
14 5/7/14. It was after they did those first audits -- or not
15 audits, the first LOTOs and shutdown.

16 What did they give him? Exceeds safety. Diamond
17 Generation Corporation said he was exceeding safety.

18 The next year, same thing. We go through. When we go
19 through them here, it takes some time. You folks will have to
20 pay attention as we go through these, but we'll show you the red
21 flags. Still all these red flags popping up.

22 But what happens? What is Diamond Generating Corporation
23 doing? The next year it's the same thing.

24 There's his annual review coming again. Now it's
25 Mr. Kromer. Mr. Kromer took over from Mr. Aaberg, and he does
26 an annual review of him. Again, no annual audits being done.

27 His responsibility, plant safety, exceeds standards.

28 Again, he said it's an open book. They could come to

1 look at everything.

2 I might add, Mr. Walker, when we took his testimony that
3 you're going to hear this afternoon, he said, well, when you had
4 the annual review, what happened afterwards?

5 He said I got a bonus and a raise each year. I got a
6 bonus and a raise each year.

7 What did that mean to you? Did that mean you're doing a
8 good job, keep up what you're doing?

9 He said, yeah, I thought I was doing a good job. He got
10 a bonus and raise every year.

11 So in this one -- so what were they looking at when they
12 were doing this review? What were they looking at? They gave
13 us an insight to what they were looking at.

14 They put in his review here. "Over the past year
15 Sentinel, the plant, did not have a recordable injury as of
16 December 31st and has gone 1,235 days without a reportable or
17 recordable injury." That's what's on his review.

18 So, naturally, I had to ask Mr. Walker -- we asked him
19 what is a reportable injury?

20 He said a reportable injury is when someone gets hurt at
21 the plant and has to go to the urgent care or the hospital. As
22 long as no one was gone to the urgent care or the hospital, it's
23 all we need to know.

24 As you're going to see, someone ended up going to a
25 different place.

26 So 2017 is more of the same thing, more of these red
27 flags.

28 Now, this is where the 46,000 reviewed documents started

1 popping up.

2 The summer before this happened -- this happened in March
3 of 2017 -- Mr. Kromer right here, Mr. Kromer, the VP of
4 operations and maintenance at Diamond Generating Corporation,
5 decides -- it seems like they're going to have a review of the
6 safety procedures.

7 Now, remember, up until this time, this is how it was
8 operating. We would close that valve, we close that valve, we'd
9 open this one, we'd open this one.

10 What the workers got used to doing, and since they
11 weren't having formal training or anything and there were new
12 workers getting hired, what everybody got used to doing was
13 listening, because it made a very loud sound coming out under
14 pressure where they opened that up, a very loud sound.

15 So the workers for four years doing this part of the
16 plant this way would do this. And then they'd hear all this gas
17 coming out the top in a very loud sound. I mean, some
18 workers -- you know, most of them were wearing hearing
19 protection. So when that sound stopped, they would know the
20 vessel was empty then. It comes out.

21 So that's how they were doing it.

22 So what comes up, Kromer sends this email to the plant.
23 These are plant managers around. Tom Walker, Carpenter. These
24 are running different plants around here.

25 He says, "What's the status of safety procedures?
26 September is just around the corner and would prefer to have
27 your comments under consideration before we go live."

28 There's going to be more in this link that's gone on, but

1 I want to show you some of the ones that are in the highlight
2 for this.

3 He doesn't hear back from them, and there is like an
4 email problem, sending it to the wrong email, I think.

5 He writes to them again and says, "What's the status? I
6 haven't seen anything about safety procedures." Michael Kromer
7 involved, haven't seen anything about safety procedures.

8 Tom Walker, the plant manager, on the 29th, a couple days
9 later, responded to Michael Kromer about the safety procedures.
10 He says, "I've reviewed about a third of those revisions and
11 found errors that need to be corrected."

12 He sends that to Kromer. They're talking about changes
13 in the safety procedures.

14 This is safety procedures. And Mike is Mike Kromer right
15 here, and he's saying, "Please provide" -- this is from an email
16 chain, the to and from. You can see this is from Mike Kromer
17 right here. This is just coming out. We'll have the whole
18 email for you guys to see. Just pointing it out here.

19 It says, "Please provide the proper verbiage for changes
20 in track change mode. I want to be clear, I'm not modifying
21 these procedures. You guys need to provide the necessary
22 changes so that they may be accepted or rejected. Regards,
23 Mike."

24 He wants to see what they're doing on the site. Give
25 them to me. I'm going to reject them or accept them. Let's do
26 it. They're reviewing these safety procedures.

27 One of the biggest safety procedures that we know is --
28 (inaudible).

1 Come January, now -- so they're going back and forth with
2 those procedures and changes -- they have a quarterly meeting at
3 the corporate headquarters in L.A., 27th floor of that highrise.
4 And they have a quarterly meeting where the managers come in to
5 give a quarterly report all the time. And they send out an
6 email, okay, the quarterly meeting is coming up. Get your
7 reports ready.

8 This is the e-mail that goes out saying get your reports
9 ready.

10 It says:

11 "As you know, we have the quarterly
12 operations meeting next Friday, the 27th.
13 Following the presentations, I would like
14 to have a separate meeting which will
15 include myself, Mike Kromer," the head over
16 there, "the plant managers. And a rough
17 agenda is provided below."

18 This, I believe, is sent by a man named Adam
19 Christodoulou. You may hear from him. Some of the emails say
20 Adam Christodoulou is working for Diamond Generating
21 Corporation. Some say he is working with Diamond Generating
22 Operations, both. You can listen to them and you can decide.
23 They are both kind of one at this point.

24 So they're going to have a meeting with an agenda.

25 Well, what's on the agenda? This is just about six weeks
26 before the explosion when they're having this quarterly meeting
27 there. What's on the agenda? Updates. They've been emailed
28 about the safety procedures. They are at the meeting, updates.

1 Can you see? Can you guys see that?

2 "Updates. Safety procedures. How are we going to
3 communicate when a change has to be made?" That's on there.

4 Now we're back in North Carolina. We talk to Mr. Walker.
5 We show him this. Did you have quarterly meetings? Yes. And
6 you look at this. This is on the agenda? Yes, it was. The
7 agenda says talk about changes in safety meetings? Yes.

8 He was still represented at that time by Diamond
9 Generating Corporate lawyers, just so you know the picture. I'm
10 not there by myself questioning him.

11 MR. SCHUMANN: Argumentative, your Honor, improper.

12 MR. BASILE: Just laying the foundation.

13 THE COURT: One moment.

14 Sustained.

15 MR. BASILE: Thank you, your Honor. Just laying a
16 foundation who was there.

17 THE COURT: It was sustained, counsel.

18 MR. SCHUMANN: Thank you, your Honor.

19 MR. REID: Thank you.

20 MR. BASILE: Now, I asked him, was this on the agenda?

21 Yeah, it's on the agenda.

22 What was talked about?

23 I don't recall.

24 Well, do you usually talk about items like that?

25 Yes, we do.

26 Are they all usually covered?

27 Yes, they are all covered. It's important to cover them.

28 What was talked about, changes in safety procedures?

1 I don't recall.

2 You'll see his testimony this afternoon.

3 So here's how it was. Here's how the procedure was for
4 four years.

5 Close that first valve down there, close that second
6 valve, open the vent, open the vent. That's how it was.

7 What happens? What are they changing? What's going on?

8 Here's the sheet on the left that they were using
9 basically for four years for this. The yellow and blue are
10 those four steps I've been outlining for you, the yellow and
11 blue.

12 On the right side it's now changed. It's the yellow and
13 blue are the steps, but there is a new ISO valve 2, not the old
14 ISO valve 2 that was used. They're changing it. I'll show you
15 that in a second. They're making it further down on this list,
16 not all together, further down. So there is a big gap between
17 it.

18 And that area in between here is different areas of that
19 skid where worker has to go, but these ISO valves are all
20 closed.

21 Here it is. Here's the change.

22 You remember it used to be this valve, this valve to open
23 the vents. Now they're changing it to this valve, open the
24 vents, and then this valve in the same area, the same area,
25 close. But they're throwing in 14 or so many other steps where
26 they're going to have to run everywhere else first. They're
27 used to just being at the skid, and so they're just going to do
28 that. Well, where's ISO valve 2? Let's do it.

1 You have to remember on these days -- I'm going to be
2 talking about what they're actually like, that there are outside
3 contractors coming in. It's a very busy day. I'll get to that.
4 But I want you to follow the change they're making.

5 So it would be now this and then open the vent. You see
6 that sound would still be coming out, where the workers had been
7 used to just listening to the sound, the sound coming out. So
8 they would still hear some of it coming out, and then it would
9 stop, and they'd been conditioned for four years with no
10 training, no follow-up, no annual, that's it. They hear the
11 sound going out and they begin to think that's right.

12 Mike Delaney was working that day. He was one of the
13 guys that -- you're going to see there were three different guys
14 who were -- Daniel Collins and two other guys were working this
15 LOTO. There should have been only one. But that's how they
16 allowed the system to develop into what workers said was just
17 like -- we were just doing it on triable knowledge, following
18 other people and that.

19 Michael Delaney, who is out there that day -- and how
20 that day works, when they're having these shutdowns, these
21 workers that are going through these shutdowns, that's not their
22 normal job. They are usually operators helping run the plant.

23 When they have the maintenance, they have to bring in
24 extra workers, more people there at the time to do it. And
25 there are as many as 25 outside contractors waiting for this to
26 be shut down so they can come on board and do the work.

27 So there is pressure. There is hustle. There's stuff
28 that has to get done on this.

1 Mike Delaney was one of the ones working that day. And
2 we saw his name and initials on the sheet and we wanted to take
3 his deposition.

4 I think most of you probably know, but a deposition is a
5 statement under oath, just like they're testifying in court
6 where they're represented by the other side. They are there
7 representing them and the questions.

8 So Mr. Sullivan was taking his deposition and asking him
9 about ISO valve 1 coming in and how the system works and what do
10 you know and listen to what he said. Oh, and who he is? I just
11 told you this. He was an operator. He participated in the
12 LOTO. He was hired in 2015. He had no plant-specific LOTO
13 training, no documented plant-specific LOTO training.

14 He was not familiar with how the system even operated,
15 but he was sent out from their job safety meeting in the
16 morning, as they call it, to work on this LOTO sheet. He was
17 not a qualified worker per their own standards.

18 When we talked to him, here's what he said.

19 "Q. Now, closing isolation valve
20 number 1, it's my understanding that
21 valve blocks the flow of gas from that
22 line that goes into the fuel filter so
23 that it can't go into the tank; is that
24 right?

25 "A. Can I say something?

26 "UNIDENTIFIED SPEAKER: Sure.

27 THE WITNESS: I was not familiar with
28 this whole fuel system, what valves. I

1 don't know what valve. I did not know
2 what valve did what or what valve was
3 what at the time."

4 MR. BASILE: So here are the complexities of it. There
5 are the two changes.

6 Another worker on this same day working on this same
7 shift -- remember, they have to have extra people. When you get
8 that shutdown for that, they had a maintenance worker, a nice
9 guy, Albert Palalay. Hopefully we'll get to him today, too.
10 But he was working there.

11 We asked him, you know, what did you know? Did you know
12 there had been a change in this procedure? What was your
13 training like and all that?

14 His initials are on the sheet too that went down that
15 day.

16 Albert was a maintenance mechanic. He wasn't an operator
17 of the system or anything. He was hired in 2014. And I believe
18 2014 was that first year they had no documented LOTO training.

19 He participated in a LOTO. No plant-specific LOTO
20 training where you're out there going through it.

21 He's not qualified. He's out there working that day.

22 Here's what he has to say.

23 "Q. What is the maintenance, from your
24 understanding, that these tests were done
25 out of sequence that day?

26 "A. From when I had walked away to go
27 get ear plugs, I mean, not -- I mean,
28 from when I went to get the ear plugs to

1 get back, I don't really remember like
2 following with him because -- instead of
3 running around, the way the skids are for
4 fuel, we hop sides, went from one side of
5 the package to the other, and didn't just
6 follow -- we were trying to do the stuff
7 closest to us instead of doing -- going
8 in order.

9 "Q. So basically just kind of taking
10 advantage of the steps that were in sort
11 of the same area of proximity?

12 "A. Yes.

13 "Q. Does the steps overall, if you do
14 them in sequence, they require you to
15 move around the skid a fair bit. Is that
16 a fair statement?

17 "A. Yes."

18 MR. BASILE: So you hear what he's saying there. When
19 they changed that order, he was doing the ones that were closest
20 and staying there. You guys see that.

21 So it's right here. You see, the steps were in order
22 here before and now they're out of order. All of these steps in
23 between when they're going to have to run around all these other
24 places when this happens right there, so he said, hey, ISO valve
25 2. This says ISO valve 2. ISO valve 2 is right here. Before
26 we go do all this, they do it. No training, no one was told.

27 Juan Gonzalez, who no longer works for them, is back
28 in --

1 MR. SULLIVAN: Wisconsin.

2 MR. BASILE: Wisconsin. We did his deposition with the
3 other side also on the phone through Zoom and asked him about
4 this change that happened. Here's what he has to say.

5 He was an operator. He was hired in 2013, had the
6 original training. No hands-on training, though, he says.

7 Not informed of the change that happened.

8 And he's not qualified by having any up-to-date training.
9 Here is he what he says.

10 "Q. Before Daniel was killed, you were
11 never advised that isolation valve
12 number 2 was being changed to a different
13 valve; isn't that true?

14 "A. Yes.

15 "Q. Before Daniel was killed, you were
16 never advised that the order in which
17 isolation valve number 2 was going to be
18 closed had changed; isn't that true?

19 "A. Yes.

20 "Q. Now, of course, since you had never
21 been told about the changes, you were
22 never trained about the changes before
23 Daniel was killed; isn't that true?

24 "A. Yes."

25 MR. BASILE: Here's a summary of the change.

26 It was 1, 2, and then on this side over here now they're
27 changing this ISO valve 2 to being down here in the lower right.
28 They're not telling anybody why it's changed, how it's changed,

1 anything. They just put it up there.

2 They had the meeting six weeks before with on the agenda,
3 "How we are going to inform people about changes."

4 So over on this side you see this was only draining that
5 much and the pressure is still in.

6 Mr. Lane is going to testify in this case, who is a LOTO
7 expert. He has designed LOTO programs in different power
8 plants. He's worked on nuclear submarines. He's trained people
9 in LOTO. He's established LOTO systems and LOTO programs and
10 all of that. He's reviewed this. He's reviewed the red flags.

11 The evidence will show that it's his opinion that this
12 was, right here -- it's his opinion that this was a dangerously
13 different change because the valve is not being marked, because
14 of the lack of training, because of the multiple -- the whole
15 system's failure.

16 Let's put it this way. It was a dangerously different
17 change would be his opinion.

18 So there have been key factors we've been talking about
19 here, folks. And you remember the safety system to develop,
20 train and review. We've covered the training and we've covered
21 the review.

22 And those were these factors, four years of the red
23 flags, the change in procedures weeks before the workers were
24 not told. And now we learn the same thing nearly happened three
25 years before.

26 This is what's called a near miss. A near miss in a
27 complex system of safety like this has to -- you must have a
28 strong near miss reporting system. And you must have it so that

1 if there's a near miss, something goes wrong, someone's starting
2 to open the top of the lid before the pressure is out and
3 someone stops it and catches it and says, whoa, you have to shut
4 that down and do a root cause analysis. Why did that almost
5 happen? How can we make sure it doesn't happen again?

6 Here's what happened. The skid had unmarked valves. And
7 they were going through one of these shutdowns in the first
8 year. The correct way is once the LOTO is installed and a
9 supervisor walks the LOTO, he has to do all of that before
10 anyone can do any work on it.

11 So we assume that that was done, but Mr. Gonzalez is
12 setting up, getting ready to take the lid off here. This gauge
13 is not a pressure gauge for the tank. That's not a pressure
14 gauge for the tank. That measures some other flow.

15 He's setting up to take the lid off, and his sleeve
16 catches on the way up there on a release valve and gas goes out.

17 At the same time a supervisor of this LOTO, who is going
18 to be our first witness, Dennis Johnson, was coming by and heard
19 the sound and stopped it and said, whoa, stop. Don't do that.

20 Mr. Gonzalez didn't realize how dangerous it was because
21 he hadn't had the training. He stopped him from doing that. He
22 said, wait, let's get down off the ladder, walk around the other
23 side of the tank. And there was a gauge and the gauge showed
24 there was still a lot of pressure in the tank.

25 So Dennis Johnson, whose office at the time was -- and
26 job at time was going to various plants, and his office was at
27 the highrise in L.A., just says to Mr. Gonzalez, oh, just tell
28 your supervisor here.

1 There was no follow-up. There is no anything. They just
2 shut it down and start it over the next day and did it right,
3 got it right.

4 There is no how did that happen. How did that happen?
5 What do we need to do to make sure it never happens again.

6 Three years before Daniel Collins is doing the exact same
7 thing. They did nothing.

8 So we asked him about it. This is Mr. Gonzalez. He's up
9 on the right side here.

10 "Q. I want you to take us back to the
11 moment when that near miss occurred.

12 "A. Well --

13 "Q. Were you up on the ladder yet?

14 "A. Yes, I was. This was the first --
15 our first outage. It was 2014. It was
16 the first outage of the season. We had
17 been through one. I can't remember
18 exactly how many units we had done up
19 until that time, but being on that unit,
20 I was on the ladder. I was taking the
21 insulation cover off the top. I either
22 hit my arm or my shirt got caught up on
23 the relief valve handle and it blew gas
24 right at that time.

25 "Dennis Johnson was coming out of
26 the PCM, which is the motor control
27 center. And he heard the gas release and
28 he asked me what was that. I said, well,

1 there is gas coming out. So he said
2 stop. We took a look at the gauge and
3 the gauge still showed pressure inside
4 the vessel itself.

5 "Q. Do you remember how much pressure
6 was in the vessel?

7 "A. Between seven and 800 pounds.

8 "Q. And you were just getting ready to
9 remove the bolts on that lid, weren't
10 you?

11 "A. Yes.

12 "Q. And but for your sleeve getting
13 caught on that release valve, you would
14 have continued to remove the bolts on the
15 lid; isn't that true?

16 "A. That is true.

17 "Q. Now, before you started work on the
18 tank, you thought that the tank had been
19 drained of high pressure; isn't that
20 true?

21 "A. Yes.

22 "Q. You were up on the ladder getting
23 ready to remove the lid, just like Daniel
24 Collins was on the date that he was
25 killed; isn't that true?

26 "A. Yes."

27 MR. BASILE: So in spite of that four years before, there
28 was never a line at any time added on that sheet to say check

1 the pressure gauge, must be zero filter tank pressure. All that
2 needed to be done was a line added on here to say "check the
3 pressure gauge." For four years, it was never on there.

4 So this has been building. March 7th, Daniel Collins up
5 early, liked to go to the fitness center and work out before
6 work in Hemet, comes to work. It's the annual shutdown.

7 The system had now evolved into, you know, different
8 verifiers, different people doing different things, and the
9 workers thinking this is how we do it, because there are new
10 workers that came on and everything. That's how they do it.

11 He goes out with Albert Palalay and Daniel Delaney and
12 they're trying to do this LOTO. This is where they're working
13 on that.

14 So while they're doing this, different items, different
15 things. Twenty-five outside contractors waiting to come on
16 there and what to do. Something unusual happens, though. They
17 hear gas venting over here near the turbine package. They hear
18 a loud sound over there happens during the turbine package,
19 which in a proper safety system, if something doesn't sound
20 right, if something is unusual, you shut the whole thing down.
21 Whoa, wait, stop, check that out. Let's see what's happening.

22 What they did was one of the bosses said anybody know
23 what that sound is?

24 Daniel said I'll go check it out. They were around here.

25 He goes over here to check out the unusual sound and
26 there is a gauge over there for the system, and that gauge at
27 that time would be zero. It's where the sound was because
28 something vented. There was a gauge there of zero.

1 He comes back over and they say did you check the gauge.
2 And he said, yeah, it was zero.

3 So there is still this pressure to get this done and
4 everything. And he does what Juan Gonzalez did. He's setting
5 up, doesn't know of that change, had heard the stuff venting.

6 He is on top of that 150-pound item, lid, taking the
7 screws out.

8 Tom Walker is in the office and he testifies that he
9 hears a sound that you just should never hear. It's like whoop.

10 He leaves his office immediately. And as soon as he's
11 walking out, other workers are running towards him saying Danny
12 is dead. He was literally -- excuse me -- blown to pieces.
13 Right there with this safety system.

14 So they did a root cause analysis after this happened,
15 not after the near miss, after this happened. Diamond
16 Generating Corporation calls in from one of their plants in New
17 York. One of their managers, Ben Stanley, says come investigate
18 this.

19 Mr. Stanley flies out and its corporate executives, Paul
20 Shepard gets on the phone. We want you to come out and look at
21 this.

22 It's not any Diamond Operations. It's Diamond Generating
23 Corporation, get out here, Ben, and take a look at this.

24 Mr. Stanley does an investigation, interviews people,
25 looks at LOTOs, looks at sheets, does the whole thing like this.

26 It's called a root cause analysis. We've talked about
27 some of that, about the employee fatality on March 6th.
28 Completes a report a little over a month later. He is out there

1 like the next day, the 7th or 8th. He comes out real quick.

2 This is him. He is one of their plant managers from
3 Valley Energy Center in New York. Twenty years of experience
4 with high-pressure natural gas. He has ten years in a senior
5 management role. He was assigned by the vice-president of asset
6 management, Paul Shepard, to do this investigation.

7 Here's what you're going to hear. We went back to New
8 York and took his deposition, statement under oath. Then we
9 went through his report. And we're going to be playing that.
10 Probably when you come back from the 4th of July, you'll hear
11 all what Mr. Stanley said.

12 But this is just a summary.

13 "Q. Okay. And in the report you spoke
14 of the systems failure and the culture of
15 complacency, right?

16 "A. Yeah.

17 "Q. That was the -- I guess we'll call
18 them failures that you found?

19 "A. Yes.

20 "Q. And they certainly contributed to
21 the death of Daniel Collins?

22 "A. Absolutely."

23 MR. BASILE: So what's the defense in this case?

24 You've heard some of it, I think. But the defense is we
25 had nothing to do with it. We had nothing to do with it. It's
26 our wholly owned subsidiary. We have different layers of
27 investors, this and that. We had nothing to do with it.

28 But, as I pointed out here, they own 100 percent of

1 operations which operates this. They provided safety policies.
2 They hired the plant manager. They reviewed the plant manager.
3 They got daily reports from the plant on production, on how much
4 electricity was being produced for them to sell, daily reports
5 on that.

6 In the daily reports they mentioned safety. They had
7 free access to the -- all that stuff. I'm not going to go over
8 it again. You guys can hear it for yourself.

9 We checked. Corporations are required to file with the
10 Secretary of State of the State of California a statement of
11 information, official document with the State of California.

12 Starting in '04 Diamond Generating Operations has to file
13 these annually.

14 Who do they list as their manager? They ask you, the
15 Secretary of State wants to know, hey, you're this LLC company.
16 Well, who's your manager. Diamond Generating Corporation is
17 listed as their manager with the filings with the Secretary of
18 State. That's Diamond Generation's who's who. That will be
19 there for you to follow.

20 Now, here's another defense you're going to hear.
21 They're going to say, you know, it's kind of set up like this.
22 Diamond Generating Corporation -- if this is a Sentinel Energy
23 plant, Diamond Generating Corporation gets 50 percent interest
24 in the plant. They have to go through different layers, how
25 they have the corporate structure and everything set up like
26 that. They had 50 percent.

27 Then there were two other groups of investors that each
28 had 25 percent. So there are two different groups. The

1 50 percent Diamond Generating here. There is an asset manager
2 named Mark McDaniel right here, who was the asset manager for
3 these two groups of investors to make sure their investors -- I
4 think it was a hedge fund company and someone else. There are
5 two groups of investors. He was out there at the plant. He was
6 there at the plant.

7 Part of their defense is saying, well, CPV, Mark
8 McDaniels, he was the one who was in charge of safety. He was
9 the one that was supposed to be in charge of safety.

10 We have a 30, 40-page agreement with McDaniels. There is
11 one paragraph in there that says CPV is in charge of safety.

12 But the case is about who undertook safety at the plant,
13 first of all. That's going to be one of their defenses.

14 They also had, Diamond Generating Corporation -- what's
15 the matter?

16 They had their own asset manager at the plant, Paul
17 Shepard. He was the asset manager.

18 These asset managers are basically exactly what they're
19 saying. They're asset managers. They're kind of like
20 accountants but for business people. They're watching the
21 books. They're watching that. Paul Shepard is the asset
22 manager for Diamond Generating Corporation that's keeping an eye
23 on this.

24 So we hear this and we scratch our head, but we heard it
25 before we talked to Mr. Walker. So we asked Mr. Walker -- we
26 didn't. Actually you can listen to it. Another lawyer asked
27 him.

28 Mr. Walker, you're the plant manager. What did

1 Mr. McDaniel have to do with safety?

2 Here's what he said.

3 "Q. Were you aware as part of that
4 agreement the asset manager, who I
5 believe we discussed was Mark McDaniel at
6 the time, was responsible to review
7 safety at the plant?

8 "A. Not that I recall, no.

9 "Q. Do you remember Mark McDaniel ever
10 inquiring about safety?

11 "A. Not that I recall."

12 MR. BASILE: So, folks, you can judge for yourself about
13 that.

14 So in summary, Diamond Generating Corporation, the
15 evidence will show that they were negligent in their oversight
16 of safety from the systems failure, lack of supervision of the
17 plant manager. There is his performance reviews. Lack of
18 training that we talked about. All those red flags.

19 This is the systems failure, unsafe LOTO procedure, no
20 line on it to check the pressure, confusing, the near miss that
21 was ignored. And failure to communicate safety changes at the
22 corporate level there in L.A. on that meeting, that agenda, to
23 discuss the changes that never got to the workers.

24 They are also going to say that Daniel should have looked
25 at the gauge. And the workers are going to say, first of all,
26 no one ever looked at the gauge because you had that sound.

27 Secondly, the only place the place to get the ladder to
28 get up on that -- you can't see the gauge. You see, the gauge

1 is on here. It's back in here, right here. And I got it --
2 there. It's like that.

3 So it's far away from where the ladder is and it's not --
4 all they had to do was put the line on there. They have all
5 these steps.

6 They're going to say, oh, he should have looked at the
7 gauge. Don't forget with the unusual venting that day he did
8 look at the gauge.

9 They're also going to come up with, oh, his nickname was
10 Brushfire. He worked real fast. They had to tell him to slow
11 down all the time.

12 We'll show you his performance reviews, and you can
13 decide if anything was ever covered before he was killed or if
14 it's just brought up after he was killed as a defense and
15 excuse. We're going to show you that.

16 Nonetheless, we also asked Mr. Walker, well, what was
17 Daniel like as a worker. Gee, if he's a bad worker and all the
18 hurry up and rushing, we've got to always slow him down and he's
19 rushing, like now they're trying to say he is, this is what
20 Mr. Walker said about Daniel Collins.

21 "Q. Can you describe for me Daniel as a
22 person after he started working at the
23 plant and you had to spend more time with
24 him and get to know more about him than
25 the information you learned at the
26 initial interview?

27 "A. Danny was a very funny, very
28 entertaining guy. He was hard working.

1 He strove for excellence. He tried to do
2 the best he could."

3 MR. BASILE: So I want to tell you about the other part
4 of the case. I've taken a lot of time to do that. I'm going to
5 move through this quickly, but you can get a flavor for that.

6 It's a value of two special relationships.

7 This was shortly before Daniel passed away. Here's --
8 he's at Ontario Reign hockey game with his son.

9 So we're going to be showing you -- you're going to have
10 to evaluate what's the value of what was lost. We talked about
11 that. We need to know what it was to see what the loss -- the
12 price of what was taken.

13 So we're going to present people that knew him. You're
14 going to learn that they were married in 1992. He was still in
15 the Navy. He spent 25 years in the Navy. He could have come
16 out after 20, but he spent 25.

17 He had a tour in Iraq. He had two tours in Afghanistan.
18 He worked in the Bagram prison in Afghanistan. He had several
19 West Pac tours of different shifts. He was looking forward to
20 retirement, to say the least.

21 They had Chris while he was still in the Navy. This is
22 Chris shortly after his birth.

23 This is them close in time. They were at a wedding
24 together. Very close people. You'll see that for yourself.

25 You're going to learn that they got married in '92, and
26 Denise gave me a card that Daniel wrote in for their first
27 Christmas. He wrote like a long poem in that in '92.

28 Then -- I'm looking through stuff -- he wrote a poem to

1 her on the Valentine's Day before this happened. He is still
2 writing her love poems 25 years later.

3 Then separately you evaluate this relationship.

4 You know, when we're real young we don't recognize our
5 father yet or anything. This is probably about the age where
6 you start realizing you have a dad. They were living in North
7 Park in San Diego. Daniel was home on leave and he loved taking
8 him to Balboa Park.

9 Chris followed his dad into the service, and when Chris
10 got this special recognition in aviation pin his dad scrambled
11 to get back. You can pick someone to pin you and he had his dad
12 pin him, Daniel.

13 This was Daniel's last deployment before he retired. He
14 came back. Whenever the ships come in, they work their dress
15 whites.

16 So you'll be putting a price on something priceless
17 that's not going to be -- because that's going to be your job.

18 Daniel was the center of a lot of people's lives.

19 After you hear everything -- I'm sorry. After you hear
20 everything, you're going to see that the evidence in this case
21 will compel a verdict holding Diamond Generating Corporation
22 fully accountable for what was taken in the tens of millions of
23 dollars for each of those relationships, but that will be in
24 your hands.

25 Thank you very much for your attention when we're
26 presenting this case.

27 THE COURT: Thank you, counsel.

28 Mr. Schumann -- or is it Mr. Reid that will be --

1 Mr. Schumann, if it's okay with you, we'll take a ten-minute
2 break. It looks like we went about an hour and 20 minutes.

3 MR. SCHUMANN: Yeah.

4 THE COURT: We'll return at 11:30.

5 Again, same admonishment. You haven't heard any evidence
6 yet in this case, so please do not discuss the facts of the case
7 or any other parties with each other. We'll see you at 11:29.

8 Thank you.

9 (Proceedings out of the presence of the
10 jury as follows:)

11 THE COURT: We are now outside the presence of the jury.
12 We'll be back in a couple minutes. Anything, Mr. Schumann?

13 MR. SCHUMANN: Yes, your Honor. Would now be the time to
14 raise the nonsuit or do we do it after the break?

15 THE COURT: We can do it after the break. Let's just
16 maximize our time here.

17 Again, as always, there is no rush. You'll have 30
18 minutes. We will break at 12:00, but obviously you're welcome
19 to pick back up. I thought it best to let everyone stretch
20 their legs and reset so you can have their full attention.

21 MR. SCHUMANN: Sure. I would like to make sure I do the
22 nonsuit motion before I start my opening.

23 THE COURT: Are you going to reserve your opening?

24 MR. SCHUMANN: I have to file a nonsuit motion, whether
25 it's now -- I can do it verbally now or I can do it when we come
26 back before I start up.

27 THE COURT: All right. Let's do it when you come back in
28 about five minutes, then.

1 MR. SULLIVAN: Your Honor, there is one issue with an
2 exhibit that they told us they were going to use that we gave
3 them notice we were objecting to it.

4 They apparently intend to use a caption from the first
5 amended complaint that has all the prior defendants listed on
6 there, which is a direct violation of the Court's standing order
7 about not introducing any evidence of the fact of or the amount
8 of any settlement.

9 THE COURT: Mr. Schumann?

10 MR. SCHUMANN: That's not correct.

11 I'm going to use a declaration that's in that complaint.

12 MR. BASILE: We haven't seen that.

13 MR. SCHUMANN: It's in your complaint. It's the
14 declaration in the first amended complaint from your expert.

15 THE COURT: Are you using a legal pleading, though, as an
16 exhibit?

17 MR. SCHUMANN: No, it's an impeachment document. It's
18 the expert's declaration that Gemma and Mott MacDonald --

19 THE COURT: If it's an attached exhibit, I'm probably
20 going to overrule the objection. If it's an actual pleading
21 with the caption with all the parties' names on it --

22 MR. BASILE: It's what it says is the problem.

23 MR. SCHUMANN: I won't show the caption, just the portion
24 of his declaration about what the expert is saying.

25 MR. SULLIVAN: It's 352, your Honor, because letting in
26 the declaration, they're going to see that there were a prior
27 defendant in this case because in order to file a lawsuit
28 against an architect, you have to attach a declaration that

1 there is some merit to it.

2 So they're trying to just back door it in an effort to --

3 MR. BASILE: Totally misleading.

4 MR. REID: Your Honor --

5 THE COURT: Let me stop here. You're asking me to rule
6 on an exhibit I haven't even looked at. So if you would like,
7 if you want to have it on the ELMO, just so you know, I'm
8 looking at real time, I'm also handling other things, and then
9 also have this screen. I'm looking at this screen. I'm looking
10 at whatever you have in this screen up here? That way I can see
11 the jurors.

12 If you want to put something up on the ELMO, I'll take a
13 look at it.

14 MR. SCHUMANN: That's okay. I'm withdraw the document.
15 I'll just do my talking.

16 MR. BASILE: You're withdrawing it?

17 MR. SCHUMANN: The document, I am.

18 MR. BASILE: The declaration, I mean. Is it going to be
19 presented?

20 MR. SCHUMANN: I'm not going to present the declaration.

21 MR. REID: Your Honor, may I enter the well and
22 photograph their trial board?

23 THE COURT: Of course.

24 MR. REID: Thank you.

25 MR. BASILE: It's already an exhibit.

26 (Recess.)

27 (Proceedings in the presence of
28 the jury as follows:)

1 THE COURT: Members of the jury are back.

2 Counsel, I know there is a pending motion. The Court
3 does have a decision on it. I will let you know once you
4 complete your opening, but I do have it written down.

5 MR. REID: Thank you, your Honor.

6 THE COURT: Mr. Schumann, as I mentioned. No rush. I
7 apologize that your opening may be interrupted, but we'll break
8 at 12 and you'll have whatever time you need afterwards if you
9 need it.

10 Permission to use the well.

11 MR. SCHUMANN: Thanks.

12 THE COURT: Mr. Schumann, we'll make sure it's turned on
13 for you.

14 MR. SCHUMANN: Thanks.

15 Members of the jury, thank you for being here.

16 This is a tough case. I know you've heard something
17 about a horrible death of an individual. That's not good.

18 I'm going to try to tell you what the evidence will show.
19 You've seen some clips of what has been said out of context or
20 in context. I'm going to tell you what I think the evidence
21 will tell you.

22 It will tell you that this is a case about personal
23 responsibility. It's a case about accepting responsibility for
24 your own actions. It's a case about human error, multiple human
25 errors and a horrible outcome therefrom. It's a case about not
26 taking your dangerous job serious enough to do it perfect every
27 time.

28 It's a sad case about a truly wonderful person that

1 everyone who comes in here to testify about will say he was a
2 great man and he did not deserve the outcome that he got.

3 There's a lot of evidence for me to go through, so I have
4 a long list. I have to kind of go slow and take my time. I
5 can't rush it. It's a long case, lots of witnesses. It's, as
6 you saw, a big power plant and it's serious stuff.

7 A lot of the people that you heard about, the actors, I
8 will call them right now, all the people who didn't do it right,
9 who weren't properly trained, they are all operations employees.
10 They are all hired by the company that runs the plant. They run
11 the plant.

12 You will hear that my client doesn't run the plant. They
13 run the plant. Their supervisor tells them what to do. Their
14 managers train them for years.

15 They were the ones who did the bad acts. You will hear
16 that the findings afterwards, they were, in fact, at fault.
17 These various operators, co-workers, made mistakes. They made
18 the mistakes.

19 Unfortunately it's also about the first slide. And this
20 was Daniel Collins' statement before he started. He was going
21 to set a record for this outage. That's not how you help run a
22 power plant.

23 Can we turn that off for a second?

24 There are a lot of different parties that you have heard
25 of. And I heard them being referred to as "they." Now, they
26 are a lot of different players. There are a lot of different
27 parties. They include the plant itself. They include the
28 company that's hired; an actual company, not a fake company, the

1 actual company that's hired to run the plant.

2 The owners of the plant is a different company.

3 Then my client is an entirely different company too who
4 has ownerships in the plant and in the company that runs the
5 plant.

6 There are other players, people who built the plant,
7 people who designed the plant.

8 You will hear that they were at fault.

9 Then you will hear about all these employees, and they
10 all worked for the company that we will refer to as DGC Ops,
11 O-P-S.

12 So you will have DGC Ops, which is the employer,
13 Mr. Collins' employer and the company that runs the plant. You
14 will hear about CPV Sentinel or Sentinel. That's the owner of
15 the plant and the plant is called Sentinel. It's confusing.
16 I'll put it up and we'll have a board so you can all see it.
17 But Sentinel is the plant. Operator is Ops. CPV Sentinel owns
18 the plant. And then our investor owns portions of both.

19 So the owner of the plant -- can we turn this thing off?

20 The owner of the plant, CPV Sentinel, they built the
21 plant. They hired Gemma and they hired Mott MacDonald to build
22 this plant.

23 As they were about to invest this amount of money into
24 building this plant, they hired another company, CPV Management.
25 And they were hired specifically to oversee the construction of
26 the entire plant, the creation of all safety systems, the
27 creation of the lockout/tagout, making sure that the entire
28 computer room, which was the size of this room, is properly fit

1 with whatever needs to be at a power plant.

2 This particular company, and we refer to them as
3 management -- they specifically were hired to do all the tasks
4 that plaintiffs' counsel claims my client somehow did.

5 You will see a contract -- I might as well show that one
6 now -- the asset management agreement.

7 So this is the asset management agreement between the
8 owner of the plant, CPV Sentinel, and they hire CPV Sentinel
9 management.

10 Let's go to the next one.

11 They specifically hire them. Okay, so the project
12 company, the owner, desires to retain asset manager to provide
13 certain administrative and asset management services to the
14 project company in connection with the construction management,
15 construction, operations of the project. And the asset manager
16 desires to accept such retention, meaning the asset manager
17 agrees to perform such services.

18 Let's go to the next one.

19 The company that builds it appoints the asset manager to
20 perform the services in accordance with the terms of this
21 particular contract. The asset manager accepts the appointment.

22 The owner appoints the asset manager as the agent for the
23 entire project, having such authority as may be necessary for
24 it, meaning for the management company, to perform its services.

25 Basically, it can do whatever it needs to do to make this
26 power plant proper, operational, safe.

27 Let's go to the next one.

28 The owner allows the asset manager to retain basically

1 whatever professionals that that manager believes need to be
2 hired.

3 So if you need to hire ten safety managers, a hundred
4 safety managers, you can do so.

5 Let's go to the next one.

6 The asset manager is authorized to arrange and contract
7 for independent third-party permits, engineering and inspection
8 services.

9 Let's go to the next one.

10 Other services, basically whatever you need. You're the
11 boss of this entire project. We're not, says the owner. The
12 owner says I'm not the boss of it. I'm investing in it. And
13 you know how to do this. You've told us you know how to do it.
14 You can do whatever you need to do to do it right.

15 Let's go to the next one.

16 The asset manager will provide -- sorry about this.
17 Okay. So construction management services is what the asset
18 manager agrees to. So basically throughout the entire
19 construction, years of building of this project, the manager
20 will provide the construction management services.

21 Next.

22 The asset manager, the manager, will attach monthly
23 reports. He'll oversee and monitor the safety programs of each
24 contractor on site. That includes Ops, right? Ops is hired to
25 be on-site to run the entire plant. The asset manager has the
26 right to oversee and monitor the safety programs for Ops, for
27 the electrical vendor, for any vendor or anyone who is on-site.

28 Next.

1 The asset manager is the representative for the project
2 company, meaning the owner, and shall oversee the operating
3 agreement pursuant to the operator. I'm sorry. That's a little
4 confusing.

5 But basically he has the right -- again, just confirming
6 that he has the right to do whatever he needs to do. It's
7 legalese, sorry.

8 Let's go to the next one and see.

9 He will provide monthly reports.

10 Next one.

11 He shall manage all government approvals, because there
12 is a lot with a power plant, a lot of involvement by government
13 to make sure this thing is built properly and runs properly.
14 Regulatory affairs, et cetera.

15 Next.

16 He will be responsible to supervise and manage the
17 operator, Ops. That's the manager's job. Ops will be
18 responsible for day-to-day compliance at the project, et cetera.
19 That's the manager's job. He, this company, hired to run Ops.
20 This company was hired to run Mr. Collins and his co-workers.
21 That's what you will hear.

22 Next.

23 Let's go to the next.

24 I think that might be the end of it.

25 Okay. So you will also hear that Mr. Collins was well
26 trained. He knew what to do. He had done this on numerous
27 occasions. He had worked there for four years. He was an
28 installer. He had been trained to follow each step on this

1 lockout/tagout sheet, all 21 steps. You follow them one by one.

2 You see that we'll actually have the tags. We'll have
3 the sheet. You'll see that you take the sheet, you take the
4 locks, you go out with your verifier. The verifier comes with
5 you.

6 Okay. I'm now doing number 1. It is 6:37 a.m. I'm
7 closing number 1. I put the lock on it so no one can open it.
8 I initial it. I time it.

9 The verifier says, yes, that's what this person did. I
10 confirm it. I initialed it. I signed it. I dated it.

11 Then you go to step number 2.

12 Mr. Collins knew to follow the order. Unfortunately
13 Mr. Collins was going to set a record that day, and
14 unfortunately he brought with him a person who was not qualified
15 to be an installer -- I mean, a verifier. Someone who had not
16 been trained to be a verifier.

17 You saw his deposition testimony of Albert Palalay, "I
18 didn't really know what the order properly was." So he brought
19 with him the wrong person.

20 Mr. Collins unfortunately knew who to bring with him, but
21 he picked someone he shouldn't have picked. He had been trained
22 to pick the right person.

23 This goes not just, oh, hey, do you want to get a coffee
24 kind of thing. This is you have to be a verifier to be able to
25 verify.

26 He then tells the verifier, hey, I'm going to do
27 something. Can you vent these two?

28 Mr. Palalay starts venting.

1 Mr. Collins then goes to do something that's not next in
2 the sheet. He leaves Mr. Palalay, who doesn't know what he's
3 doing. He knows a little bit about it. He's there for six
4 minutes. It's freezing, 6:30 in the morning. It's cold. It's
5 loud.

6 He closes and walks in to get his jacket and ear plugs.
7 When he comes out, the tags are hung. Collins moved to
8 something else.

9 I'll go through the list with you -- the root cause
10 analysis they showed you, we'll go through almost all the
11 unfortunate mistakes that were made.

12 So the installer, let's talk about who the installer is,
13 if we can go to that slide.

14 Okay. This is the installer and this is in the procedure
15 handbook that they've been trained on.

16 "What is an installer? The installer shall
17 isolate locked out and tagged out
18 components, drain, pressurize and/or
19 deactivate the components, hang locks and
20 lockout/tagout tags and sign all installed
21 lockout/tagout tags."

22 That's his job.

23 Let's go to the verifier.

24 "The verifier shall walk out" -- meaning
25 walk out is like go verify it, walk with --
26 "he shall walk out the lockout/tagout and
27 verify all components have been properly
28 isolated, tagged, drained, pressurized

1 and/or deactivated."

2 Meaning you have to verify as a verifier what the
3 installer did. You can't verify it if you're not with the
4 installer. If you have to go to the restroom or get ear plugs,
5 you're not with the installer. That's the first redundancy in
6 the system.

7 The second is that after they are done with following it,
8 signing it, doing all the things, hanging all the tags, locking
9 it, they now must tell the plant manager. And this was Jason
10 King at the time.

11 And the plant manager -- let's go to the next one.

12 The work supervisor verifies the isolation and
13 de-energizing of the component equipment prior to the start of
14 the job.

15 The verifier -- I mean the manager here, Jason King, is
16 supposed to be told I'm done with my job. You can go check it.

17 Mr. Collins did not tell Mr. King that he was done. No
18 one told Mr. King that Collins was done. That was Collins' job,
19 to tell Mr. King I am done, will you please go out and double
20 check my work, which would be the second double-check after the
21 verifier.

22 Mr. King would then go out, sheet in hand, with the dates
23 and times and all and confirm step number 1 was done, as you
24 said it was. Step number 2 was done. Step number 3. That was
25 not done. That was another unfortunate mistake. No one told
26 Mr. King.

27 Okay. We are going to show the all the unfortunate
28 mistakes and issues that occurred. The list is long so we'll go

1 one at a time.

2 Let's do the next.

3 So as I talked about, Mr. Collins selected Palalay, who
4 is not qualified to be a verifier.

5 We talked about the verifier's job, creates a second step
6 in making sure nothing goes wrong.

7 The verifier has to make sure all the steps are done
8 properly and in order. He initials the sheet, the tags, et
9 cetera.

10 You will hear that Robert Ward, co-worker and Ops
11 employee, told Mr. Collins in the control room, this giant room,
12 that's isolation valve 2, which you heard about, had been moved
13 on the sheet. So just remember, we talked about it. It's later
14 on in the sheet. That's what he told Mr. Collins, and he's
15 testified to this.

16 Mr. Delaney that you saw overheard Mr. Collins say, I'm
17 going to set a record for this outage.

18 Mr. Delaney will testify that he did not admire Collins'
19 hard-charging attitude and preferred to work slowly and
20 carefully.

21 You will hear that during a previous outage earlier,
22 Mr. Collins had said the same thing to the plant manager, Thomas
23 Walker.

24 Mr. Collins did not perform the role of installer
25 properly, as he had Palalay operate the key valves when he was
26 only supposed to verify. That was Mr. Collins' job.

27 The verifier cannot touch any of the equipment. You're
28 only supposed to watch, see that it's done right, sign and

1 initial.

2 The installer cannot ask the verifier to do this.

3 Mr. Collins then told Mr. Palalay to close isolation
4 valve 1, start the venting process. Again, Mr. Collins' job.
5 Not Mr. Palalay's job as Mr. Palalay was the redundancy in
6 confirming it was done.

7 Mr. Collins then left Palalay. Again, you can't leave
8 your buddy -- and he went to do something else.

9 Again, this is a key, unfortunate part. Because Palalay,
10 not properly trained, and it removed the verification step.

11 Then Palalay leaves. Unfortunately when he closes the
12 vents, he leaves 700 pounds of pressure in the chamber. So he
13 has only done this for a few minutes. It's vented down from 900
14 to about 700.

15 You will hear all this evidence. We have all this
16 evidence. It's in the control room. It's all recorded, the
17 times, the dates. It's all recorded. It's like a big plant.
18 There is no secret as to what happened and the order in which it
19 happened.

20 Vented for six minutes rather than the usual ten to 15.

21 Five more minutes to get his ear plugs and jacket. That
22 five more minutes would have ended the venting.

23 You will hear, unfortunately, that's the missing five
24 minutes.

25 You will hear from Robert Ward, coworker, ops coworker,
26 that the custom and practice is to watch the gauge which is on
27 the filter as it's venting. You have your ten to 12 minutes of
28 venting and you can literally stand there and watch and see it

1 go doo, doo, doo, doo.

2 Mr. Collins was aware of this process. He's done it
3 before on previous outages. And had he done the job, he would
4 have been the one watching.

5 He did not tell Mr. Palalay to watch and make sure it
6 went to zero.

7 So, pursuant to the LOTO tags that we have, it says that
8 Mr. Collins closed isolation valve 2, which was step number 14,
9 at 6:36 a.m. That is unfortunately not possible. You will hear
10 that's not possible.

11 You will hear that someone -- I don't want to use --
12 someone signed someone else's name to the verification sheet.
13 And you will hear Palalay saying I didn't sign it. Someone
14 signed my name for me.

15 Mr. Palalay will testify that he did not see Collins
16 close the valve. Thus he couldn't verify that he closed the
17 valve.

18 So this is what the evidence will show, that Collins
19 signed the tag for himself and also for Mr. Palalay.

20 This was the critical error, one of the critical errors
21 that left 700 PSI in the filter skid.

22 You'll hear Mr. Palalay testify that he was not present
23 when Mr. Collins closed the manual isolation valve, step nine,
24 or opened one and two, steps ten and 11.

25 Afterwards Mr. Collins had Mr. Palalay initial the sheet
26 and the tags; after it was done, not as it was being done.

27 There were these valves called maintenance valves. When
28 they were opened, there was an unusual venting of gas, something

1 that should not happen. It was a noise, a loud, loud noise.
2 The whole plant heard it and caused people to say what's up.

3 That should have been a warning to both Collins and his
4 co-workers to double-check the pressure in the system. Just go
5 look at the pressure or look inside the control room. No one
6 double-checked it, not Mr. Collins and not Mr. King.

7 During this time Mr. Walker -- Mr. Ward walked over to
8 the skid and saw Mr. Collins and Mr. Delaney, who you also saw,
9 and showed them that the closing of isolation valve 2 had been
10 moved down the sheet.

11 This was during the process. Mr. Ward second time tells
12 Mr. Collins, hey, reminder, valve 2 is further down the sheet,
13 just as he had told him before he started the process.

14 Unfortunately, it was not heard or ignored. We don't
15 know.

16 So when Mr. Palalay returned from getting his jacket and
17 ear plugs, Mr. Delaney was there with Mr. Collins and
18 Mr. Delaney vented a small portion of the system.

19 Again, Mr. Delaney was not the verifier, had not been
20 chosen to be the verifier. Mr. Collins had chosen someone else.
21 This was not Mr. Delaney's job.

22 The boss was Mr. Collins. He knew how to do this. He
23 was in charge of the entire lockout/tagout procedure.

24 No one instructed Mr. Delaney to watch the gauge as he
25 finished the venting.

26 The venting happened to be a small portion only.

27 THE COURT: Mr. Schumann, I apologize.

28 MR. SCHUMANN: Sorry.

1 THE COURT: You're starting a new slide, correct?

2 MR. SCHUMANN: Yes.

3 THE COURT: We'll break there. It's the noon hour.

4 Thank you, members of the jury. We'll resume at 1:29.

5 Again, please do not discuss the facts of the case. You
6 have not heard any evidence yet or any of the parties involved.

7 Please have a nice lunch. We'll see you at 1:29.

8 Please, counsel remain.

9 (Proceedings out of the presence
10 of the jury as follows:)

11 THE COURT: We are now outside the presence of the jury.
12 I apologize, Mr. Schumann. We brought the jurors back in at
13 11:29, so I wanted to address your motion for nonsuit after
14 plaintiffs' opening pursuant to CCP 581c.

15 So this is not considering anything you mentioned in your
16 opening statement.

17 Based on plaintiffs' opening statement and their
18 proffered evidence, the Court is not making any determination on
19 the credibility of the witnesses or weighing any of the proposed
20 evidence discussed in that opening. That motion is denied.

21 MR. SCHUMANN: Okay. May I address some issues or no?

22 THE COURT: When you mentioned it the first time, you
23 just said you were bringing a motion for nonsuit, but you didn't
24 address any grounds. That is why the Court was kind of paused
25 for a moment.

26 MR. SCHUMANN: I didn't know if that was the time to say
27 my grounds.

28 THE COURT: Sure. If you would like to state your

1 grounds.

2 I think there was miscommunication between us.

3 MR. SCHUMANN: There must have been. I apologize, your
4 Honor.

5 So the grounds would be that there's been no evidence of
6 either negligent undertaking or an exception to Privette.

7 The arguments were that their expert will testify that it
8 was a dangerously different change and that there was negligent
9 oversight. That's neither negligent undertaking nor an
10 exception to the Privette rules.

11 There is no alter ego cause of action, so he continues
12 claiming that what Ops employees did is akin to Diamond
13 Generating being in charge of those employees. So that wouldn't
14 apply either.

15 I'll make it as simple as that. That's as simple as it
16 can be, your Honor, because I just don't see or hear any
17 evidence for negligent undertaking or an exception to Privette.

18 THE COURT: Thank you. As I previously mentioned, the
19 Court can't weigh the evidence or make any determinations in
20 terms of credibility.

21 Based on at least what was proffered, the motion is still
22 denied. I don't want to rule further on it because then we're
23 getting into weighing the evidence and credibility.

24 MR. SCHUMANN: Yes, no worries. Thank you, your Honor.

25 THE COURT: Your motion was timely brought, though. I
26 know I'm ruling on it now during your opening, but it was timely
27 brought.

28 MR. SCHUMANN: Great. Thank you, your Honor.

1 THE COURT: We are in recess. Counsel, if you want to
2 come back about ten minutes prior.

3 (At 12:00 noon, a recess was taken until 1:30 p.m.
4 of the same day.)

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JUNE 29 - AFTERNOON SESSION
BEFORE THE HONORABLE MANUEL BUSTAMANTE

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(Proceedings out of the presence of
the jury as follows:)

THE COURT: Let's recall the matter of Collins versus DG Corporation. We're outside the presence of the jury. All counsel and parties are present with the exception of Mr. Sullivan, who might be knocking on the door. We'll wait for a moment.

MR. BASILE: We can proceed, your Honor.

THE COURT: There he is.

Okay. Is there anything we need to discuss before continuing with Mr. Schumann's opening?

MR. SCHUMANN: No, your Honor.

THE COURT: Thank you. Mr. Reid?

MR. REID: No, your Honor.

MR. BASILE: No, your Honor. We're fine.

THE COURT: Mr. Basile, there was something we discussed last Monday.

Mr. Schumann, ultimately I leave it to you and Mr. Reid. The Court did note that the board over here remained during your opening. I understand Mr. Reid took a photo of it, so you're aware of what's on it.

Would you like it to stay up while you're doing your opening or should Mr. Basile take it down?

MR. SCHUMANN: Yeah, please take it away.

THE COURT: Okay. Thank you.

1 MR. REID: If you want to just flip the page down and
2 cover what's on the --

3 THE COURT: And the same thing.

4 The same with the other boards. You're welcome to use
5 it. But once you're concluded, if you could turn it away.

6 MR. BASILE: Do you think I'll be able to use this spot?
7 It might be a little awkward.

8 THE COURT: It's a smaller courtroom, but we might be
9 able to move it back into this space here. Yes, that's fine.

10 As long as, counsel, you'll have to be able to walk past
11 the Collins and you should be able to see from that angle.

12 MR. REID: I apologize. I left something in the hall.
13 I'll be right back.

14 THE COURT: Of course.

15 So the record will reflect the boards have been taken
16 down. And that was it. That's all the Court had.

17 There is one other thing. We are still waiting for those
18 exhibit binders.

19 MR. SULLIVAN: They are right there.

20 MR. BASILE: They need them.

21 MR. SULLIVAN: We'll bring them up.

22 MR. SCHUMANN: And one more thing, your Honor.

23 If we could get an order to get copies of the exhibits
24 that were being used by plaintiff in their opening. I'd like to
25 request copies of the exhibits -- I mean of everything that was
26 shown to the jury.

27 THE COURT: Well, ultimately, it's just opening
28 statement. So the Court did make its own notes in terms of what

1 exhibits each side --

2 MR. BASILE: We gave them the list too, your Honor. They
3 have the list.

4 THE COURT: I won't have him turn over his PowerPoint
5 presentation or anything, but if you would like to make a
6 numeric list.

7 MR. BASILE: I already did.

8 THE COURT: I'll ask you to exchange that.

9 MR. BASILE: It's done.

10 MR. SCHUMANN: Yes. I have the exhibit numbers. It was
11 more the documents, the PowerPoint, whatever was shown to the
12 jury that I have not seen.

13 THE COURT: You haven't seen you mean in terms of it like
14 now?

15 MR. SCHUMANN: Until right now.

16 MR. BASILE: I understood your order, your Honor, was to
17 give them our exhibits and I didn't need to give them the
18 PowerPoint, so I followed the Court's rule.

19 THE COURT: The only time I have seen that is in capital
20 cases, really.

21 I'll decline that request, but the exhibits, of course,
22 because that could be a future motion potentially if it's not
23 introduced. But the PowerPoint, no. That goes for both sides.

24 I notice a lot of yours, Mr. Schumann, they were
25 PowerPoint slides with bullet points, but less so on the exhibit
26 side thus far. So I wouldn't ask you to turn that over either.

27 MR. SCHUMANN: Okay. Thanks.

28 THE COURT: Counsel, neither of you requested it. During

1 the playing of plaintiffs' deposition testimony, if you would
2 like, these lights can be turned down. I didn't see anything
3 where it interfered, but it's an option you have.

4 (Proceedings in the presence of
5 the jury as follows:)

6 THE COURT: We are back on the record in Collins versus
7 DG Corporation with all members of the jury minus one alternate.
8 So we will get started here in a moment.

9 I think the jurors came in at 1:28. Now it's 1:29.

10 We can't proceed unless everyone is together.

11 JUROR GAIPA: He was in the bathroom the last time I saw
12 him, if that helps.

13 (Juror Benitez enters courtroom.)

14 THE COURT: Thank you. All members of the jury and all
15 three alternates are now back. We're still on the record.

16 One thing I was going to mention, this courtroom is a
17 little bit different than others. In fact, the jury box is
18 recessed into the wall. In terms of acoustics, if at any
19 point -- the attorneys obviously have put a lot of preparation
20 into this -- if you cannot hear them or if they're playing some
21 type of audio and you can't hear because, again, you're recessed
22 into the wall, just raise your hand.

23 I'm looking here at exhibits on this monitor, constantly
24 keeping an eye on them. So then that way if we can let the
25 attorneys know, they would appreciate that.

26 Mr. Schumann, whenever you're ready.

27 MR. SCHUMANN: Thank you, your Honor.

28 Before we move on, I think I wanted to clear up some

1 facts that you will hear that I don't know if all of us have
2 cleared up for you yet.

3 So unless you know what a filter skid is or in a power
4 plant how it operates, you probably don't know. What you'll
5 hear is that this filter that we have been talking about, this
6 tower, it cleans the gas from particles and water because the
7 turbine does not like particles or water. So this is a cleaning
8 process. There is a filter in there like a car filter or HVAC
9 filter. And every year it has to be cleaned out.

10 Part of the process of an outage, as they call it, is to
11 take that rectangular area where the turbine is and where the
12 filter is and shut the whole thing down, close off all the gas
13 from coming into that area.

14 So when they do this shutdown, it takes about four to
15 five days to do the whole thing.

16 Part of the process is turn off the gas to the entire
17 system because it's not just the filter that has to be cleaned.
18 It's all the different areas of all the pipes before it goes
19 into the generator that has to be worked on. So it's a big long
20 process.

21 All right. So with that, back to the next area.

22 So, again, from the evidence from the control room, what
23 you will hear is that steps 12 and 13 were done at 7:00 and
24 7:15, 16 to 21 were done at 7:10, again indicating that these
25 steps were done out of order or the time was improperly placed
26 on the verifier's portion or the installer's portion.

27 Then at 7:10 Mr. Collins finishes the tags and verifying
28 the LOTO and his coworker in the control room asked if he can

1 start his work.

2 Collins says yes.

3 Then at this time there is another unusual venting of
4 gas, something that doesn't normally happen in any of these
5 outages.

6 There was another warning to the entire group something
7 is up. Unfortunately no one, again, goes to check the pressure
8 gauge.

9 Collins was asked by Mr. Kim -- you will hear his
10 testimony -- if everything was fine. Collins says yes.

11 Unfortunately he doesn't go look.

12 Collins' boss and Ops employee Jason King -- I talked to
13 you about him earlier -- he asked twice if the LOTO was done
14 correctly and will testify that Mr. Collins told him yes,
15 ultimately reassuring Mr. King that everything was under
16 control.

17 You will hear from Jason King that no one told him that
18 the LOTO was ready. He is the guy who will lock down and
19 double-check -- actually triple-check. He is the
20 triple-checker -- that it's done. That would have been the
21 third redundancy.

22 Then it's finished -- alleged to have been finished.
23 It's finished. And they bring the sheet and the box into the
24 control room. No one should have been working on this until
25 this was verified by Mr. King.

26 Unfortunately, Collins tells the people he is he working
27 with that it's done, it's finished, you can start with your
28 work, unfortunately knowing that it hadn't been verified.

1 Then at 11:00 he goes to the filter skid and gets his
2 ladder up and is about to start working on removing the top so
3 he can get to the filter. And there is a pressure gauge just to
4 the right of his ladder. Unfortunately, he doesn't look at it,
5 which is part of the process. It's part of the procedures in
6 the booklet that he's been trained in.

7 So let me show you. We have a video that we want to show
8 you of how it's supposed to be done.

9 If you can queue up the video.

10 Okay. Can I pause it with this?

11 THE TECHNICIAN: I will pause it.

12 MR. SCHUMANN: Can you go back?

13 So this is a birds-eye view of the filter skid, it's
14 called, right? It's this thing and the -- we're going to fly
15 into it.

16 Over here is the control room and the main buildings. So
17 you'd walk out and walk over to the skid.

18 Over here you have the LOTO sheet with all the items. So
19 there's the -- it shows that you would have to close the valve
20 and you put a lock on it so no one can open it. You put a tag
21 on it, sign it, time it.

22 You open the filters to vent out the system. You wait
23 the 12 to 15 minutes until the pressure is gone. You close it.

24 So these are two people walking next to each other on the
25 green line, the verifier and the installer.

26 There are a lot of steps. Everything has to be locked
27 and tagged and timed.

28 This is just below the turbine.

1 This is isolation valve 2.

2 THE COURT: One moment, Mr. Schumann, until we have
3 everyone.

4 Okay.

5 MR. SCHUMANN: So that is a sped-up process. I know it
6 still took four minutes, but that is a sped-up process showing
7 you everything that has to be done. You follow the sheet, one
8 at a time, nothing happens. It's a safe procedure.

9 Okay. So after the incident, there was a root cause
10 analysis. People say stop. Let's find out what happened.
11 Bring investigations in and let's queue up the root cause
12 analysis.

13 Okay. It's a long document. You'll see the document.
14 You'll have it in the jury room.

15 It talks about the incident. It talks about what
16 happened, the date, unit five.

17 It talks about the parties.

18 Let's go to the next one.

19 I'm sorry. I can go back.

20 It talks about what Jason King observed, discussing the
21 venting with Collins as to why the venting sequence sounded
22 different.

23 Was that me? Palalay, Kim and King all confirmed, had
24 brief conversation. Unfortunately there was an assumption and I
25 don't know what they say about assumptions. Let's go to the
26 next one.

27 So the conclusion is or was that the LOTO was not
28 followed, and it goes through the various steps. I don't want

1 to repeat my 18 points.

2 But this analysis, determination is what the findings
3 were. The findings were what I've gone through in terms of who
4 the installer was, what the installer is supposed to do.

5 Let's go to the next one.

6 Okay. This document you will have to read and go through
7 and understand everything that was supposed to have been done
8 and was not done, by whom, et cetera.

9 Let's go to the next one.

10 Actually, go back one. I'm sorry. Go back one. Just
11 highlight the bottom -- the last one.

12 Thank you.

13 I highlighted the section, "Neither performed their
14 verifications correctly." That part of their findings.

15 This is about Delaney and Palalay, they were involved.
16 Those two Ops employees unfortunately also failed their portion
17 of the job.

18 Let's go to the next.

19 Yes, thank you.

20 The plant manager failed. Everyone failed. There are
21 lots of human errors, lots of human errors.

22 You will hear from the one and only human factors expert
23 who will testify that if you just follow the LOTO, it's safe for
24 everyone, including Mr. Collins and including his co-workers, et
25 cetera.

26 All right. Thanks.

27 Let me just see. Yeah, go ahead.

28 Although the list of steps set forth as EPCs and the

1 equipment lockout/tagout sheet, if followed correctly and in
2 sequence, safely isolate and vent the lines. There is no
3 separate procedure or steps, et cetera, et cetera.

4 Okay. Thank you. That's it.

5 All right. So what happened after the six months we
6 heard about earlier? What happened was the plaintiff claimed
7 that Mott MacDonald, the engineer and designer, and Gemma Power
8 Systems, the construction company that built the plant, that the
9 system --

10 MR. BASILE: Excuse me, your Honor. I have to object.
11 They are not a party to this case.

12 THE COURT: One moment. Overruled.

13 MR. BASILE: Thank you.

14 MR. SCHUMANN: Their expert -- they had an expert who
15 claimed in declaration form that the construction company and
16 engineering management -- the engineering and designers
17 constructed this entire facility negligently and in a dangerous
18 format.

19 The expert claimed that this system had hidden defects in
20 it that no one could know about, that only the designer and the
21 construction company knew about, and that that's what caused
22 Mr. Collins' death.

23 You will hear that my client, Diamond Generating
24 Corporation, also referred to as DG Corp, and I will try to --
25 these are a lot of names, so we'll try to say them properly
26 every time and stick with the same, but some of the witnesses
27 might use a different terminology -- can you turn that one on?

28 Thanks.

1 Just to clear it up -- I'll help clear it up a little
2 bit. So I created this little document. It doesn't seem to
3 work.

4 THE COURT: The top one.

5 MR. SCHUMANN: What we have is up top is we have Mott
6 MacDonald, the designer, and Gemma, the construction company.
7 They build the plant, all right?

8 They are hired by CPV Sentinel, who is the owner of the
9 plant.

10 At the time that CPV Sentinel builds this plant, they
11 hire the management company, CPV Sentinel, the contract that I
12 showed you earlier. They hire them at the time of construction
13 to oversee these people, to oversee the plant and to oversee the
14 Ops, the operator who operated the plant.

15 CPV Sentinel hires the operator to operate the plant.
16 That is who Mr. Collins worked for.

17 My client, Diamond Generating Corporation, DG Corp, is an
18 investor in the process, a part owner of CPV and an owner of --
19 a shareholder of DGC.

20 That is the layout of how the facility, the plant, came
21 to be.

22 You will hear from plaintiffs' expert that the claim is
23 now that this incident was my client's fault, that my client
24 somehow had a duty to run the operation, that my client somehow
25 controlled all the employees of the separate company DGC Ops.

26 You will hear testimony that my client asked questions,
27 that they were interested, and likely so, should have been, as
28 owner, right, in what was going on.

1 But you'll also hear that DGC Ops ran the entire process.
2 They ran it as they and the management company saw fit. That
3 was their job. It was a job that they were specifically hired
4 to do.

5 My client was not hired to run the operation, to run the
6 plant at all.

7 You heard counsel say that because my client had a logo
8 on the LOTO sheet, that that meant that they had control over
9 how the process ran.

10 What you'll hear is you'll hear testimony from the Ops
11 manager saying I put -- I took a form and I created the LOTO. I
12 took a blank form that I brought with me and I created the LOTO.
13 I created the 21 items or however many I wanted to use for each
14 outage. I created it. No one else did. I did it, me, an ops
15 employee.

16 You will hear that the manual called the SMP-3 -- I don't
17 know why they use these names, but the manual for the outage was
18 created by Mr. King, and it was approved by the owner, CPV
19 Sentinel, and by the management company, CPV Sentinel
20 Management. They approved the manual, the SMP-3 manual it's
21 called.

22 That is the manual upon which you then base how you do
23 these steps. The manual is like the big document. The LOTO
24 sheet is the little tiny one-pager you use because you already
25 know what's in the big document. You can't bring the big
26 document with you every time you go do something.

27 You will hear testimony from Mr. King and Mr. Walker that
28 neither one of them requested my client's authority to put my

1 client's logo on the document.

2 You will hear testimony that the LOTO, the sheet and the
3 order in which it was created was printed out a couple days
4 before by Mr. Collins' friend and coworker Robert Ward.

5 He is the one who also told him twice and reminded him
6 that they hadn't moved item number 2, or valve number 2, to item
7 14 instead of where it had been on another occasion, a decision
8 they made.

9 You will hear no evidence that my client had anything to
10 do with changing valve number 2 or any which way they decided to
11 do this LOTO sheet.

12 You will hear testimony that Mr. Collins had been
13 reprimanded before to slow down. He was going too fast. Don't
14 cut corners. There is no need for rushing. Everyone who is
15 going to come testify to knew Mr. Collins will be sad that he's
16 gone. He was a good guy, they will say, and unfortunately
17 that's what happened to him. That was the end. It was an
18 unfortunate mishap of multiple human errors caused by him and
19 his co-workers.

20 At the end of the day I'll be asking you to let my client
21 out of the case.

22 Thank you.

23 THE COURT: Thank you, Mr. Schumann.

24 Okay. Members of the jury, you have heard opening
25 statements from each of the parties as to what they expect the
26 evidence will show. That evidence will begin here shortly.

27 We have a quick logistical matter to take care of. We
28 are going to switch court reporters.

1 It has something to do with court-provided and private.
2 So that will begin here in a moment before we start witness
3 testimony.

4 If you would like -- it should just take about two
5 minutes. If you would like to stand, stretch and then we'll
6 begin with your first witness, correct, Mr. Basile?

7 MR. BASILE: I'll be judicial notice and moving some
8 documents into evidence and then going right to the witness.

9 THE COURT: Yes. Okay.

10 MR. REID: When would you like Mr. Johnson to come in
11 here?

12 THE COURT: That's your first witness, Mr. Basile?

13 MR. BASILE: Yes, your Honor.

14 THE COURT: If you would like to bring him in now. Then
15 we will go ahead and go off the record here and we'll go back
16 and switch court reporters.

17 MR. REID: Thank you.

18 One thing about the court reporter, your Honor.

19 THE COURT: He can't leave until we stop talking.

20 MR. REID: I understand. One thing about the court
21 reporter, we stipulated yesterday to not have the video
22 testimony transcribed. Unfortunately, we have to withdraw that
23 stipulation.

24 THE COURT: All right. We'll rule on that in a moment.

25 Thank you.

26 (Recess.)

27 (Next Volume is Volume 5, Page 701.)

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COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT - DIVISION TWO
APPEAL FROM THE SUPERIOR COURT OF RIVERSIDE COUNTY

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DENISE COLLINS and CHRISTOPHER) DCA No. E080233
COLLINS,)
)
Plaintiffs/Respondents,) Superior Court
) Case No. PSC1901096
vs.)
)
DIAMOND GENERATING CORPORATION,) Volume 5 of 19
) Pages 701 - 761
Defendants/Appellant.) (761-800 Blocked)

REPORTER'S TRANSCRIPT ON APPEAL
BEFORE THE HONORABLE MANUEL BUSTAMANTE - DEPARTMENT PS2
June 29, 2022

APPEARANCES:

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Reported by: DEMETRIA BISCHOFF, CSR 12602

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SUPERIOR COURT - STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

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DENISE COLLINS; CHRISTOPHER)
COLLINS,)
Plaintiffs,) Case No. PSC1901096
vs.)
CPV SENTINEL ENERGY CENTER, LLC,)
MOTT MACDONALD, LLC, GEMMA POWER)
SYSTEMS, LLC, and DOES 1 to 15,)
Inclusive,)
Defendants.)
_____)
-)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE MANUEL BUSTAMANTE - Department PS2

June 29, 2023

APPEARANCES:

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EXHIBITS

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JUNE 29, 2022 - AFTERNOON SESSION
BEFORE THE HONORABLE MANUEL BUSTAMANTE

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THE COURT: Recall the matter of Collins versus DG Corporation. We're outside the presence of the jury. Mr. Basile, please.

MR. BASILE: First thing I'm going to be doing is I've given the exhibits to Officer Lee. I would ask the Court to take judicial notice of Exhibits 351, 352 and 353. He has them in his hands. I can make that motion when we begin but just so to move along you can have them in your hands. I won't have to take the time and pass them up.

THE COURT: DCG Operations.

MR. BASILE: Secretary of the State.

THE COURT: That's an internal document, how would I take notice?

MR. BASILE: I'll have him hang on to it and save that for a few seconds.

THE COURT: Then at the conclusion of the day we can discuss whether they are admitted or not. It will be introduced at this point but the Court will go ahead and take judicial notice of 351, 353, should I --

MR. BASILE: I'll wait on publishing, Your Honor.

THE COURT: No, you can go ahead and publish.

MR. BASILE: Thank you, Your Honor.

THE COURT: Sorry, Deputy Lee.

(Pause in the proceedings.)

THE COURT: On the record in Collins versus DG

1 Corporations. All members of the jury and alternates have
2 returned. We will begin with plaintiff's case in chief.

3 MR. BASILE: In regards to defense opening statement,
4 we'd move to admit the root cause analysis which is
5 Exhibit 34.

6 THE COURT: One moment. That's without attachments?

7 MR. BASILE: Yes.

8 THE COURT: Counsel.

9 MR. REID: No objection, Your Honor.

10 MR. SCHUMANN: No problem.

11 THE COURT: Okay.

12 MR. BASILE: Thank you, Your Honor. Next, would the
13 Court take judicial notice of Exhibit 351, which is a
14 certified copy of the statement of information with the
15 secretary of state.

16 THE COURT: The Court has reviewed the original.
17 Submitted. Sorry. Introduced.

18 MR. BASILE: May we publish, Your Honor?

19 THE COURT: Yes. And the same can go for 352 and
20 353.

21 MR. BASILE: All right. We'll move right through
22 this. 351, please publish.

23 And could you enlarge the whole exhibit for us?

24 Okay. I'll tell you what we moved in 351, 352 and
25 353. I acknowledged the Court has taken judicial notice of
26 those. We'll finish up with this at a later time when we need
27 to. We'll just move on. Is that fine, Your Honor?

28 THE COURT: It's your case, counsel, yes, that's

1 fine.

2 MR. BASILE: Thank you, Your Honor.

3 THE COURT: All right.

4 MR. BASILE: We're ready to call our first witness,
5 Mr. Dennis Johnson under Evidence Code Section 776,
6 Your Honor.

7 THE COURT: Thank you, counsel.

8 Counsel, thank you for that. If there's going to be
9 additional reference, just refer to the Evidence Code Section,
10 please.

11 MR. BASILE: I'm sorry.

12 THE COURT: As you did, just refer to the Evidence
13 Code Section, and not another term that way the Court
14 understands.

15 MR. BASILE: Sure.

16 THE COURT: Thank you.

17 THE CLERK: Please raise your right hand. You do
18 solemnly state that the evidence you shall give in this matter
19 shall be the truth, the whole truth, and nothing but the
20 truth, so help you God?

21 THE WITNESS: I do.

22 THE CLERK: You may be seated.

23 MR. BASILE: Your Honor, we want to examine him under
24 Evidence Code Section 776.

25 MR. BASILE: Does the Court wish to have any comment
26 or inquire as to the jury about that?

27 THE COURT: No. You may proceed.

28 THE CLERK: Please state and spell your first and

1 last name for the record.

2 THE WITNESS: Dennis Johnson, D-e-n-n-i-s
3 J-o-h-n-s-o-n.

4 MR. BASILE: May I, Your Honor, inquire.

5 THE COURT: Yes.

6 DENNIS JOHNSON,
7 called as a witness under Evidence Code 776 by Plaintiff, was
8 sworn and testified as follows:

9 DIRECT EXAMINATION

10 MR. BASILE:

11 Q. Good afternoon, Mr. Johnson.

12 A. Hello.

13 Q. Mr. Johnson, please keep your voice up so that the
14 jury can hear you. This afternoon you sound a little soft
15 there.

16 A. No problem.

17 Q. Thank you. You're the current manager of the
18 Sentinel Energy Center; isn't that true?

19 A. Correct.

20 Q. Let's go back to when you were first hired by Diamond
21 Generating who hired you, Diamond Generating generation
22 corporation or operations?

23 A. Hired for in 2009?

24 Q. Yes, sir?

25 A. I was hired by Diamond Generating Corporation.

26 Q. Thank you. You were hired by Diamond Generating,
27 Diamond Generating Corporation was that when they --

28 MR. BASILE: May I grab -- go in the well,

1 Your Honor?

2 THE COURT: Yes. I'm sorry that should have been
3 over there for you already.

4 MR. BASILE: Okay. Thank you.

5 Q. BY MR. BASILE: When you were hired, may I approach
6 the witness, hold this over there, Your Honor, doesn't matter.
7 I'm going to move. Do you recognize these people on here?

8 Mr. Kromer, Mr. Aaberg, Satoshi Hamada, Paul
9 Sheppard, Bohan Buchynsky?

10 A. When I was hired?

11 Q. Yes.

12 A. No.

13 Q. But you were hired by Diamond Generating Corporation
14 originally?

15 A. The human resources from Diamond Generating
16 Corporation, I dealt with them.

17 Q. The head of human resources for Diamond Generating
18 Corporation is this Jane Cubos, correct?

19 A. Correct.

20 Q. Based on your knowledge, she's the Human Resources
21 Director for Diamond Generating Corporation?

22 A. Yes.

23 Q. And she's also the Human Resource Director for
24 Diamond Generating Operations?

25 A. Yes.

26 Q. Now, the office, the main office for Diamond
27 Generating Corporation is in downtown LA?

28 A. Yes.

1 Q. And you've been to that office several times?

2 A. I have.

3 Q. And it's in a big high rise?

4 A. Yes.

5 Q. Twenty-seventh floor?

6 A. Yes.

7 Q. Yes. All offices for Diamond Generating Corporation
8 are on the 27th floor?

9 A. As far as I know, yes.

10 Q. Now, when you were hired by Diamond Generating
11 Corporation in 2009, you were hired as what's called an ICE
12 technician; is that correct?

13 A. That's correct.

14 Q. Tell the jury what an ICE technician does.

15 A. Instrumentation control electrical technician.

16 Q. When you were hired as an instrumentation control
17 electrical technician, your assignment was several or a number
18 of power plants to cover?

19 A. No.

20 Q. How many power plants when you were initially hired?

21 A. One.

22 Q. Which power plant?

23 A. Larkspur Energy.

24 Q. That was a Diamond Generating Corporation plant, DCG
25 Operations?

26 A. DCG Operations.

27 Q. A wholly owned subsidiary of Diamond Generating
28 Corporation?

1 A. Yes.

2 Q. Now, where was the Larkspur plant you were working
3 at?

4 A. Otay Mesa, California, San Diego.

5 Q. Where did you move next?

6 A. We then moved to Palm Springs, California.

7 Q. Is there more than one plant here that's affiliated
8 with Diamond Generating Corporation?

9 A. Yes, Sentinel Energy Center and Indigo Generation.

10 Q. What years were you a technician for those two
11 plants?

12 A. I moved in 2012 to be the ICE technician for Sentinel
13 Energy Center.

14 Q. And just generally, the ICE technician mainly deals
15 with what?

16 A. It's all the instrumentations and controls and
17 electrical of the facilities. That would be many types of
18 signals, wiring, the computer screen that we use at power
19 plants to operate the facilities. So we handle as
20 technicians, we repair all of those things and actually work
21 on them quite often.

22 Q. Right. Now, you remember having your deposition
23 taken in this case?

24 A. I do.

25 Q. And that was when all these lawyers were there, right
26 or a number of these lawyers were there to ask you questions,
27 do you remember that?

28 A. Yes.

1 Q. At your deposition, you were represented by Mr. Reid;
2 isn't that true?

3 A. Yes.

4 Q. And you're being represented by the Diamond
5 Generating Corporation lawyers today when you're coming in to
6 testify today; isn't that true?

7 A. Yes.

8 Q. Now, you're familiar with high pressure natural gas
9 plants?

10 A. I am.

11 Q. And you are well aware that they are dangerous, they
12 can be?

13 A. There's a danger there, yes.

14 Q. And the danger that comes with high pressure natural
15 gas plants is the high pressure they are under, right, that's
16 one?

17 A. It's contained.

18 Q. Yeah. But that's one of the dangers, there's a lot
19 of pressure there, right?

20 A. Correct.

21 Q. And the pressure at the Sentinel Energy plant is as
22 high as 900 pounds per square inch; isn't that true?

23 A. That's correct.

24 Q. A square inch is about this big, like I'm holding my
25 finger, why don't you show us what a square inch is?

26 A. Little square from corner to corner, one inch.

27 Q. There's compression of 900 pounds of pressure per
28 square inch in that system, that's out there at this Sentinel

1 Energy Center, correct?

2 A. Yes.

3 Q. Are you familiar with the pressure in our home, in
4 our home gas lines?

5 A. I wouldn't recall, no.

6 Q. Have you ever heard of it being less than one pound
7 per square inch?

8 A. No.

9 Q. Now, we have Exhibit 254, please.

10 MR. BASILE: May we publish, Your Honor?

11 THE COURT: Yes.

12 MR. BASILE: Thank you.

13 Q. BY MR. BASILE: Mr. Johnson, there's a monitor also
14 in front of you.

15 A. Yes.

16 Q. You can look at either one, fine with me, whatever
17 you're most comfortable looking at. This is a photograph of
18 the Sentinel Energy Center, right?

19 A. That is correct, yes.

20 Q. And there are eight -- I got a laser pointing here,
21 there's eight separate units?

22 A. Yes.

23 Q. You probably have a better name for that. See me
24 circling, eight, left to right; is that correct?

25 A. That's correct.

26 Q. Do you call them skids or fuel filter skids, how do
27 you refer to it?

28 A. The eight separate units would be called a package,

1 what you get -- when you buy that specific technology of
2 turbine from General Electric.

3 Q. There's eight packages here?

4 A. That's correct.

5 MR. BASILE: Let's look at one of those packages.
6 Can I have Exhibit 255. May I, Your Honor?

7 THE COURT: Yes. I'm sorry. You don't have to ask
8 each one. I assume counsel has seen them.

9 MR. BASILE: Yes.

10 THE COURT: I assume counsel has seen each of these
11 since it's a joint exhibit binder.

12 MR. BASILE: Yes, sir. I don't need to ask any more.
13 Thank you, Your Honor.

14 Q. BY MR. BASILE: This is one of the packages, right?

15 A. That's one package, yes.

16 Q. Okay. Let's just give the jury a general idea of
17 what's contained in the package. And let's start over here on
18 the left. What is this big stack I'm pointing at at the left
19 side, exhibit up, down?

20 A. That's what you said stacks the houses, emission
21 monitoring system.

22 Q. By emission, that's what comes out after the gas is
23 burned?

24 A. Correct.

25 Q. What's this area here to the right of that?

26 A. It's called the selective catalytic duct.

27 Q. Just in general terms, what does that do?

28 A. It interacts with the exhaust gas of the turbines to

1 reduce the emissions.

2 Q. What is this area, these two cylinders?

3 A. Those are the package ventilation ducts. They're
4 very large fans in those ducts, they're pulling air through
5 the package to keep it cool.

6 Q. What is all this stuff here that looks like poles and
7 things?

8 A. That is the bust coming out of the generator towards
9 the generator step up transporter.

10 Q. And where's the turbine where the big blades are
11 spinning, over in this area?

12 A. No. It's basically just barely what we call east of
13 those of the two package ventilation stacks.

14 Q. Right in this area?

15 A. Do you want me to point?

16 Q. Yes. Feel free to step up there.

17 A. It's actually the building underneath, this is an
18 inlet. That's an inlet filtration building. Then underneath
19 this is the actual turbine package. So you can't see it --

20 Q. Okay.

21 A. -- from this overhead.

22 Q. What's this cylinder here?

23 A. The variable bleed geometry duct.

24 Q. What's this, this tank over here?

25 A. That's the air cooler which actually it has water in
26 tubes and then it flows air through to cool the air.

27 Q. These lines here, that's where the high pressure gas
28 runs, right?

1 A. So --

2 Q. Right here?

3 A. The very front line.

4 Q. Okay. Now, could we have 255 beside 254, please.

5 Just for review sake, do you have that, James. Side-by-side
6 there. Yeah. So what we just talked about, there's eight of
7 them along here, right?

8 A. Yes.

9 Q. And once a year that whole package, you called it,
10 right?

11 A. Correct, yes.

12 Q. It has to be shut down for annual maintenance?

13 A. Yes.

14 Q. Let's go to Exhibit 349, please. Now, this is
15 Exhibit 349. This is what's called a fuel filter skid,
16 correct?

17 A. Yeah, final fuel filter skid.

18 Q. Because this is a final fuel filter, it goes through
19 before it heads to the turbine?

20 A. That's correct.

21 Q. It comes in here where I'm showing along the bottom
22 about 900 pounds per square inch, goes into this fuel filter,
23 correct?

24 A. That's correct.

25 Q. Then goes up through the fuel filter, there's filters
26 inside, comes out the top, correct?

27 A. That's correct.

28 Q. It's all under 900 pounds of pressure when it's

1 operating, right?

2 A. That's correct.

3 Q. Comes out the top, then goes off to the -- comes off
4 the top, goes out to the turbine?

5 A. Correct.

6 Q. 372 beside this, please, if you could, James. This
7 Exhibit 372 on the right is the lid that's on the top of the
8 fuel filter package, correct?

9 A. Yes.

10 Q. And you're familiar with it?

11 A. I am.

12 Q. About how wide is it?

13 A. Ten to 12 inches wide.

14 Q. Twelve inches wide, circumference about this or
15 bigger?

16 A. Yeah.

17 Q. About eight inches, maybe 18 inches, I would say?

18 A. Twelve inches, I would say pretty close.

19 Q. What's your best estimate of how much that weighs?

20 A. I don't recall.

21 Q. Have you ever lifted one?

22 A. I have not.

23 Q. Okay. Fair enough. Now, just 349, please. I'm
24 sorry, 255.

25 Now, you told us a moment ago once a year each of
26 these packages has to be shut down for maintenance, right?

27 A. Correct.

28 Q. And that is a special time of year, I guess, for lack

1 of a better term, by that I mean, it's not a normal day-to-day
2 procedure, that's done at the plant?

3 A. No, it's an annual occurrence.

4 Q. Annual occurrence?

5 A. Yes.

6 Q. Tell the jury like when the plant is just running on
7 a normal day, when you are not doing this annual shutdown, how
8 many worker's operate this plant?

9 A. On a normal day, Monday through Friday, you have two
10 operation technicians, and then you'll have anywhere between
11 three to five maintenance technicians on site that are in
12 charge of the operations, maintaining the plant. Then of
13 course, administration staff.

14 Q. So actually operating the plant is around -- on a
15 shift, about how many workers?

16 A. Two.

17 Q. Two. Running that whole plant?

18 A. The whole plant.

19 Q. Now, when you have an annual shutdown, do you have to
20 call in more workers to participate in that?

21 A. At that time, we did.

22 Q. You would call in -- well, when this happened, you
23 weren't there that day though, right?

24 A. Not on that day.

25 Q. Right. But you had been there in years past when
26 they were doing these annual shutdowns, correct?

27 A. Yes.

28 Q. When they would do the annual shutdowns, there was a

1 team of Sentinel workers that would need to show up to do
2 this, you call in other operators -- strike all that. Let me
3 try again. You needed more than the two to do the annual
4 shutdown, right?

5 A. Yes.

6 Q. How many additional workers would you schedule to
7 come in for the annual shutdown?

8 A. So again, the two just for operations. But during
9 the normal day-to-day, there would be around five to six
10 people there for operating and maintaining. So you have that
11 five to six people that are normally there, and then in
12 addition, you would bring in one additional, one or two
13 additional based on where they were on their schedule, if they
14 could come and assist.

15 Q. So you would have the two normal operators for the
16 shutdown, you bring in five or six other people that were
17 doing other things to help with it, I'm talking about before
18 this incident?

19 A. Yeah. So there -- they are there but, yes, you're
20 right there, duties were assigned to the outage or the
21 shutdown, yes.

22 Q. Right. And one of the operators that worked there
23 would be considered a boss at the plant, wouldn't they?

24 A. The operators?

25 Q. Yeah.

26 A. They are operation technicians.

27 Q. They are not bosses at the plant, right?

28 A. No. You would have more experience or what you call

1 a lead, but not a -- what do you refer to when you mean boss,
2 like a manager?

3 Q. Yeah.

4 A. Supervisor.

5 Q. Someone in charge of this whole operation?

6 A. The operation manager.

7 Q. Yeah.

8 A. He's in charge of that.

9 Q. Not the regular operators and workers, right?

10 A. No. So the operation manager would lead the outage.

11 Q. Right. When this outage is going on, it's a pretty
12 busy day, right?

13 A. Yes.

14 Q. One of the reason it's busy, you have to get it
15 shutdown because there's outside contractors that are going to
16 come on board, right, and do their work?

17 A. That's correct.

18 Q. And there could be as many as how many outside
19 contractors waiting on site for this to be shutdown before
20 they can come in and work?

21 A. As many as 20.

22 Q. As many as 20. 20 different contractors or 20
23 different individuals?

24 A. Individuals.

25 Q. Waiting for that staff to shut this whole thing down
26 so they can come in and work, right?

27 A. That's correct.

28 Q. Exhibit 200, please. Now, you recognize Exhibit 200?

1 A. I do.

2 Q. This is a list of the tasks to be performed during an
3 outage; isn't that true?

4 A. That is correct.

5 Q. And could we enlarge just the top there, zoom in on
6 the top. The top and first four or five lines.

7 Mr. Johnson, if you can take a closer look at this
8 and just explain to the jury what these first five steps --
9 first of all. Let's back up. I'm trying to -- what is this?

10 A. What is the document?

11 Q. Yes, sir.

12 A. It's called an outage plan.

13 Q. And it list's all the tasks to be done, right?

14 A. That's correct.

15 Q. Okay. What is listed on the first line there?

16 A. The first line of Spring outage time. Spring outage
17 0600 to 1800 hours.

18 Q. Over on the right then, the columns are what, the
19 yellow columns on the right?

20 A. That would be the day you plan on getting or doing
21 that task.

22 Q. Okay. Let's go back to the whole one and start
23 paging down through it a bit. Let's go down to that first
24 group of yellow and green, ten of them put up right there.
25 Thank you. What's this telling us?

26 A. That's the flow path for the task to get done.

27 Q. Okay. Next, let's move on down the sheet, James, if
28 we could, down to right where this begins, this whole thing.

1 I see under one column there, we've enlarged it. It says
2 Sentinel team, can you tell us what that means?

3 A. The responsible team for the task.

4 Q. Those are the actual workers out there at Sentinel?

5 A. That's correct.

6 Q. Let's go back. Continue on down. Let's go to the
7 next section towards the top there. Sentinel task also. Do
8 you see these are also tasks for the Sentinel team, right?

9 A. The top section, yes.

10 Q. Over here I noticed these here, are these times or
11 what are they?

12 A. Expected duration, yes.

13 Q. So that's what they are expected to get those tasks
14 done in that period of time, correct?

15 A. Well, that's more of -- yeah. So for like the timing
16 of the outage, so you have the days to complete the outage in
17 and it will split up the specific tasks to get it done in the
18 full allotment.

19 Q. Got you. So each task is like timed and that -- now,
20 you're familiar with a term called "job safety analysis,"
21 right?

22 A. Yes.

23 Q. And they're important, aren't they?

24 A. Very important.

25 Q. And job safety analysis should like be planned for
26 ahead of time; isn't that true?

27 A. The steps within the job safety analysis would be
28 decided upon what you're going to be doing that specific day.

1 Q. Okay. So you should have all that ready, correct,
2 for that day?

3 A. Based on something like this, would be a known
4 outage, you could have -- you could have a standard JSA, yes.

5 Q. Could we go down and the last line on this sheet.

6 I think that's what's the last page of this exhibit.
7 There are, I believe, about 200 different items that are to be
8 done during an outage; isn't that true?

9 A. I wouldn't know the exact number on this plan.

10 Q. This is -- where the blue is, James, if you could on
11 this here, down across and could you enlarge this line right
12 here.

13 Do you see step 178, Mr. Johnson?

14 A. Yes.

15 Q. That's referring to the job safety analysis, do you
16 see that?

17 A. I do.

18 Q. And do you see where it says, "Continue to update and
19 fine tune GSAs on the fly," do you see that?

20 A. Yes.

21 Q. Let's go and pull up Exhibit 255 beside Exhibit 200.

22 THE COURT: Mr. Basile, on that last exhibit, you
23 introduced pages 1, 2 and 4. Is there an agreement amongst
24 the parties that the entire exhibit is going to come in?

25 MR. BASILE: I believe so, Your Honor.

26 THE COURT: How many pages would that be?

27 MR. REID: Four pages, Your Honor.

28 THE COURT: Any objection?

1 MR. SCHUMANN: No objection.

2 THE COURT: Pages 1 through 4. Okay. Just for the
3 record in case we need to go back and look at anything, if
4 you're going to skip around on pages on a particular exhibit,
5 just reference the page number and we can find it at a later
6 time.

7 MR. BASILE: Very well. Thank you, Your Honor.

8 THE COURT: Thank you.

9 Q. BY MR. BASILE: Can we have 200 beside 255. So
10 those, I believe on Exhibit 200, there was a 178 different
11 tasks that various workers and contractors were to do during
12 this package outage; is that correct?

13 A. The last item on 178?

14 Q. Yeah.

15 A. Correct.

16 Q. And that was all taking place on that package that's
17 shown on the right?

18 A. Yes.

19 Q. And there would be at least eight different worker's
20 and however many contractors up to 20 coming in to work in
21 that area; isn't that true?

22 A. That's correct.

23 Q. All right. Thank you. Now, Mr. Johnson, you would
24 agree that workers at the Sentinel Energy Center involved in
25 this annual shutdown must receive training?

26 A. Yes.

27 Q. And could we pull up Exhibit 176. You're familiar
28 with the SMP-3, I take it.

1 A. Yeah. That was the -- at the time, yeah.

2 Q. At the time. Speaking of the time, we may get up to
3 today, this is the cover sheet of SMP-3, do you recognize
4 that?

5 A. Yes.

6 Q. And it is actually the Lock Out/Tag Out procedure
7 that was in effect when Daniel Collins was killed; isn't that
8 true?

9 A. Yes.

10 Q. And you're familiar with it, correct?

11 A. The procedure, yes.

12 Q. Yes. And the Lock Out/Tag Out procedure requires
13 initial training in Lock Out/Tag Out? In this procedure --
14 it's rather long, it's multiple pages, there's standards and
15 procedures set, correct?

16 A. Yeah, initial training in the procedure.

17 Q. Right. But I'm just going through what's required at
18 the plant. So when a worker's hired, he has to go through
19 initial training with the Lock Out/Tag Out?

20 A. That is correct.

21 Q. They're supposed to be annual training on the Lock
22 Out/Tag Out; isn't that true?

23 A. Annual refresher training, yes.

24 Q. And anytime there's a change in this Lock Out/Tag Out
25 procedure, there should also be training?

26 A. Correct.

27 Q. Now, Exhibit 349, please. There should also be a
28 hands-on training on the actual unit; isn't that true?

1 A. That is correct.

2 Q. Now, the energy that we talked about, the high
3 pressure gas, I think we talked about the high pressure is
4 danger, but it's also flammable, correct?

5 A. That's correct.

6 Q. It's also explosive, it could explode?

7 A. That's true.

8 Q. It's toxic to breathe; isn't that true?

9 A. Yes.

10 Q. Now, you've heard the term "energy control
11 procedure," right?

12 A. Yes.

13 Q. And energy control procedure is very important for
14 controlling hazardous energy; isn't that true?

15 A. Controlling -- it's used for getting it to a zero
16 state.

17 Q. Right.

18 A. As controlling and venting off.

19 Q. Controlling and venting off, is the energy control
20 procedure. Now, at the time Daniel Collins was killed, there
21 was no separate energy control procedure for this fuel filter
22 skid; isn't that true?

23 A. They used -- they use a LOTO as energy control
24 procedure.

25 Q. There were multiple systems on it; isn't that true?

26 A. That's correct.

27 Q. What I'm asking you is, you agree then that there was
28 not a separate energy control procedure just for the skid on

1 the day Daniel Collins was killed?

2 A. That's correct.

3 Q. Exhibit 153, please. Can you enlarge that, James.
4 Mr. Johnson, you're familiar with this LOTO sheet?

5 A. Yes.

6 Q. Your name is on there as the LOTO work supervisor?

7 A. That's correct.

8 Q. And this on top says Diamond Generating Corporation,
9 correct?

10 A. Yes.

11 Q. You have previously testified that when the Diamond
12 Generating Corporation is on a document that is a Diamond
13 Generating Corporate document, you've testified to that,
14 haven't you?

15 A. In a vacuum. I was given a picture of Diamond
16 Generating, of the logo of Diamond Generating Corporation and
17 asked if this was on --

18 Q. You were asked if this picture is on a document. You
19 said it's a Diamond Generating Corporate document; isn't that
20 true?

21 A. Yes, in a vacuum.

22 Q. Okay. The whole sheet, please, is that more than one
23 page, the sheet, I believe. Could we also show the second
24 page. On this LOTO sheet, there were over how many steps?

25 A. Looks like 24.

26 Q. Let's go back to the first page of Exhibit 153.

27 You were working the day this LOTO was done, correct?

28 A. That's correct.

1 Q. And you were the LOTO supervisor that day, correct?

2 A. That's correct.

3 Q. And how LOTOs are supposed to be used is there should
4 be a single installer; isn't that true?

5 A. That's correct.

6 Q. The single installer goes through the LOTO, right,
7 and you don't have a verifier go along with them at the same
8 time, do you?

9 A. The independent verification comes afterwards.

10 Q. It would be wrong for the installer to have the
11 verifiers right alongside of him at the same time; isn't that
12 true?

13 A. That's correct.

14 Q. So the installer has to go through all the LOTOs
15 first, then the verifier goes through, right?

16 A. Correct.

17 Q. It would be a red flag if you saw the installer and
18 verifier going out there together, that would be a red flag,
19 you would say, hey, wait a minute, if you saw that as a plant
20 manager?

21 A. That's correct.

22 Q. Now, the whole page, please, James. It's also
23 important in those LOTOs that the tags that are used like this
24 one here, sir, they're similar to the one I'm holding in my
25 hands which is exhibit, for the record, 260. They are similar
26 to this?

27 A. Yeah, the one side looks like that.

28 Q. Yeah. And when they are doing that, it's important

1 to have the time that it's tagged written on the tag; isn't
2 that true?

3 A. That's correct.

4 Q. If you were doing a review of a LOTO that had been
5 installed, there was no times on the tags that would be a red
6 flag for you of how it was being done, if there was no times
7 on the tags?

8 A. I don't recall if the SMP-3 procedure provided a time
9 on the tag. I would have to review that.

10 Q. I'm not talking about that yet, sir. Based on your
11 experience as a plant manager, you know it's important to have
12 the times on the tags?

13 A. It's important to follow the procedure as well if
14 we're talking about this time and the SMP procedure, I don't
15 recall if it was required for them to put the time on the tag.

16 Q. In your experience, now as a plant manager, you agree
17 that it's important to have the times on the tags?

18 A. It is important.

19 Q. Thank you. Now, up until Daniel Collins was killed,
20 there was never a line on any of those LOTO sheets for workers
21 to record pressure in the filter tank; isn't that true?

22 A. That's correct.

23 Q. And you agree that the thing that would have
24 prevented this from occurring, would have been a reminder on
25 the sheet that required the operator to actually record the
26 pressure before they start to remove the lid; isn't that true?

27 MR. REID: Calls for speculation.

28 THE COURT: One moment. Calls for speculation?

1 MR. SCHUMANN: Lacks foundation.

2 THE COURT: Lacks foundation?

3 Was it both?

4 MR. SCHUMANN: Lacks foundation and calls for
5 speculation. Sorry, Your Honor.

6 THE COURT: Overruled. If you know, you may answer.

7 MR. BASILE: May I repeat the question?

8 THE COURT: Yes.

9 Q. BY MR. BASILE: Thank you. Mr. Johnson, you agree
10 that the thing that would have prevented this from occurring
11 would have been a reminder on the sheet that required the
12 operator to actually record the pressure before they start to
13 remove the lid?

14 A. No.

15 MR. BASILE: Your Honor, I'd like to read from
16 Mr. Johnson's deposition. Does Your Honor have a copy of
17 that?

18 THE COURT: Give me one moment. I'll have you
19 reference the page number and line number.

20 MR. BASILE: Page 224, lines 11 through 16.

21 THE COURT: Which page numbers?

22 MR. BASILE: Page 224, lines 11 through 16.

23 THE COURT: You may proceed.

24 Q. BY MR. BASILE: Mr. Johnson, you remember having your
25 deposition taken?

26 A. I do.

27 Q. And before your deposition, you had -- at your
28 deposition you were represented by Mr. Reid?

1 A. Correct.

2 Q. And you had an opportunity to meet with Mr. Reid
3 before your deposition to discuss whatever you needed to,
4 correct?

5 A. Yes.

6 Q. And when we began your deposition, you took an oath
7 to tell the truth?

8 A. Yes.

9 MR. BASILE: And I'd like to read from his
10 deposition, now, Your Honor.

11 "Q. The things that would have prevented this from
12 occurring, one of them would have been the reminder on the
13 sheet that required the operator to actually record the
14 pressure on the pressure gauge on the tank before they start
15 to remove the lid; is that right?"

16 THE WITNESS: You asked that very different.

17 Q. BY MR. BASILE: You said, "The things, one of them
18 would have been."

19 A. You just asked me if that would have been the one
20 thing. And they are very different questions.

21 Q. Okay. I just want you listen to the question. I
22 haven't read your answer yet, sir, for this jury to hear.

23 A. You let me answer, and I answered.

24 MR. BASILE: May I finish the reading, Your Honor?

25 THE COURT: Mr. Johnson -- and please begin again at
26 line 11 through 16. Mr. Johnson, wait for him to finish
27 reading that portion of your transcript, then you may answer.

28 Q. BY MR. BASILE: "The things that would have prevented

1 this from occurring, one of them would have been the reminder
2 on the sheet that required the operator to actually record the
3 pressure on the pressure gauge on the tank before they start
4 to remove the lid; is that right?"

5 "A. Correct."

6 Q. Now, Mr. Johnson -- Exhibit 349, please.

7 You're familiar, we talked about this, that's the
8 filter tank on the right?

9 A. Correct.

10 Q. You agree that a warning should be on the filter tank
11 advising the operator to check the pressure gauge before
12 attempting to remove the lid; isn't that true?

13 A. That is suggested.

14 MR. BASILE: Your Honor, I'd like to read 49, 24
15 through 52, line -- to 50, line 2.

16 THE COURT: Which page was it again, counsel?

17 MR. BASILE: Page 49, line 24, through 50, line 2.

18 THE COURT: One moment. So starting on page 49, line
19 24, then to page 50, through --

20 MR. BASILE: Two.

21 THE COURT: You may proceed.

22 MR. BASILE: "Q. Would you agree a warning should be
23 on the filter tank advising the operator to check the pressure
24 gauge on the tank before attempting to remove the lid?"

25 "A. Yes."

26 Q. BY MR. BASILE: Now, another part of the safety
27 system is what's called near miss reporting, you're familiar
28 with that?

1 A. I am.

2 Q. And a near miss is basically what it says if someone
3 is doing a LOTO procedure, and they are attempting to take the
4 lid off of a -- off the filter tank and there's still pressure
5 in it, you catch that, that would be a near miss, right?

6 A. That's correct.

7 Q. You are familiar with Juan Gonzalez?

8 A. Yes.

9 Q. Have you had an opportunity to -- has anyone given
10 you his deposition to review?

11 A. No.

12 Q. Okay. I'd like you to watch a portion of that
13 deposition.

14 MR. BASILE: It's very short, Your Honor, of Mr. Juan
15 Gonzalez, line 22, 25 through line 24, 19.

16 THE COURT: Is this a marked exhibit, counsel?

17 MR. BASILE: It's been submitted into that blue
18 binder I gave you, Your Honor.

19 THE COURT: Of Juan Gonzalez?

20 MR. BASILE: It's the last one on the bottom.

21 THE COURT: If you can reference the timeframe, the
22 portion you'll be playing.

23 MR. BASILE: Page 22, line 25 through 24, 19.

24 THE COURT: Page 22 and --

25 MR. BASILE: Twenty-two, 25 to 24, 19.

26 THE COURT: That's the portion you'll be playing?

27 MR. BASILE: Yes, sir.

28 THE COURT: Counsel, may we play it? One moment

1 Mr. Schumann, Mr. Reid?

2 MR. REID: I've got it. I need a page number.

3 MR. SCHUMANN: Page 22 to 25.

4 THE COURT: You have the information now, Mr. Reid?

5 MR. REID: I do, Your Honor. Thank you.

6 THE COURT: Please proceed, Mr. Basile. You can play
7 that.

8 (Video played; not reported.).

9 Q. BY MR. BASILE: At the time this happened,
10 Mr. Johnson, your office was in Los Angeles; isn't that true?

11 A. No.

12 Q. You've previously testified under oath that Diamond
13 Generating Corporation did not have a physical -- I'm sorry.
14 Diamond Generating Operations did not have a physical office;
15 isn't that true?

16 A. Diamond Generator Operations are the power plants,
17 that's the offices.

18 Q. Right. But your office, when you were an ICE guy,
19 whenever this happened back in 2014, that's right, after this
20 plant opened, right?

21 A. Correct.

22 Q. You were still going to the LA office; isn't that
23 true?

24 A. That's not true.

25 Q. You never went to the LA office in 2014?

26 A. Not for my job. We went there -- no, I had not
27 actually been to the LA office. In 2016 I took a different
28 position.

1 Q. You were never at the LA office at all in 2014?

2 A. Maybe for a possible training or -- but not that I
3 recall. We wouldn't go to the LA offices to teach operations,
4 INC technicians.

5 Q. When you said maybe for training, is that what we
6 heard you say?

7 A. Maybe for some sort of -- I don't know. If you're
8 about to pull out I was there, I honestly don't recall if I
9 was there.

10 Q. You're saying maybe you were there for training at
11 the Diamond Generating operating offices; isn't that true?

12 A. Could have happened.

13 Q. Right. You knew where the office was in 2014, right?

14 A. I did not.

15 Q. You did not know where the office was?

16 A. I did not.

17 Q. This was a real near miss, wasn't it?

18 A. Yes.

19 Q. That's pretty dangerous, isn't it?

20 A. Yes.

21 Q. At no time after that happened, there was never a
22 line placed on that LOTO sheet to report the pressure; isn't
23 that true?

24 A. Correct.

25 Q. And there was no warning put on that filter tank to
26 check the pressure before you start taking the screws out;
27 isn't that true?

28 A. Correct.

1 Q. Nothing all the way up until the day Daniel Collins
2 was killed, it was never put on; isn't that true?

3 A. Correct.

4 Q. Now, you were not there the day this happened, right?

5 A. I was not.

6 Q. You took over as plant manager, it's like interim
7 plant manager, just days after this happened; isn't that true?

8 A. That's correct. Interim OM and manager, operations
9 manager.

10 Q. Interim operation -- that was Bo Buchynsky that gave
11 you that positron?

12 A. No.

13 Q. Paul Sheppard?

14 A. No.

15 Q. Adam Chrisadulu (phonetic)?

16 A. Adam, yes, because Adam was there at the site. He
17 asked me to take that interim possession.

18 Q. Then you took over as the plant manager in May;
19 right?

20 A. Yes.

21 Q. This happened in March of 2017, right?

22 A. Correct. No, not in March of 2017, that was the
23 incident.

24 Q. Yes. That's what I mean. This happened and this
25 happened?

26 A. I'm sorry.

27 Q. I didn't phrase that right. I said this happened,
28 you thought it was when you took over as manager. This

1 incident when Daniel Collins was killed was March of 2017,
2 right?

3 A. Yes.

4 Q. You took over as plant manager in May of 2017?

5 A. Yes.

6 Q. And when you took over as plant manager, you found
7 that there had been no annual audits done up to that time;
8 isn't that true?

9 MR. REID: Objection. Subsequent remedial measures
10 by DCG Ops.

11 MR. BASILE: It's not remedial measures.

12 THE COURT: I heard it. Let me double check.

13 Overruled.

14 Q. BY MR. BASILE: When you took over as plant manager,
15 you found that there had not been any annual audits done;
16 isn't that true?

17 A. It came through the investigation, yeah, it wasn't me
18 personally, yes.

19 Q. I don't mean you. When you took over, what you saw
20 there at the plant as the plant's manager indicated to you
21 that there never had been an annual audit of that LOTO
22 program; isn't that true?

23 A. That's correct.

24 Q. And 349. When you took over as plant manager, you
25 discovered that none of these valves, those red handles were
26 labeled; isn't that true?

27 A. That is correct.

28 Q. And when you took over as plant manager in May of

1 2017, you said that there was a warning that was needed; isn't
2 that true?

3 A. That's correct.

4 Q. You said a line was needed on the LOTO sheet; isn't
5 that true?

6 MR. REID: Subsequent remedial measures, Your Honor.

7 THE COURT: Overruled.

8 Q. BY MR. BASILE: Isn't that true?

9 A. For the time being on the LOTO sheet, yes, but --

10 Q. And you said that there needed to be a separate
11 energy control procedure; isn't that true?

12 A. That is correct.

13 Q. You also said that there was no up-to-date training,
14 isn't that true, when you took over as manager?

15 A. We were looking for up-to-date training when I took
16 over as manager.

17 Q. And you were unable to find any?

18 A. We did find some training that was LOTO -- not LOTO
19 training specific to where it was actual LOTO training. We
20 found some training documents of some meetings where it had
21 been discussed.

22 Q. But you said there was no up-to-date training on the
23 LOTO when you took over as manager?

24 A. LOTO procedure training, that is correct, we did not
25 find that.

26 Q. Thank you. Now, you know who Mr. Ben Stanley is;
27 isn't that true?

28 A. I do.

1 Q. Have you been given a copy of his deposition to read
2 before your testimony today?

3 A. No.

4 MR. BASILE: Your Honor, I'd like to play page 149,
5 line 6 through line 15 of Mr. Stanley's deposition.

6 THE COURT: Line 15?

7 MR. BASILE: Line 15.

8 THE COURT: So Mr. Schumann, Mr. Reid, you have that?

9 MR. REID: Just a moment, Your Honor.

10 Yes, Your Honor.

11 THE COURT: You may proceed, Mr. Basile.

12 MR. BASILE: Thank you.

13 (Video played not reported.)

14 Q. BY MR. BASILE: Mr. Johnson, you knew that Ben
15 Stanley came out and did a root cause analysis, right?

16 A. Yes.

17 Q. You've had an opportunity to review that root cause
18 analysis; isn't that true?

19 A. Yes.

20 Q. That root cause analysis was previously marked here
21 as an exhibit and admitted into evidence as Exhibit 34. Since
22 you reviewed it, I'm not going to pull it out for you. You
23 generally agree with that information that's contained in that
24 root cause analysis; isn't that true?

25 A. Yes.

26 Q. And we asked you in your deposition if you had any
27 major disagreements, you said no?

28 A. That's correct, no.

1 Q. Exhibit 60, please. Now, when you took over as
2 manager, we talked about some of -- shall we call them
3 deficiencies that you've talked about. You had a very common
4 concern that was brought to your attention in the wake of
5 March 6th, when Daniel Collins was killed; isn't that true?

6 A. I'm not familiar with the common concerns you're
7 talking about.

8 Q. Okay. Exhibit 60, please.

9 You can look at it in front of you. This is an
10 e-mail that you composed. Maybe we need to show him the top.

11 A. Yes, I composed that.

12 Q. You composed that, right? Now, down here, if we
13 could enlarge right here. Yeah. Do you have --

14 This has been -- I can read it if you can't get it.

15 You wrote, "There has been one very common concern
16 brought to my attention in the wake of March 6th. Everybody
17 does everything different. This is a direct result of
18 management without leadership. Management alone creates a
19 culture of individualisms, business machines need to be
20 managed, people need structural leadership." You're referring
21 to the area of safety; isn't that true?

22 A. That is correct.

23 Q. And you agree safety starts at the top?

24 A. Absolutely.

25 MR. BASILE: No further questions.

26 THE COURT: Thank you.

27 MR. SCHUMANN: We'll reserve.

28 THE COURT: Okay. So leave Mr. Johnson subject to

1 recall?

2 MR. SCHUMANN: Subject to recall, yes, Your Honor.

3 THE COURT: Okay. Mr. Johnson, you're subject to
4 recall. The parties may wish to call you back. Just make
5 yourself available. Counsel will let you know if we need you
6 back at some later time during this trial.

7 THE WITNESS: Okay.

8 THE COURT: Thank you for your time this afternoon.

9 We're going to take to a brief recess at this time,
10 Mr. Basile. I think --

11 MR. BASILE: Your Honor, just for planning purposes.

12 THE COURT: Let's discuss that outside the presence
13 of the jury.

14 MR. BASILE: Yes, sir.

15 THE COURT: 3:16. Everyone be back at -- well, we're
16 getting close to that 3:30 mark. You're going to begin the --

17 MR. BASILE: No. That's what I was going to suggest.
18 I have a 20-minute video clip of Gonzalez, we can use to fill
19 the time if you like, Your Honor.

20 THE COURT: Does anyone need a break or raise your
21 hand now? That's what I figured. Okay. You wouldn't be
22 alone. So let's come back at 3:25. Then let's try to
23 conclude by 3:45. Okay, then.

24 Thank you.

25 Remember, again, do not discuss the facts of the case
26 or parties involved. Thank you.

27 (Outside the presence of the jury.)

28 THE COURT: Still on the record outside the presence

1 of the jury. We were going to come back in six minutes.

2 Mr. Basile, what's exhibit number would that be?

3 MR. BASILE: Oh, Your Honor, what we plan was to go
4 to Palalay. In light of the time, I'm not going to have
5 enough time for Palalay. They already know I was going to
6 play Juan Gonzalez, and so we can just fill this time with
7 playing Juan Gonzalez.

8 THE COURT: Do you have that marked as an exhibit
9 number?

10 MR. BASILE: It's in the -- it wasn't marked as a
11 separate exhibit. It's in that binder, Your Honor, page and
12 line.

13 THE COURT: It's in chambers, but still for the
14 purposes of the record, what are we going to reference it as?

15 MR. BASILE: I can bring a copy of it. We can add an
16 exhibit number, Your Honor.

17 THE COURT: It's just for the record, so.

18 MR. BASILE: Yeah.

19 THE COURT: Ultimately, at some point, someone may
20 want to appeal. So what we need to do is make sure we're
21 making a record. There's exhibits being shown and there's
22 page numbers being jumped around on. Ultimately, if you don't
23 show it to the jury, those page numbers are not going to come
24 in unless the parties stipulate. If there's a 30-page exhibit
25 and you only show two pages, I don't know if both sides agree
26 that all 30 pages should go back to the jury room. If we are
27 not making a record, that's unclear. If we are going to
28 introduce any videos, it needs to be a video, you need to have

1 the accompanying transcript with it.

2 MR. BASILE: Because the video is not going to go
3 into the jury room, the video depo is --

4 THE COURT: You're just playing the --

5 MR. BASILE: It's just like it's testimony.

6 THE COURT: You're playing testimony in lieu of trial
7 testimony?

8 MR. BASILE: Okay. We can do that when we come back.

9 MR. REID: Your Honor, with that understanding,
10 Mr. Gonzalez is waiting outside, can we let him go?
11 Mr. Palalay.

12 THE COURT: Yes, that's fine. Thank you.

13 MR. REID: Okay.

14 THE COURT: We're in recess.

15 MR. REID: We anticipate he'll need to be here
16 Tuesday morning.

17 THE COURT: Let's discuss it once the jury leaves.
18 We have the 4th of July on Monday.

19 Thank you.

20 MR. REID: Thank you, Your Honor.

21 (Brief recess.)

22 THE COURT: We're back on the record in Collins
23 versus DG Corporation. All counsel are present, and I think
24 the Collins are still outside. But before we bring in the
25 jury, we'll go ahead and play this transcript. Hopefully
26 we'll conclude it by 3:50.

27 Mr. Basile, I'm going to ask if there's any videotape
28 deposition that within five days that you submit a -- either

1 do it on a flash drive or for evidentiary purposes for the
2 DCA, probably be better on a CD.

3 MR. BASILE: I have clips, I'll put in.

4 THE COURT: You're going to play the entire or are
5 you only playing a portion?

6 MR. BASILE: For this one coming up?

7 THE COURT: Yes.

8 MR. BASILE: It's just a portion.

9 THE COURT: So it's 20 minutes.

10 MR. BASILE: Less, 14.

11 THE COURT: I'm still not going to ask Madam court
12 reporter to transcribe it.

13 MR. BASILE: We --

14 THE COURT: Do the video and then the transcript of
15 the portion that we're plying to the jury.

16 MR. BASILE: Yes, sir.

17 THE COURT: That way later on, if there's -- the
18 instruction, remember there's a CACI instruction, it's
19 different than the CALCRIM. Remember the recording itself is
20 evidence, although this is a deposition transcript, actually
21 it is just as good.

22 MR. BASILE: We'll have it to you.

23 THE COURT: Same thing, any future videotape witness
24 testimony, if we can mark it as next in order for the
25 exhibits, but it just makes a much cleaner record.

26 MR. BASILE: We'll do that.

27 THE COURT: Please. Mr. Schumann.

28 MR. SCHUMANN: It would help us as well. There might

1 be objections that were lodged during the deposition that we
2 might have objections to certain testimony that is, just take
3 the objection out.

4 THE COURT: Well, that should have been done by now.

5 MR. SCHUMANN: We gave them the designations long
6 time ago, Your Honor.

7 MR. REID: We have them, Your Honor. That's not the
8 issue. The issue again as we talked about stipulating to the
9 reporter not having to transcribe it, we just want to make
10 sure it's very clear for an appellate record. This transcript
11 is easily available to the appellate court without having to
12 fish for it. That's what we want to have transcribed.

13 THE COURT: You're still going to have a
14 transcription. I'm assuming you had a certified court
15 reporter do this.

16 2.1040, there's an exception for that transcript
17 where the court reporter was used, this isn't something you
18 sent out to Texas or something to have transcribed.

19 MR. BASILE: No.

20 THE COURT: This was before. We're going to do it
21 that way with a video preferably on the CD, if you can then,
22 with the transcript portion only of what's going to be played
23 before the jury.

24 MR. REID: That will be entered as an exhibit,
25 Your Honor.

26 THE COURT: Yes, we're going to mark next in order
27 sounds like it's not going to be Juan Gonzalez, so we'll be
28 doing it with the others as well.

1 Same thing for both sides. If we can make the record
2 in terms of the exhibits, it's not. I'm not going to remember
3 next week how many pages of certain exhibits, you may not
4 either, you introduced. So all right. Thank you, Deputy Lee.

5 (Pause in the proceedings.)

6 THE COURT: Record will reflect all members of the
7 jury and alternates are present. Mr. Basile, you may proceed.

8 MR. BASILE: Thank you, Your Honor. Your Honor, at
9 this time we'd like to play the testimony under oath that was
10 taken of Juan Gonzalez to be played before the jury.

11 THE COURT: Okay. If you can please state for the
12 record the portions that will be played.

13 MR. BASILE: Yes, they will be --

14 THE COURT: Time marks and page number of transcript.

15 MR. BASILE: Your Honor, in the interest of time, can
16 I submit that later? There's different ones or I'll read them
17 all off now, if you want me to.

18 THE COURT: It's one continuous portion or clips?

19 MR. BASILE: There's portions in between. I can read
20 it off, if you like me to, or we can --

21 THE COURT: As you play each one, we can do that.

22 MR. BASILE: That will be very interrupting. I'll
23 play it. I'll submit a page and line, Your Honor, in the
24 transcript. It is in your book, Your Honor, that we submitted
25 the exact transcript of exactly of what's going to be played.
26 It's the last one in the back of the book.

27 THE COURT: Mr. Schumann, Mr. Reid, you have a copy?

28 MR. REID: We do, Your Honor.

1 THE COURT: So what I'm looking at here shows a total
2 time of 25 minutes and 26 seconds.

3 MR. BASILE: This -- what we're going to play is
4 contained within that 20 minutes, but we've even made it
5 shorter, made it 15 minutes. Everything is contained in
6 there, Your Honor.

7 THE COURT: Again, it's your case. It's your record.
8 So, we need to know what's being played.

9 MR. BASILE: I'll submit that.

10 THE COURT: Okay. We're going to mark this video.
11 It will be on one CD. We'll mark this next in order, which is
12 613.

13 MR. BASILE: Yes, Your Honor.

14 THE COURT: As to the video and also there will be an
15 accompanied transcript, we can mark as 613 as well. 613A.

16 MR. BASILE: Very well, Your Honor.

17 MR. REID: I have to object. We have 25 minutes of
18 cherry picked testimony, they are cutting it down.

19 MR. BASILE: It's speaking objection.

20 MR. REID: I apologize, Your Honor. I'm trying to
21 explain my concern. 25 minutes that we've been able to review
22 and now they are picking further, 14 minutes, we don't know
23 whether it's objectionable or not.

24 THE COURT: And so, the Court asked about a minute
25 ago if you had a copy of this. We're past jury selection.
26 We're hearing the case.

27 MR. REID: I understand, Your Honor.

28 THE COURT: Objection is noted.

1 MR. BASILE: Thank you, Your Honor.

2 THE CLERK: There's already an Exhibit 613 in the
3 system, Your Honor. We'll make it next in order.

4 THE COURT: 613 based on the most recent joint
5 exhibit list provided by the parties was blank. I have 612.
6 There's no 613. Again, the Court is stressing, it's your
7 case, the record that must be made. So, there can't be more
8 than one 613 on the record.

9 MR. REID: Your Honor, the first amended Complaint
10 was Exhibit 613. We did submit it to him. I don't know why
11 it didn't get into the list.

12 MR. SCHUMANN: I didn't receive it until after I was
13 already in Palm Springs, Your Honor.

14 THE COURT: 613. I'm sorry, Mr. Reid.

15 MR. REID: First amended Complaint, Your Honor.

16 THE COURT: All right. Gentlemen, you know it's not
17 just the Court. Ms. Youngberg, she's -- the minutes
18 reflecting all the exhibits that are being introduced. We
19 need to have consistency. If the record is not accurate, that
20 will effect things potentially down the road. 613 will be the
21 first amended Complaint?

22 MR. REID: Yes, Your Honor.

23 THE CLERK: Are we marking that right now?

24 THE COURT: Not marking, but apparently it's part of
25 the joint exhibit list.

26 Then 614 will be the video of Juan Gonzalez.

27 MR. REID: Thank you, Your Honor.

28 THE COURT: With 614A being the transcript, that will

1 be submitted within five days.

2 MR. BASILE: Yes, Your Honor.

3 THE COURT: Thank you. You may proceed.

4 MR. BASILE: Thank you, Your Honor. Thank you for
5 your patience.

6 THE COURT: Counsel, if you could pause.

7 I'm sorry. Members of the jury, I could not hear up
8 here. It's been a long day, were you able to hear?

9 THE COURT: No. So I see people shaking their heads.
10 And whenever you're ready, Mr. Basile, rewind it and begin for
11 the benefit of all counsel.

12 (Video played, not transcribed.)

13 THE COURT: Record will reflect that Exhibit 614 has
14 concluded playing at the 25-minute mark. And members of the
15 jury, I apologize, that in order to make use of time, counsel
16 was kind enough to switch around the order of testimony for
17 that last video deposition that was played. I should have
18 read you this instruction. Again, witnesses called out of
19 order for the efficiency of time, reading you CACI jury
20 instruction regarding deposition as substantive evidence.

21 You received deposition testimony that was played
22 through a video. The deposition is a testimony of a person
23 taken before trial. At a deposition, the person is sworn to
24 tell the truth and is questioned by the attorneys. You must
25 consider the deposition testimony that was presented to you in
26 the same way as you would consider testimony given in court.

27 That would pertain to what you just heard in terms of
28 Juan Gonzalez. I apologize. I know we were supposed to break

1 around 3:30. To be fair, I think in voir dire I said 3:30ish.
2 We'll try to keep it as close as possible to find a natural
3 breaking point. We are now concluded for the day.

4 As promised during voir dire, we're not in session on
5 Thursday and Friday. Monday we're not in session because it's
6 the 4th of July. So we'll see everyone back on Tuesday,
7 July 5th, at 10:00 a.m., in this department. Sorry 9:59 a.m.,
8 in this department. And, again, same admonishment, Please do
9 not discuss the facts of the case with anyone, that means with
10 each other, friends or family at home or any parties involved.

11 This case has just started. There's plenty more for
12 you to hear and consider. Thank you for your time. We'll see
13 you next Tuesday.

14 (Outside the presence of the jury.)

15 THE COURT: We're still on the record. We're outside
16 the presence of the jury. All jurors have been sent home for
17 the weekend. That leaves us, so before, I'm sure counsel
18 might have something, before we do that, I'd like to go ahead
19 and go through the exhibits that will or will not be admitted.

20 It's neither here nor there. I do recall now why
21 certain courts appreciated when counsel would go
22 chronologically in exhibits. It's a lot to keep track of when
23 you are moving around.

24 Mr. Basile, the Court does take judicial notice of
25 351, 352, 353. They are not introduced yet. They will not be
26 introduced -- admitted today. Same thing with Number 34. You
27 asked the Court to take judicial notice, you mentioned it. It
28 has not been introduced.

1 MR. BASILE: Thirty-four, you offered it. They
2 stipulated to its admission, Your Honor.

3 THE COURT: Are you going to introduce it?

4 MR. BASILE: Yes.

5 THE COURT: Okay. So I'm putting it already on your
6 exhibit list, admissibility stipulated to, you said yes. You
7 have it on record. Until you introduce it, we're not going to
8 admit it.

9 MR. BASILE: I got you.

10 THE COURT: Unless the stipulation is to send it back
11 to the jury without explanation.

12 MR. BASILE: I think we can do that in light of what
13 the opening statement was, it would be in the jury room, we
14 can.

15 THE COURT: We're not going to admit it today. If it
16 comes up in your case to discuss or end of your case and you
17 want to move it into evidence without introducing it, just let
18 us know.

19 THE CLERK: Just marking it, Your Honor.

20 THE COURT: It was not introduced. We're not going
21 to; however, one -- I'll try to go in order, Madam clerk. We
22 have 153 introduced by plaintiff, is there any objection?

23 MR. SCHUMANN: No, Your Honor.

24 THE COURT: That will be admitted.

25 We next have 176, any objection?

26 MR. REID: Give me just a moment, Your Honor. I
27 apologize.

28 Yes, that's fine, Your Honor.

1 THE COURT: Thank you. We next have 200, any
2 objection?

3 MR. REID: No, Your Honor.

4 THE COURT: 254.

5 THE CLERK: I apologize, Your Honor, I cannot hear
6 counsel.

7 THE COURT: There was no objection.

8 THE CLERK: Thank you.

9 THE COURT: 254.

10 MR. REID: No objection, Your Honor.

11 THE COURT: Okay. 255.

12 MR. REID: No objection, Your Honor.

13 THE COURT: 349.

14 MR. BASILE: Picture of the skid.

15 MR. SCHUMANN: Okay, then, no objection.

16 MR. REID: No objection.

17 THE COURT: 372.

18 MR. REID: No objection, Your Honor.

19 THE COURT: Then what will be marked, Counsel, can
20 bring it next week, 613. I'm sorry. Not 613. 614, which
21 will be the video and 614A, which will be the transcript.
22 And, Mr. Reid, I'll note that at least you know I suspect this
23 will be the same, Mr. Basile, what you present, what you
24 presented to counsel and to the Court in this binder.

25 MR. BASILE: Yes, sir.

26 THE COURT: I don't know if there was objections, but
27 they certainly aren't reflected in the video or transcript,
28 those have since been redacted out?

1 MR. BASILE: Yes, sir.

2 THE COURT: Mr. Reid's prior concern, doesn't look
3 like those objections were in there.

4 MR. REID: Thank you, Your Honor.

5 THE COURT: Thank you. That will be admitted.

6 This will work if you just copy this, although if
7 this is from a --

8 MR. SCHUMANN: Your Honor, the video is not admitted
9 but the transcript is?

10 THE COURT: The video is. The video and the --

11 MR. SCHUMANN: The video can go back into the jury
12 room.

13 THE COURT: If they want read back of it, they'll
14 have to ask us to have it out. We won't let them have the
15 video and transcript back there in the courtroom.

16 MR. SCHUMANN: Yes. As if it was testimony read from
17 a transcript, yes.

18 THE COURT: That's all we have. In terms of
19 introduced and admitted today. I'm sure, Mr. Basile, there
20 was others I mentioned. Just less us know in the future
21 you're going introduce those.

22 That deals with our housekeeping, because ultimately
23 we have to pull them from your binders and get them ready for
24 the jurors at later point. Anything further?

25 MR. SCHUMANN: Yes, Your Honor. Just for
26 Your Honor's -- as Your Honor goes through the pending special
27 jury instructions, I wanted to just point out that plaintiffs
28 had two individuals testify to failure to warn. The warning

1 on the lid, and the warning on the LOTO sheet that will go to
2 special instruction 1009A, under the Privett, P-r-i-v-e-t-t,
3 admitted.

4 THE COURT: Is it still counsel's request for 1009A
5 and 1009B?

6 MR. REID: With this new failure to warn claim.

7 THE COURT: Candidly, the Court wants to have a
8 decision to you, again, these requests were not -- they were
9 not in the original binder. So the Court is considering them
10 because the jury instructions are -- if not, they're probably
11 one of the most important aspect of the trial for the record.
12 So, one I wanted to have an answer to you, but again, not
13 knowing exactly what the evidence will be before the jury, the
14 Court is going to be a little slower in getting that response
15 to you.

16 MR. SCHUMANN: We fully understand, we're not asking
17 for it to be on Tuesday, we just wanted to let Your Honor know
18 about 1009A. Thank you, counsel.

19 MR. REID: Just on the scheduling issues, Your Honor.
20 Mr. Palalay, was here this afternoon and anticipating that
21 he'd be able to get his testimony out of the way. He has a
22 prebooked trip from Monday to Tuesday evening. I know they
23 wanted him here on Tuesday but he's already paid for, he's
24 going to loose it. Can we take --

25 Can we take him out of order and have him here on
26 Wednesday?

27 MR. SCHUMANN: Does that work?

28 THE COURT: Let me take a step back. Which witnesses

1 do you intend on calling on Tuesday?

2 MR. BASILE: We were intending on calling Mr. Palalay
3 and Delaney and playing Mr. Stanley's videotaped testimony.
4 I'm sorry. Palalay, actually, because I got out of order
5 today. So let's rewind.

6 THE COURT: Mr. Palalay.

7 MR. BASILE: Walker's video deposition testimony will
8 be first up.

9 THE COURT: Okay. Tom Walker.

10 MR. BASILE: Tom Walker and then Albert.

11 THE COURT: Then you're going to mark that as now
12 615.

13 MR. BASILE: We'll prepare that the same way.

14 Then, we're going to go with Palalay, and then we
15 were going to go with Gonzalez's video, that I squeezed in
16 today. So that's out of the way.

17 THE COURT: Okay. So for Tuesday July 5th, we have
18 the video of Tom Walker.

19 MR. BASILE: That's a one hour video.

20 THE COURT: Okay. Thank you. I do have that here
21 now, and then we're going to go with live testimony of
22 Mr. Palalay?

23 MR. BASILE: Yes.

24 THE COURT: Back to Mr. Reid's point, this is also a
25 witness being called under 776.

26 MR. BASILE: Yes, sir.

27 THE COURT: Okay. He's not -- Mr. Reid's not
28 available until when?

1 MR. REID: Wednesday morning, Your Honor.

2 THE COURT: Mr. Basile.

3 MR. BASILE: That's fine.

4 THE COURT: It's hard, we do the best we can. Please
5 reschedule. So we'll have him for Wednesday morning.

6 MR. BASILE: Here's the only hitch, Your Honor, is I
7 have experts that are flying in, two of them are out of state.
8 Right now they are scheduled to fly in on the 4th here. So
9 I'd like to get to them.

10 THE COURT: Well.

11 MR. BASILE: Probably Wednesday, I only got two days
12 next week, probably Wednesday with them.

13 THE COURT: So you'll be done with Mr. Walker's
14 testimony at approximately 11:00 a.m. How are we going to
15 fill the rest of the day.

16 MR. BASILE: Delaney.

17 THE COURT: Okay.

18 MR. BASILE: Then we have -- then we have Stanley.

19 THE COURT: Delaney is live?

20 MR. BASILE: Yes. Then we have Stanley and
21 Mr. Sullivan is telling me something else here. So it will be
22 Walker, and then -- since we're moving Palalay. Then it will
23 be Delaney. Then after Delaney is Stanley, then hopefully
24 that will be the day. If not, we'd go with Wayne Forsyth.

25 THE COURT: So that's potentially four witnesses.

26 MR. BASILE: Yes, I think we might be able to do
27 that.

28 THE COURT: That should be fine.

1 MR. BASILE: Okay. And for the overall, over, under,
2 how long, the trial is going to take, I'm still, even with
3 this, looking to rest by the 12th, possibly the 13th. We have
4 three days that week.

5 THE COURT: Let's revisit it next week. See how it
6 goes. In terms of, is there anything else, Mr. Schumann?

7 MR. SCHUMANN: No.

8 MR. BASILE: One more thing, Your Honor.

9 THE COURT: Mr. Basile.

10 MR. BASILE: Thank you. I don't use this phrase
11 often, in fact I don't remember the last time I used it. That
12 it is with all due respect, so with all due respect,
13 Your Honor, this whole Privett issue, I wish we could get out
14 of the way because it is totally ambush on the last day, like
15 I sent an e-mail. It is based on ownership, ownership. The
16 summary judgment motion, they filed all kinds of stuff that
17 we're not the owners. We relied on that. We even said, okay,
18 we'll buy what you're saying, you're not the owners. Go ahead
19 and grant it, we said Your Honor, all the premises stuff.

20 THE COURT: You have made any estoppel arguments in
21 your opposition.

22 MR. BASILE: Yes, Your Honor. We filed it last
23 night, Your Honor.

24 THE COURT: Those are sitting on my desk right now.
25 When I finished calling the calendar at 9:45 this morning. I
26 haven't read them.

27 MR. BASILE: I didn't mean this, with all due
28 respect, you're really working hard. I see you this morning,

1 I peaked through the crack in the door. I know you're busy
2 and all that. I mean that with all due respect. It's not
3 you. It's what coming from them, every little thing keeps
4 coming. I'm like geez, are they really going to get this
5 instruction on this stuff. Do I have to now start showing
6 ownership in doing all that with these people.

7 It really puts -- I'm sure you can appreciate it
8 being a trial attorney in there when you're in that bind. So
9 this is how I calm myself down, Your Honor. I don't believe
10 that that applies. Whether it does or not, we are still
11 entitled to instructions on our theory of the case. So either
12 way, just to put this all to bed, either way, 450C is what
13 we're basing the case on.

14 It's the duty of the Court to instruct based on
15 evidence and our theory. So we can keep fighting about that,
16 but I just wanted to make it clear it is 450C case. That's
17 what I'm proceeding under. In light of the summary judgment
18 ruling, in light of judicial estoppel, in light of everything
19 that we've filed, they probably filed about five times as many
20 pages as we have in this issue. I'll end this week -- I'll
21 end since, I said all that. It is truly a pleasure to be in
22 this courtroom.

23 THE COURT: Mr. Schumann, Mr. Reid, you don't need to
24 respond. It's not going to be put to bed tonight. I
25 appreciate your comments, Mr. Basile. Ultimately you don't
26 want a verdict in your favor, then get a reversal because
27 there was an instruction given that should not have been given
28 or I did not grant an instruction, that should be entitled to

1 pursuant to the law. I gave you the case law from the CAL
2 supremes from last year, audited by Justice Kiar (phonetic).

3 The Court is still reviewing that and again, as this
4 case has progressed and based on opening statements, I see
5 it's going to be crucial factor, what evidence comes in front
6 of this jury. I'm not going to rush this decision because you
7 are, both sides are entitled for the Court to make it's best
8 determination on whether this instruction is given or not or
9 modified as proposed by defense. So I understand you've
10 already alluded to, I've been in your seat. I too would like
11 certainty on some aspects, it's something that may not resolve
12 until we hear further evidence. It will get due
13 consideration.

14 MR. REID: Your Honor, we absolutely appreciate your
15 consideration on this.

16 THE COURT: Thank you. Mr. Basile, Mr. Sullivan,
17 Mr. Schumann, Mr. Reid, all of you have a fun, safe weekend.
18 Don't bring anything back into this courtroom in terms of
19 contagious viruses. Take precautions. We need this trial to
20 keep moving. We don't want to break in between.

21 MR. REID: We understand, Your Honor.

22 (Proceedings adjourned.)

23 (Next Volume and Page number is Volume 6, Page 801.)
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REPORTER'S CERTIFICATE

-oOo-

DENISE COLLINS; CHRISTOPHER COLLINS,)	
)	
Plaintiffs,)	
)	
vs	)	Case No. PSC1901096
)	
CPV SENTINEL ENERGY CENTER, LLC,)	
MOTT MACDONALD, LLC, GEMMA POWER)	
SYSTEMS, LLC, and DOES 1 to)	
15, Inclusive,)	
)	
Defendants.)	
)	

I, Demetria Bischoff, Certified Shorthand Reporter No. 12602, hereby certify:

On June 29, 2022, in the county of Riverside, state of California, I took in stenotype a true and correct report of the testimony given and proceedings had in the above-entitled case, pages 706 - 760, and that the foregoing is a true and accurate transcription of my stenotype notes and is the whole thereof.

DATED: Palm Springs, California, March 22, 2023.



Demetria Bischoff, CSR NO. 12602

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COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT - DIVISION TWO
APPEAL FROM THE SUPERIOR COURT OF RIVERSIDE COUNTY

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DENISE COLLINS and CHRISTOPHER)
COLLINS)
) DCA No. E080233
Plaintiffs/Respondents,)
) Superior Court
vs.) Case No. PSC1901096
)
DIAMOND GENERATING CORPORATION,) Volume 6 of 19
) Pages 801-936
Defendant/Appellant.) (937-1000 Blocked)
)

REPORTER'S TRANSCRIPT ON APPEAL
BEFORE THE HONORABLE MANUEL BUSTAMANTE - DEPARTMENT PS2
JULY 5, 2022

APPEARANCES:

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SUPERIOR COURT - STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

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DENISE COLLINS and CHRISTOPHER)	
COLLINS,)	
)	Plaintiffs,
)	
vs.)	Case No. PSC1901096
)	
DIAMOND GENERATING CORPORATION,)	
)	
Defendant.)	
)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE MANUEL BUSTAMANTE - DEPARTMENT PS2

JULY 5, 2022

APPEARANCES:

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EXHIBITS

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60	E-mail from Dennis Johnson	807	807	
5	Equipment Lockout/Tagout Document	827	914	
18	Photo of Ladder	843	914	
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253	DG Group Website-Photo	880	921	
261	Photo of Office Building	922	922	
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JULY 5, 2022 - MORNING SESSION

BEFORE THE HONORABLE MANUEL BUSTAMANTE

THE COURT: Let's call the matter of Collins versus
DG Corp.

MR. BASILE: Good morning, Your Honor.
Jude Basile on behalf of the Collins family.

THE COURT: Good morning.

MR. SCHUMANN: Good morning, Your Honor.
Kim Schumann for the defendant.

THE COURT: Good morning.

MR. REID: Good morning, Your Honor.
David Reid for DG Corp. And I will introduce James
again, a representative for the company.

THE COURT: And Mr. Sullivan?

MR. SULLIVAN: Yes. David Sullivan for plaintiffs.

THE COURT: We have a couple housekeeping matters.
Are the Collins not going to be here, Mr. Basile?

MR. BASILE: No.

THE COURT: Let the record reflect that they are not
here today.

When we concluded on Wednesday last week, we went
through and we reviewed the exhibits that had been introduced
and admitted. However after words, I was comparing my notes
with madam clerk's, and we realized that there was one exhibit
that was not -- there was no motion to be admitted. It was
introduced, though.

Was it Exhibit 60?

MR. BASILE: Yes, Your Honor.

1 THE COURT: For the record Exhibit 60 -- and I do
2 have that introduced and will deemed it admitted as of
3 June 29th when we were last here on Wednesday. So Exhibit 60
4 will be admitted. I'm sorry. Everyone was gone when we
5 realized that.

6 We're going to be switching court clerks in and out
7 today and tomorrow, I believe. We're a little short-staffed
8 this week. The Court obviously is continuing to make its own
9 notes, so when we are referencing exhibits, let's just make a
10 clear record in case we need to go back for anything.

11 Mr. Reid?

12 MR. REID: Your Honor, there is going to be recorded
13 testimony played today.

14 THE COURT: Yes.

15 MR. REID: In both of those depositions, there are
16 references to Mitsubishi Corporation. I am just objecting
17 that in advance. I don't know if it is their intention to
18 play those based on the Court's rulings up this point.

19 THE COURT: When you say "in advance," was it a
20 subject of the -- a motion in limine or --

21 MR. REID: I don't want say "advance," Your Honor.
22 But originally you did indicate that Mitsubishi should not be
23 mentioned or referred to. We did discuss that the logo does
24 contain the Mitsubishi name, but they are specifically
25 referring to people at Mitsubishi.

26 THE COURT: Well, the Court is not going to review it
27 now.

28 When do we intend to play that, Mr. Basile?

1 MR. BASILE: It is the first witness.

2 Your Honor, I might add there are two short
3 references. Mitsubishi's name is on everything here. I'm
4 only asking about -- basically it is in passing on how this
5 comes about on there.

6 And I also want to make for the record, Your Honor,
7 pursuant to your local order and the Code of Civil Procedure,
8 we provided the page and line of all this testimony to defense
9 counsel on June 2nd, over a month from today.

10 We have received no objections. We have received no
11 counter-designations, and here we are about to play this
12 and --

13 THE COURT: Thank you, Mr. Basile. Is this the
14 Tom Walker video?

15 MR. BASILE: Yes, it is.

16 THE COURT: Okay. This was discuss when we were here
17 last Wednesday. And as I inquired with Mr. Reid right now,
18 you say this "advanced notice," it is not very advanced
19 considering the jury is going to be brought in in one minute,
20 so the motion is denied.

21 If the Court -- in reviewing this, if the Court can
22 ask Mr. Basile to pause it, I can remind the jurors that
23 Mitsubishi is not a party to this lawsuit if it feels that it
24 looks like it is being done gratuitously.

25 But up to this point, I think the record will
26 reflect, at least in this Court's opinion, there has been no
27 gratuitous mention of Mitsubishi. As we talked about in
28 motions in limine, we are going to ask counsel to redact

1 exhibits that have Mitsubishi in the background, and
2 ultimately that is how the defending corporation here, you
3 know, that is part of their letterhead.

4 MR. REID: Your Honor, and we are submitting
5 additional jury instructions limiting the -- referencing that?

6 THE COURT: Yes. We'll discuss this during a break.

7 The Court does have an additional ruling on motion in
8 limine, number 13. The Court is going to impart grant that
9 motion to exclude evidence of subsequent remedial measures,
10 however I think we need to clarify what is deemed a remedial
11 measure versus e-mails that postdate the date of incident here
12 of March 6th because there are e-mails and correspondence that
13 I don't think go to remedial measures, but they do go to show
14 control, which ultimately goes to the negligent undertaking
15 instruction which is in play at this point.

16 For example, there is that report from the gentleman
17 from New York that he drafted. I don't remember the name of
18 the report.

19 Mr. Basile?

20 MR. BASILE: It is Mr. Stanley. And it is the root
21 cause analysis, and we will be playing his deposition this
22 afternoon.

23 THE COURT: The root cause analysis, at least what
24 the Court gathers thus far from opening statements and some of
25 the brief evidence that is -- there is a component of it that
26 deals with, you know, why this incident occurred. And then it
27 sounds like from the moving papers in the motion in limine
28 that there is a component of it dealing with, well, these

1 things, A, B, and C need to be done in the future. So it is
2 that latter part that the Court is granting. However, that
3 first part about why this happened or the opinion of it, the
4 Court is not going to rule that as excluded. We need to
5 further discuss it, I'm just letting the parties know.

6 MR. REID: Thank you, Your Honor.

7 MR. BASILE: Thank you, Your Honor.

8 THE COURT: Deputy, if we could please bring in the
9 jurors.

10 (Proceedings in the presence of the jury as follows:)

11 THE COURT: Good morning.

12 Recalling the matter of Collins versus DG Corp.

13 Let the record reflect all members of the jury are
14 present. I hope everyone had a fun and safe weekend. And
15 most importantly you are all back.

16 We are going to resume with testimony here this
17 morning. It is the same as last week. If there is at any
18 part -- because I do see the speaker here ready to go in the
19 background. We talked about the acoustics in the courtroom,
20 so just please raise your hand and let us know if the sound
21 isn't working for you and we can pause and we can let counsel
22 know as opposed to ten minutes later finding out that you
23 missed part of the evidence.

24 Mr. Basile, whenever you are ready.

25 MR. BASILE: Yes, thank you, Your Honor.

26 We'd like start off with the sworn testimony of
27 former plant manager Tom Walker under Evidence Code
28 Section 776 which allows us to lead the witness, Your Honor.

1 THE COURT: And this is going to it be marked as --
2 MR. SULLIVAN: Exhibit 615, Your Honor.

3 I have a copy of the transcript and a CD that shows
4 everything to it be played.

5 MR. BASILE: May I present it to the deputy?

6 THE COURT: Yes, that is fine.

7 Thank you Mr. Sullivan, and thank you Mr. Basile.

8 (Video recording playing.)

9 THE COURT: Mr. Basile, can you please pause?

10 (Video recording paused.)

11 THE COURT: I am sorry. I do not mean to interrupt.

12 Two things, if you could put the volume up briefly.

13 And the second, we have a different court reporter here this
14 week. So it is the same as last week, we're not just going to
15 have, pursuant California Rules of Court, we are not going to
16 have the court reporter follow along and record this.

17 Mr. Basile, you may restart from the beginning.

18 (Video recording playing.)

19 (Video recording paused.)

20 THE COURT: Let the record reflect we currently
21 paused Exhibit 615.

22 Members of the jury, we're going to take a brief
23 recess here. It is a little bit after 11:00.

24 Before we do I would just like to remind you that
25 there is an instruction. Number one, would CACI
26 Instruction 117, Wealth of Parties. In reaching a verdict,
27 you may not consider the wealth or poverty of any party.
28 Wealth or poverty is not relevant to any of the issues that

1 you must decide.

2 Furthermore as we discussed during voir dire, along
3 with counsel, Mitsubishi is not a main party to the suit. So
4 you know the named parties, it is Collins versus DG
5 Corporation.

6 Having said that, let's return at 11:15 and continue
7 our morning. Again, as we do every time we take a break,
8 please do not discuss the facts of the case with each other or
9 any of the parties involved.

10 I apologize. I know I say that each time. It does
11 not have anything to do with each of you. We haven't seen
12 anything. The record just has to reflect that I'm telling you
13 that each time we take a break. Okay.

14 See you at 11:15.

15 (Proceedings out of the presence of the jury as follows:)

16 THE COURT: All members of the jury have now stepped
17 out. Counsel are still present. We are going to take a brief
18 recess. Let's come back at 11:10, and we can address it then.
19 We'll come in five minutes prior the jury.

20 (Recess.)

21 THE COURT: We are back on the record of Collins
22 versus DG Corp. We are outside of the presence of the jury.
23 All counsel are present. All parties are present, minus the
24 Collins who will not be here today to my understanding.

25 Yes, Mr. Reid, I apologize, but we all needed our
26 break.

27 MR. REID: No problem, Your Honor.

28 So the trial transcript or the deposition transcript

1 and the clips that are playing is dated 5-13-2022. The
2 document that they provided to us was dated it 5-1-2022. And
3 the documents are different. The order of the testimony is
4 different. There are additions to testimony that we are not
5 aware of. That last reference to Mitsubishi was not in the
6 document we were provided. And now, we don't know what is
7 coming, and we don't know what is coming with Mr. Stanley. It
8 is very disturbing, Your Honor.

9 THE COURT: Mr. Basile.

10 MR. BASILE: Your Honor, Mr. Sullivan submitted the
11 documents.

12 MR. SULLIVAN: Yeah, the designation that was
13 submitted to them back on June 2nd was an all encompassing one
14 that had more testimony than the stuff that we're actually
15 offering.

16 I don't know what it is that he is referring to at
17 this particular point in time. But there wasn't anything to
18 my knowledge that was added to any of that stuff. The only
19 thing that was done was it was shortened. And whether or not
20 the order of the testimony is the way it was offered is of no
21 consequence. What matters is is that they have been aware
22 what those things were. And there was no objection. You
23 know, they sandbag us here this morning with this stuff about
24 the Mitsubishi stuff, if it had been something that had been
25 brought to our attention that they were objecting to it when
26 they should have done it in a reasonable time frame, then it
27 would have been a situation where it could have been --

28 MR. BASILE: And Your Honor, if I could --

1 THE COURT: Wait. Sorry. Mr. Reid?

2 MR. REID: I have the two documents, Your Honor. The
3 one with my stickies is the one that I received. This is one
4 is the one that we got this morning. This one we got this
5 morning. The total time is 1 hour and 13 minutes and
6 12 seconds. The one we actually received is 1 hour and
7 1 minute and 53 seconds. There is 10 minutes of testimony in
8 there, some of which has already been given, but we have no
9 idea what is coming. That is the concern.

10 They're saying we've been given opportunity to review
11 and object, and we haven't been. And, again, I don't know
12 what they're presenting this afternoon for Mr. Stanley. I
13 don't know if that is substantially different or not.

14 THE COURT: First, the bigger picture, Mr. Walker was
15 and I think still an employee of DG Corp.

16 MR. REID: That is not correct, Your Honor.

17 THE COURT: No longer?

18 MR. REID: No longer. He was terminated shortly
19 after this incident.

20 THE COURT: Approximately when?

21 MR. REID: May of 2017, so within two months of the
22 incident.

23 THE COURT: So at the time that this deposition was
24 taken, he was no longer an employee?

25 MR. BASILE: That is correct.

26 THE COURT: And his deposition testimony that is
27 being offered here today is under what evidence code section?

28 MR. BASILE: I don't have it, but this is how it went

1 down. I want to ask your indulgence and let me explain, Your
2 Honor.

3 THE COURT: Sure.

4 MR. BASILE: He was the manager of the plant at the
5 time. We've gone through so much litigation. We asked them
6 to produce him. They refused to produce him out here. We had
7 to either do it Zoom or in person. We flew back there, and we
8 flew because he was away that we were taking his testimony for
9 trial purposes. I mean, that is clear that that is what we
10 were doing. This is a preservation of a witness testimony who
11 resides more than 150 miles from the courthouse.

12 THE COURT: Where does he reside?

13 MR. BASILE: In New York.

14 THE COURT: That is all I needed to hear.

15 MR. BASILE: I am sorry. Mr. Stanley is in New York.
16 He's in North Carolina, more than 150 miles away.

17 If I might, Your Honor, about the transcripts for
18 today, we submitted just what we did to those, according to --
19 and I trust Mr. Sullivan -- to the Court in that blue book.
20 This is exactly what we're playing. This is what we're going
21 to do. We gave the same one. We might have sent a longer
22 one, but I reduced it to 1 hour and 1 minute as opposed to
23 1 hour and 13 minutes. They have the whole thing. Like I
24 said this morning, June 2nd, we gave them this whole thing.
25 They never listed counter designations. They never issued
26 objections to anything. And that testimony that came out.
27 And I agree, and I tell the Court, I did not read this whole
28 thing this weekend on that. That portion there, which was

1 short compared to the whole thing about Mitsubishi was asked
2 in the deposition, and I believe it was not even objected to
3 in the deposition, Your Honor.

4 So once again, this is where we take facts and twist
5 them to help themselves. This jury is waiting, we have the
6 speaker ready to go, and I'll submit, Your Honor.

7 THE COURT: Last thing for the record, Mr. Reid.

8 MR. REID: Your Honor, again, I just want to
9 emphasize the document they gave us here today includes ten
10 more minutes of testimony that we were unaware of.

11 THE COURT: Okay. Again, bigger picture, the Court
12 was proceeding under the assumption this was an adverse party
13 that was an employer or director that was still employed by
14 the defendant, but it sounds like he is unavailable, he is 150
15 miles outside of this jurisdiction. So in theory, the entire
16 deposition could have been moved in. So if there were
17 objections, they should have been made prior to today. We had
18 a whole Monday when we were here dealing with this.

19 I will repeat it again. The Court also does not get
20 involved, but this whole -- it has become apparent to the
21 Court up to now that Rule 3401 was not complied with. The
22 Court has not issued any evidentiary sanctions up to now, but
23 this should have been resolved.

24 Last week I really didn't to do this in front of the
25 jury. I had to get involved and point out that the Court had
26 an incorrect exhibit list and there was some back and forth
27 about, you know, e-mails, all that in front of the jury, and
28 that shouldn't be happening. So discuss with each other the

1 exhibits.

2 The thing with Stanley coming up, Mr. Basile give
3 them whatever you are going to mark as exhibit. It better be
4 the same thing that we have here.

5 MR. BASILE: Yes.

6 THE COURT: I don't want to here any more about
7 evidence being presented that defense, you know, is either
8 intentionally or not operating under a different set of
9 transcripts from.

10 MR. BASILE: We gave him the video. We gave them the
11 transcript this morning at the same time we presented it to
12 them. On June 2nd, we gave them the whole thing. It is the
13 same way with Mr. Stanley.

14 THE COURT: Okay. We're going to bring in the jury.

15 MR. REID: One last request, can I get what they're
16 going to present before the lunch break?

17 THE COURT: Yes.

18 MR. REID: Thank you, Your Honor.

19 (Proceedings in the presence of the jury as follows:)

20 THE COURT: Back on the record in Collins versus
21 DG Corp. All members of the jury are back. We have concluded
22 our morning break.

23 Mr. Basile, you paused 615. Are you ready to begin?

24 MR. BASILE: Thank you, Your Honor.

25 (Video recording playing.)

26 MR. BASILE: That concludes it, Your Honor.

27 THE COURT: Let the record reflect that 615 is
28 concluded. The Court is in receipt of 615 and 615A.

1 You may proceed.

2 MR. BASILE: We would call Michael Delaney. He is
3 out in the hall.

4 THE CLERK: Please Raise your right hand.

5 Do you solemnly state the evidence you shall give in
6 this matter shall be the truth, the whole truth, and nothing
7 but the truth, so help you God?

8 THE WITNESS: Yes.

9 THE CLERK: Please be seated. Please state your name
10 and spell it for the record, please.

11 THE WITNESS: Michael Delaney, M-i-c-h-a-e-l
12 D-e-l-a-n-e-y.

13 THE COURT: You may proceed, Mr. Basile.

14 MICHAEL DELANEY,
15 called as a witness by the plaintiffs, was sworn and testified
16 as follows:

17 DIRECT EXAMINATION

18 BY MR. BASILE:

19 Q. Good morning, Mr. Delaney. Thank you for coming. I
20 understand you have been waiting in the hall?

21 A. Yeah.

22 Q. Do you understand my name is Jude Basile, and I
23 represent Denise and Chris Collins? Do you know that?

24 A. Yes.

25 Q. You are going to have to keep your voice up and speak
26 into that microphone, please, sir.

27 A. Okay.

28 Q. Now, you were hired to work at the Sentinel Energy

1 Center in August of 2015?

2 A. That is correct.

3 Q. And you were hired by Diamond Generating Operations?

4 A. Yes.

5 Q. You left work there in March of 2020?

6 A. Correct.

7 Q. Where are you working now?

8 A. I'm not working right now.

9 Q. Now, these Diamond Generating corporate lawyers are
10 representing you here today; is that correct?

11 A. Correct.

12 Q. Now, you did not hire them to represent you, though,
13 did you?

14 A. I did not.

15 Q. They contacted you and said they would represent you;
16 isn't that true?

17 MR. RIED: Lacks foundation, relevance.

18 THE COURT: Sustained.

19 Q. BY MR. BASILE: In fact, when you left Diamond
20 Generating Corporation, did they have you agree to assist them
21 if there was an lawsuit or litigation filed under Daniel's
22 death?

23 MR. REID: Objection. Misstates the facts.

24 THE COURT: Sustained.

25 MR. BASILE: Just asking.

26 UNIDENTIFIED JUROR: I can't hear what you're saying.

27 THE COURT: I am sorry. The last two -- the
28 objections were sustained, so there would be no answer to

1 that.

2 UNIDENTIFIED JUROR: Yeah, but I couldn't hear what
3 you are saying.

4 THE COURT: Thank you for that.

5 MR. DELANEY: I think Mr. Basile mentioned this
6 previously. It goes into the Court's PA system. So really
7 what you are trying to do is to project to the jurors over
8 here across from me. Thank you.

9 Q. BY MR. BASILE: How are you feeling Mr. Delaney?

10 A. I am fine.

11 Q. Just keep your voice up and speak into that and I
12 will get you through this as quickly as I can.

13 Now, you worked as an operator at the Sentinel plant,
14 correct?

15 A. Correct.

16 Q. And between the time you were hired in August of 2015
17 until 2020, you were an operator at the plant?

18 A. Yes.

19 Q. And while you were working there during that time,
20 there was a reference now and then that would come up as
21 "corporate," like "corporate is coming" or referring to
22 "corporate," do you remember that?

23 A. Sometimes, yes.

24 Q. And whenever the term "corporate" would come up at
25 the plant, that was referring to Diamond Generating
26 Corporation in Los Angeles, correct?

27 A. Correct.

28 Q. Now, do you remember Mr. Forsyth?

1 A. I do.

2 Q. Can we have Exhibit 368, please.

3 He was the safety and compliance manager from Diamond
4 Generating Corporation; isn't that true?

5 A. Yes.

6 Q. And you see up here on Exhibit 368, the bottom center
7 picture, that is Mr. Forsyth, correct?

8 A. Yes, it is.

9 Q. And Mr. Forsyth would come to the Sentinel Energy
10 Center often; isn't that true?

11 A. A few times, yes, but not that often.

12 MR. BASILE: Okay. I would like to -- we have 147
13 under deposition, page 147, lines 8 through 19. I'd like to
14 play that, Your Honor.

15 THE COURT: One moment. Mr. Delaney, if we can do a
16 little test with the microphone. When you are using the
17 microphone, it is right in front of you, but when you are
18 speaking, it looks like you are speaking to the side of it. I
19 can hear you because I'm closest to you, but I don't think it
20 is making its way across. Maybe just have it go up a little
21 bit so it is in front of you, but maybe not so close.

22 THE WITNESS: Can you hear me now?

23 THE COURT: A little bit closer.

24 THE WITNESS: How about that?

25 JUROR: That is better.

26 THE COURT: It seems like you are soft spoken. That
27 is fine.

28 I'm sorry, Mr. Basile, it was exhibit?

1 MR. BASILE: Page 147, lines 8 through 19.
2 THE COURT: Page 147, lines --
3 MR. BASILE: Lines 8 through 19.
4 THE COURT: And this is Mr. Delaney's --
5 MR. BASILE: Deposition.
6 THE COURT: One moment. Michael Delaney?
7 MR. BASILE: Yes, sir.
8 THE COURT: And Mr. Reid?
9 MR. REID: No objection.
10 THE COURT: Please proceed.
11 (Video recording playing.)
12 (Video recording paused.)
13 BY MR. BASILE:
14 Q. Does that refresh your recollection that Mr. Forsyth
15 would come to the Sentinel Energy plant often?
16 A. He would come most often after the incident.
17 Q. Was that your deposition testimony, sir?
18 A. Yes, it was.
19 Q. In your deposition testimony, you said he'd come
20 quite often?
21 A. Yes.
22 Q. And nowhere in your deposition testimony did you say
23 he'd come often after the incident?
24 A. That's correct.
25 Q. Now, you also knew a man by the name of Paul
26 Sheppard; is that true?
27 A. I knew who Paul Sheppard was.
28 Q. And he was the asset manager for Sentinel Energy

1 Center; isn't that true?

2 A. I'm not sure --

3 MR. REID: Objection. Lacks foundation, calls for
4 speculation.

5 THE COURT: Overruled.

6 Q. BY MR. BASILE: Go ahead. You can answer.

7 You're not sure?

8 A. Mark Daniels was the asset manager at that facility.

9 Q. Do you see -- on Exhibit 368 in front of you, do you
10 see Mr. Sheppard's picture?

11 A. Yes, I do.

12 Q. Do you know that Mr. Sheppard was the vice president
13 of portfolio and asset management at Diamond Generating
14 Corporation when this incident happened?

15 A. I don't know his exact role.

16 Q. Did -- you knew Tom Walker, correct?

17 A. I did.

18 Q. And did these lawyers ever show you Mr. Walker's
19 deposition?

20 A. They did not.

21 Q. It would not surprise you to learn that Mr. Walker
22 has testified that Paul Sheppard would be the asset manager he
23 would most often contact -- that wouldn't surprise you, would
24 it?

25 A. I can't answer that. I don't know how to answer.

26 Q. Now, as an operator, tell the jury what your normal
27 shifts were?

28 A. We worked 14 days a month, switching shift. We would

1 come in and work four nightshifts, have a couple of nights
2 off, work three dayshifts, have two days off in between, come
3 back and work three days, and then we would have seven off.
4 That would be a typical month.

5 Q. Were they 12-hour shifts?

6 A. Yes. 12-hour shifts, yeah.

7 Q. In Exhibit 254, please, this is a picture of a -- an
8 overall aerial picture of the plant, correct?

9 A. That is correct.

10 Q. Now, there would be annual outages or annual
11 shutdowns at the plant; isn't that true?

12 A. That is true.

13 Q. And that would not be part of your normal every day
14 work at the plant; isn't that true?

15 A. That is true.

16 Q. And for these outages, there would be more people
17 scheduled to participate in it?

18 A. Yes.

19 Q. Exhibit 255, please.

20 Now, you see 255, that is Unit 5. You recognize that
21 as a unit. Right?

22 A. Yes, I do.

23 Q. And there would be eight of these?

24 A. Yes.

25 Q. And they each have to be shut down one at a time,
26 yes?

27 A. Yes.

28 Q. It is a very busy time?

1 A. Very busy.

2 Q. And there are outside contractors waiting to come on
3 once it is shut down?

4 A. Yes.

5 Q. And when you are shutting down a whole unit like
6 this, there are various systems that have to be shut down;
7 isn't that true?

8 A. That is correct.

9 Q. Can you tell the jury what some of the different
10 systems are that need to be shut down during an annual outage?

11 A. You got the fuel gas system, you have the electrical
12 system. That is pretty much it.

13 Q. Do have you ammonia system?

14 A. Yeah.

15 Q. Do have you a water cooling system?

16 A. Water cooling.

17 Q. And there are probably some that both you and I don't
18 remember?

19 A. Yeah.

20 Q. But there are multiple systems?

21 A. Yes.

22 Q. Now, Exhibit 349. This is the fuel filters skid;
23 isn't that true?

24 A. Looks like it, yes.

25 Q. And before Daniel Collins was killed, none of those
26 valves were clearly marked; isn't that true?

27 A. That is true.

28 Q. And before Daniel Collins was killed, you never

1 received hands-on training on how to shut down this fuel
2 filter skid; isn't that true?

3 A. That is true.

4 Q. And you felt that the training for isolating and
5 draining the high pressure gas in this system was ineffective?

6 A. I did.

7 Q. What was that?

8 A. I did. I felt it was ineffective.

9 Q. In fact, up until the time Daniel was killed, you had
10 very little training on the lockout/tagout procedure; isn't
11 that true?

12 A. That is correct.

13 Q. In the training you never had to do a walk-through of
14 this task of shutting it done; isn't that true?

15 A. Yes.

16 Q. You said in your deposition what was given to you was
17 something you referred to as "tribal knowledge," is that
18 true -- do you remember using that term?

19 A. I don't recall, sir, no.

20 Q. Now, there was no -- in all of the time you worked
21 there, up until Dan Collins was killed, there was no separate
22 energy control procedure for that skid shown in Exhibit 349;
23 isn't that true?

24 A. That is true.

25 Q. You are familiar with the water sheets, right?

26 A. Yes.

27 MR. BASILE: Kind of like the one I'm holding in my
28 hand here. For the record, I'm holding in my hand Exhibit 5.

1 Could I approach the witness just briefly, Your
2 Honor?

3 THE COURT: Are you using it to refresh his
4 recollection?

5 MR. BASILE: Yes. I can pull it up on there just as
6 quick.

7 THE COURT: No, it is fine. If you are going to
8 publish it, that is one thing. If you want to refresh the
9 recollection, then it doesn't get published.

10 Q. BY MR. BASILE: Let's just pull it up Exhibit 5.

11 You are familiar with the lockout/tagout sheets that
12 were being used at the Sentinel Energy facility when you were
13 hired when this happened, right?

14 A. Correct.

15 Q. This is one of them?

16 A. Yes.

17 Q. At no time when you worked there from 2015 up until
18 in incident, was there ever a line added to this sheet for
19 people to record the pressure in the filter tank; isn't that
20 true?

21 A. That is true.

22 Q. Now, you can take that down, James, and put up 349,
23 again, please.

24 In the morning when had you are having one of these
25 shutdowns, they would usually start on a Monday; isn't that
26 true?

27 A. That is correct.

28 Q. And you would shoot to try and get it done by Friday,

1 right?

2 A. It was scheduled through Saturday, but yeah, we
3 typically would shoot to get it done by Friday.

4 Q. Yeah, even though it was scheduled through Saturday,
5 you would shoot to get it done by Friday?

6 A. Yes.

7 Q. At the beginning of the morning -- you would come
8 very early in the morning about 5:30, right?

9 A. Yes.

10 Q. And there would be what would be called a job safety
11 analysis that morning, right?

12 A. Right.

13 Q. And you would just sign a sign-in sheet that you were
14 at the job safety analysis meeting, right?

15 A. Yes.

16 Q. And the morning that this happened, there was nothing
17 mentioned at that meeting that there had been changes made on
18 this LOTO sheet from how it was being done back in 2016; isn't
19 that true?

20 A. I don't recall that.

21 Q. Nothing was mentioned in that morning meeting that
22 isolation valve 2 had been changed; isn't that true?

23 A. I don't recall.

24 Q. In fact, on the day Daniel was killed, you weren't
25 familiar with how the whole fuel system worked; is that true?

26 A. That is true.

27 Q. You did not know what valve did what, did you?

28 A. I did not.

1 Q. Or what valve was what?

2 A. Correct.

3 Q. Or how this Exhibit 349 operated?

4 A. That is correct.

5 Q. You didn't know where the gas was coming in or where
6 it was coming out, did you?

7 A. I knew where it was coming in from.

8 Q. But you had no idea what valve was what?

9 A. No, I did not.

10 Q. I would like to play page 3921 through 47 of
11 Mr. Delaney's deposition -- 3921 through 47.

12 MR. REID: Objection. Relevance.

13 Why are we playing testimony?

14 THE COURT: Mr. Basile?

15 MR. BASILE: 3921 through 47.

16 THE COURT: And the reason?

17 MR. BASILE: Reason of confirmation of what he said,
18 but also a little different than what he just said.

19 THE COURT: Is that a prior consistent statement or
20 prior inconsistent statement?

21 MR. BASILE: It is a little of both, but I will offer
22 it as a consistent.

23 THE COURT: On those grounds, the objection is
24 sustained. The last question we have is, "You had no idea
25 what valve that was," and their response was, "No, I did not."

26 Q. BY MR. BASILE: You had no idea what valve did what;
27 isn't that true?

28 A. That is correct.

1 Q. And you were one of the people that were working with
2 the LOTO sheet that day; isn't that true?

3 A. That particular day, I wasn't assigned to the LOTO.

4 Q. You're initials appear on it, though, right?

5 A. Yes. I assisted as I was in the area.

6 Q. Before this incident happened, you were never told
7 that it was important to just have a single installer of the
8 LOTO by anyone at the plant; isn't that true?

9 A. That is true.

10 Q. You were never trained or told that it was important
11 to have a single verifier on the LOTO sheet; isn't that true?

12 A. Yes, it is.

13 Q. And you were never told that the installer should go
14 all the way through all of the steps first before the
15 verifier; isn't that true?

16 A. That is correct.

17 Q. And it is not appropriate for the installer and
18 verifier to go out together to do it; isn't that true?

19 A. That is correct.

20 MR. REID: Objection. Argumentative, lacks
21 foundation.

22 THE COURT: Overruled.

23 MR. BASILE: Thank you.

24 Q. Exhibit 255, please.

25 Now, you already said this is a skid that all of the
26 systems had to be shut down that day, correct?

27 A. Correct.

28 Q. And that day you never had any hands-on training,

1 right?

2 A. That is correct.

3 Q. You had never been told the importance of a single
4 installer?

5 A. Right.

6 Q. You had never been told the importance of a single
7 verifier, right?

8 A. Right.

9 Q. And even though you were not told that, how the
10 culture was there, how the system was operating, everybody who
11 was working that day could do any one of those steps on this
12 LOTO; isn't that true?

13 A. For the most part, yes.

14 MR. REID: Objection. Argumentative, lacks
15 foundation.

16 THE COURT: Sustained on that last one. It seems to
17 be compound, as well, Mr. Basile.

18 MR. BASILE: Yeah, I'll break it down.

19 THE COURT: The last response will be stricken.

20 MR. BASILE: I will do it quickly so we can break for
21 lunch, Your Honor. I just want to cover this point.

22 THE COURT: Take your time, Mr. Basile.

23 Q. BY MR. BASILE: So you had participated in several of
24 these shutdowns before this date, right?

25 A. Yes, I have.

26 Q. And how the culture had become out there is there
27 would be various people on various steps on these LOTOs;
28 isn't that true?

1 A. Typically, yes.

2 Q. And that had been from when you were hired in '15 up
3 until this incident happened, right?

4 A. Yes.

5 Q. And the different people, there would be different
6 initials for the person installing, like one person could be
7 the installer and the verifier in different steps; isn't that
8 true?

9 A. No. The verifier was a separate person.

10 Q. But there were multiple people that were acting as a
11 verifier on some of these LOTOs before this happened; is not
12 true?

13 A. I can't recall that.

14 Q. But your testimony to us is that on the days of these
15 shutdowns, up until Daniel was killed, the workers could do
16 multiple steps on these LOTOs; isn't that true?

17 A. That is true.

18 Q. And there could be multiple workers involved in a
19 single LOTO?

20 A. Typically, there was only two people involved in a
21 single LOTO.

22 Q. Have you ever heard of the annual audits or reviews
23 of the LOTO system?

24 A. I've heard of them, yes.

25 Q. Have you ever seen any?

26 A. After the fact, yes.

27 Q. Before this happened?

28 A. No, I did not.

1 Q. Had you ever been aware where this LOTO system was
2 ever reviewed on an annual basis before this happened?

3 A. Not to my knowledge.

4 MR. BASILE: Your Honor, this might be an appropriate
5 time.

6 THE COURT: Thank you, Mr. Basile. We're gonna break
7 for the noon hour. Again, please do not discuss the facts of
8 the case or any parties involved with each or with anybody
9 else. There is still much evidence to be presented.

10 We will see you back at 1:29. Please try and stay on
11 schedule.

12 (Proceedings out of the presence of the jury as follows:)

13 THE COURT: We are now outside of the presence of the
14 jury.

15 Mr. Delaney, please return about five minutes prior
16 to counsel, and we will see you at 1:30. Thank you.

17 We will see you 10 minutes prior -- see you at 1:20
18 if you want to discuss anything.

19 Mr. Basile, so far for today, we have 615, 615A, 368,
20 and Exhibit 5. You did reference other exhibits, but those
21 were previously admitted last week.

22 The Court's inquiry is that there were several
23 exhibits referenced in Mr. Tom Walker's video deposition. It
24 seems that those have been introduced through the video.
25 They're referenced in there. It seems that they are marked
26 the same as in the joint exhibit list, however, I'm sure if
27 you are seeking to have those admitted.

28 At the end of the 615A, the transcript you provided

1 us, there is a reference to the exhibits. The Court did note
2 in that exhibit that that 1 hour and 13 minutes compares to
3 the binder the Court received back on the day in motions in
4 limine with Mr. Tom Walker's propose testimony, which was
5 1 hour and 1 minute and 53 seconds. That is the previously
6 mentioned, you know, extra almost 13 minutes that apparently
7 Mr. Reid wasn't aware of.

8 Again, the bigger picture, this is a witness who is
9 unavailable. In theory, the entire deposition testimony could
10 have been brought in, but Mr. Reid does have an opportunity to
11 know exactly what you are going to be playing and if there are
12 any objections he needs to make for the record.

13 Please do not let that happen again.

14 MR. REID: I will note that at the time of
15 Mr. Stanley's deposition, he will still employed. He is not
16 currently employed anymore, if it makes any difference.

17 THE COURT: I guess it no longer falls under -- it is
18 still that exception, so we don't have to go to the next one
19 if it is outside of the jurisdiction.

20 MR. BASILE: His residency in New York then.

21 THE COURT: Exhibits then, please discuss with
22 opposing counsel and let us know because the Court has any
23 inquiries, and madam clerk also mentioned, if we should keep
24 marking those, we need to know.

25 MR. BASILE: I made a list of everything that was
26 mentioned in Walker's, and we will compare it to what has been
27 admitted and --

28 THE COURT: It is referenced at the end of your

1 transcript that you submitted, just so you know.

2 MR. REID: Your Honor, I don't remember off the top
3 of my head, but Juan Gonzales, they were going to present that
4 one, but we haven't received the DVD.

5 THE COURT: Yeah, 614 and 614A, it looks like you
6 received something.

7 MR. SULLIVAN: We have this here in court, as well.

8 THE COURT: Okay. And pursuant the California Rules
9 of Court, the Court's order was that you have five days to
10 produce that. We're in receipt now, and we will have it
11 marked as 614 and 614A.

12 That is what was played to the jury, Mr. Basile?

13 MR. SULLIVAN: Yes, Your Honor.

14 THE COURT: Okay. Well, regardless, as we talked
15 about last week, if there is any request for witness read back
16 from the video depositions, it will not occur in the jury's
17 deliberation room. It will be out here. We will all be
18 present so we know exactly what is being read to them, so I
19 guess that is secondary setting.

20 Have a nice lunch. See you all at 1:20.

21 (Lunch recess.)

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JULY 5, 2022 - AFTERNOON SESSION

(Proceedings out of the presence of the jury as follows:)

THE COURT: Back on the record.

We're outside the presence of the jury. We have about eight minutes.

Was there something, Mr. Reid?

MR. SULLIVAN: May I before Mr. Reid speaks?

THE COURT: Mr. Reid stood up first.

MR. SULLIVAN: Fair enough.

MR. REID: Your Honor, two minutes ago, Mr. Sullivan walked up and handed me, yet, a third version of Mr. Stanley's testimony. It is, again, different from what I was given before lunch. I have not had an opportunity to review this. I don't know what to say at this point.

MR. SULLIVAN: May I, Your Honor?

THE COURT: Sure. Go ahead, Mr. Sullivan.

MR. SULLIVAN: As the Court instructed prior to lunch, we wanted to make sure that the designations that were provided to the Court were copacetic with what was going to be offered here today. I did that over lunch, and I compared the document that I handed to Mr. Reid. There is only like ten lines that were removed from the prior designation. Nothing has been added to this. Those are the very last lines on the last page that go from 151, line 1 down to 151-18. Those have been removed. It ends at 150-15. Everything that is in there is in the designation that was provided to the Court. I provided him a copy.

When looking at the other ones, there were some

1 things that were included in there that should not have been
2 in there. I made sure that they were removed. The clip that
3 is going to be played matches the document that I gave him. I
4 have a copy of the revised version that was deleted to give to
5 the Court. The tech is going to prepare a DVD that has those
6 last portions removed from it. We will provide it to the
7 Court, Your Honor.

8 THE COURT: This is going to be 616?

9 MR. SULLIVAN: Yes, Your Honor.

10 THE COURT: Mr. Reid, which one did you review?

11 MR. REID: (No audible response.)

12 THE COURT: All right. So originally we were given
13 one that was an hour and thirty minutes long. Before lunch,
14 you gave me one that is an hour and thirty-four minutes. Just
15 now you gave me one that is an hour and twenty-eight minutes.

16 So which one have you reviewed?

17 MR. REID: I reviewed the one-thirty-four -- an hour
18 and thirty-four minutes.

19 THE COURT: Do you have objections to that?

20 MR. REID: We don't have objections to the specific
21 testimony. But again, I know don't know what they're
22 presenting.

23 THE COURT: Okay. If you reviewed the one for an
24 hour and thirty-four minutes and you are comfortable with that
25 one and that is the one that you had an opportunity to review,
26 I will have counsel go ahead and mark that one and submit that
27 one. If you want to review it during the remainder of
28 Mr. Delaney's testimony, if you want to go with the shorter

1 one, we can do that as well, but ultimately you decide which
2 one. It looks like we are talking a difference of about six
3 minutes?

4 Mr. Reid, your comments on not lost in the Court. It
5 is frustrating because this should have been done already.
6 But it would seem extreme for me at this point to issue an
7 evidentiary sanction and say it doesn't come in at all. So I
8 would afford you that same, you know, latitude, as well.

9 I will note something that we've noticed here with
10 the courtroom assistant when we were just kind of checking
11 everything, we still don't have exhibit binder for defense.

12 Is there any additional exhibits, or is it just the
13 600- --

14 MR. REID: Our understanding it was a joint exhibit
15 binder. The only thing that is outstanding is we have
16 impeachment exhibits in the back.

17 THE COURT: And those are for you. And I'm not sure
18 if you've submitted them the way they should be for the Court
19 where it is like in a sealed envelope, I don't think so, but
20 --

21 MR. REID: Well, it is three boxes of documents.

22 THE COURT: I don't intend on opening that until, you
23 know, we cross that bridge.

24 I would extend you the same latitude. I do hear your
25 concerns, and I really would rather not hear them brought up
26 again -- not your concerns, but the fact that they need to be
27 brought up.

28 So if you reviewed the one hour and thirty-four and

1 you are comfortable with that, that is the one that will be
2 marked. If you want the one hour and twenty-eight minutes,
3 then that is the one that will be marked. We really shouldn't
4 be at that at this point.

5 Mr. Basile?

6 MR. BASILE: Your Honor, we are keyed up to play
7 one hour and twenty-eight minutes. If he reviewed the one
8 hour and thirty-four minutes, that is overinclusive than what
9 it is.

10 And I want to once again be very clear for the
11 record, we followed not only the Code of Civil Procedure, I
12 believe, but also this Court's where you have to give page and
13 line to the other side at least five days. We gave them a
14 month before today. We gave them what is in your binder, Your
15 Honor. It was probably either the one-twenty-eight or the
16 one-twenty-four. You can check and see where it ends. That
17 was given to them one month ago. We have never heard one
18 objection. They haven't done counter-designations. We
19 started this case, and I'm ready to proceed.

20 THE COURT: I understand that, Mr. Basile. Say, for
21 example, the exhibit list -- and this could just be the
22 Court's own preference, but the description of the exhibits
23 will just say whatever the exhibit is, but there is no
24 specificity to it.

25 For example, the record will reflect that, like 614
26 and 615 are redacted transcripts. They are not the ones that
27 are lodged with the Court where it is the entire transcript.
28 For example, Mr. Delaney's, we have the entire transcript here

1 -- bad example because he is actually testifying here -- but
2 Mr. Walker and Mr. Gonzales, it wasn't their entire video
3 testimony, which you could have done, that was introduced,
4 rather it was redacted versions kind of pieced together. So
5 that is not clear on the exhibit list and neither is with
6 Mr. Stanley's.

7 Again, we are switching around. The one that I have
8 says an hour and thirty minutes, so we have one-twenty-eight,
9 one-thirty-four, one-thirty. It is this last minute editing
10 that is going on. It seems inconsequential, but it is
11 frustrating. Whatever the finalized version is going to be,
12 that should have been completed already.

13 MR. REID: At this point, Your Honor, I am most
14 comfortable with what I have reviewed, so the one hour and
15 thirty-four minutes.

16 MR. BASILE: We're going to play the
17 one-twenty-eight, and I'll come back and add those other
18 minutes or they can add them or whatever.

19 Your Honor, the one-twenty-eight is included in what
20 he is reviewing. Once again, they are trying to dictate what
21 we do. Your Honor, the one hour and twenty-eight minutes is
22 included what we gave to them. I want to play the one hour
23 and twenty-eight minutes, and I apologize for my loudness.

24 THE COURT: I understand. We're arguing over six
25 minutes here. These are electronic items of evidence, so I
26 find it hard to believe that you don't have a saved version of
27 the one-thirty-four. This isn't a VHS tape that you are just
28 deleting over. So find the one-thirty-four on your computer,

1 on your network. Defense's were copied. Apparently, they
2 have their copy.

3 MR. SCHUMANN: He gave us a copy before lunch. I
4 don't know which one it is. Is it 15?

5 MR. SULLIVAN: Which exhibit is 6- --

6 THE COURT: It is next in order. 616, unless there
7 is a new exhibit, the Court is not aware of.

8 MR. BASILE: Your Honor, again --

9 THE COURT: Mr. Basile, we need to bring in the jury.
10 I hear your concerns. Both sides are entitled to present the
11 evidence in the way they like to. The way the Court sees it,
12 you have created the situation by this switching back and
13 forth on the exhibits.

14 So the most recent one, when did you come up with
15 this one-hour-twenty-eight minute version?

16 MR. BASILE: Before we began this case, Your Honor.

17 Before we began this case, I edited it, I brought it
18 down, and it was an hour and twenty-eight minutes. There was
19 one that Mr. Sullivan pointed out here that we took out the
20 last ten because it was confusing. Because when we pulled up
21 the exhibit on the video, you had to turn your head, so I said
22 let's just get rid of that and let's end it, and he said
23 absolutely, that is it, we're done.

24 There is nothing that we're presenting on the hour
25 and twenty-eight minutes of Mr. Stanley's that has not been
26 shown to the other side. Not only that, they attended the
27 deposition. They were there, and we've given this to them.

28 THE COURT: If this was completed prior trial,

1 Mr. Basile, the Court would not be in possession of this black
2 binder here with the plaintiff's designation of videotape with
3 a transcript that says an hour and thirty minutes.

4 So, again, the exhibits need to be in order.

5 I'm not questioning that you had it done before
6 trial, but you see, again, I'm in possession of something,
7 Mr. Reid is in possession of something else, so let's get
8 things in order. Okay?

9 MR. BASILE: Yes, sir.

10 THE COURT: Thank you, Mr. Basile.

11 We will go ahead and bring in the jury.

12 Let's have Mr. Delaney actually take the stand before
13 we resume.

14 (Proceedings in the presence of the jury as follows:)

15 THE COURT: Back on the record in the matter of
16 Collins versus DG Corp.

17 I know we are starting about two minutes late, but
18 from what I recall, there is not a lot of prior jury
19 experience on this panel. But for those of you who have had
20 prior, we are being pretty punctual by court standards, so we
21 will still aim to get started right on time like you are
22 supposed to.

23 Mr. Basile, whenever you are ready. I believe you
24 have Mr. Delaney still on the stand. I'm not sure if you
25 wanted the overhead projector turned on before you started.

26 Whenever you are ready.

27 MR. BASILE: Yes.

28 Q. BY MR. BASILE: Mr. Delaney, you're familiar with

1 Exhibit 349, the fuel filter skid that we talked about,
2 correct?

3 A. Yes.

4 Q. And at that the fuel filter skid that you look at
5 there, there is a valve that indicates the pressure in the
6 tank around there, isn't it -- isn't there?

7 A. A valve or a gauge?

8 Q. A gauge.

9 A. Yes, there is.

10 Q. Now, the gauge that is shown in this, is not that
11 gauge, correct?

12 A. I don't see the gauge on there.

13 Q. Right, it is not on there.

14 We have Exhibit 18 pulled up besides this one.

15 Take a look at Exhibit 18. You see the ladder there,
16 correct --

17 A. Yes, I see the ladder.

18 Q. -- in Exhibit 18?

19 And behind the ladder is the fuel filter; is that
20 true?

21 A. Yes.

22 Q. Do you see the arrow on the white upright that is
23 pointing towards what looks like a gauge?

24 A. Yes.

25 Q. That is the gauge that has the pressure in the fuel
26 filter tank; is that true?

27 A. Yes.

28 Q. Yes?

1 A. Yes.

2 Q. All right. Now, this is -- just to the left of that
3 arrow is where the gauge is, correct?

4 A. That is correct.

5 Q. And you have told us before -- you've had your
6 deposition taken in this case, right?

7 A. Yes.

8 Q. And you swore to tell the truth, right?

9 A. Correct.

10 Q. And lawyers representing Diamond Generating
11 Corporation were representing you at that deposition, right?

12 MR. SCHUMANN: Objection. Relevance, 342.

13 THE COURT: Overruled.

14 Q. BY MR. BASILE: Correct?

15 A. Correct.

16 Q. Now, there is really only one spot that you can place
17 the ladder in order to remove the lid off the fuel filter
18 skid; is that true?

19 MR. REID: Objection. Foundation.

20 THE COURT: Sustained.

21 BY MR. BASILE:

22 Q. You placed the ladder to remove the fuel filter skid?
23 You are familiar with placing the ladder there, right?

24 A. I have, yes.

25 Q. And you have done that on a number of occasions?

26 A. A couple of occasions.

27 Q. Just a couple.

28 And there is really only one spot that you can place

1 the ladder in order to remove the lid; isn't that true?

2 A. That is true.

3 Q. And from this location where you put the ladder, is
4 the pressure gauge visible to the worker?

5 A. If he was to be walking up on it towards the ladder,
6 it looks to me like the gauge is facing the opposite way of
7 the ladder.

8 Q. So it wouldn't be visible, would it?

9 A. No.

10 Q. And in fact, even when you are up on top trying to
11 remove the lid, it is not visible; isn't that true?

12 A. That is true.

13 Q. And as long you have worked there, there was never a
14 sign on top of that lid that said check the gauge before you
15 removed the lid, was there?

16 A. There was not.

17 Q. You can take that down, James.

18 Now, we have already talked about that it is a busy
19 day when there is an outage, correct?

20 A. Correct.

21 Q. And lots of workers, right?

22 A. Yes.

23 Q. And lots of outside contractors waiting for the
24 shutdown, right?

25 A. Right.

26 Q. And I showed you that Exhibit 200 with that list,
27 right?

28 A. Yes.

1 Q. And it is scheduled for six days, but you guys shoot
2 to try to get it done in just five; isn't that true?

3 A. That is true.

4 Q. Now, when an unit is shut down during an outage, that
5 means the unit is not available, right?

6 A. That is correct.

7 Q. And it is not available to produce electricity for
8 the corporation to sell, right?

9 A. That is correct.

10 Q. So it is important to get the shutdown done, right?

11 A. Yes.

12 Q. And to get the contractors in there, right?

13 A. Correct.

14 Q. And get all of the maintenance work done, right?

15 A. Yes.

16 Q. And start the unit up again, right?

17 A. Yes.

18 Q. That is important.

19 And so you can make the unit available, right?

20 A. Yeah, that is correct.

21 Q. To produce electricity, right?

22 A. Yes.

23 Q. Now, operators like you and Daniel Collins were
24 eligible for bonuses based on plant availability; is that
25 true?

26 MR. REID: Objection. Foundation.

27 THE COURT: Sustained as to Daniel Collins.

28 MR. BASILE: Thank you, Your Honor.

1 Q. BY MR. BASILE: Operators like you or operators at
2 the plant were eligible for bonuses based on plant
3 availability; isn't that true?

4 A. Plant performance and self-performance.

5 Q. Pardon me?

6 A. Self-performance and plant performance.

7 Q. But the bonuses were based on plant availability,
8 too, weren't they?

9 A. As well, yes.

10 Q. That is making that unit available, your bonuses were
11 based on it, right?

12 A. Yes.

13 Q. If the units were nonoperational, then the units
14 would not be available; isn't that true?

15 A. That is correct.

16 Q. So that day when the workers were shooting to finish
17 that scheduled work out on Friday instead of a Saturday, they
18 were shooting to get it done in a shorter amount of time than
19 what it was even scheduled for, right?

20 MR. REID: Objection. Foundation.

21 MR. BASILE: Based on his knowledge, Your Honor.

22 THE COURT: Speculation or foundation, Mr. Reid?

23 MR. REID: Calls for speculation, also, Your Honor.

24 THE COURT: Sustained.

25 Q. BY MR. BASILE: So the workers that day -- I mean,
26 you already told us that although it was scheduled to be done
27 through Saturday, you guys are shooting to finish it on
28 Friday, right?

1 A. Typically, yes.

2 Q. So if Daniel Collins was to say something like, hey,
3 let's set a record, you know, let's get this done in time or,
4 you know, we got a bonus on availability, that wouldn't have
5 been unusual, right?

6 A. No, it wasn't.

7 Q. Because that is what you guys were trying do, right?

8 A. We would try to do that so we wouldn't have to work
9 an extra day.

10 Q. So you wouldn't have to work an extra day.

11 Let's talk about the lockout/tagout at the plant,
12 Exhibit 59, please.

13 Do you know what this is?

14 A. It looks like a revision to the lockout/tagout
15 procedure.

16 Q. You were never shown this lockout/tagout procedure
17 before this incident; is that true?

18 A. That is true.

19 Q. So by never being shown this, the requirements of it
20 that are listed in Exhibit -- what exhibit did you -- 49, you
21 never had any training where they actually went through what
22 was contained in Exhibit 49; isn't that true?

23 A. That is true.

24 Q. Now, let's go to Exhibit 9 beside 349, please.

25 On the day that this happened, I think we talked
26 about you had that meeting in the morning -- very early
27 morning, remember?

28 A. Yes.

1 Q. And nothing was discussed at that meeting about the
2 specifics of how to shut down the skid shown in Exhibit 349 on
3 had the left side; isn't that true?

4 A. That is true.

5 Q. And you were never told that there is now a change in
6 what used to be ISO Valve Number 2 and what was now ISO Valve
7 Number 2? You were never told of that, were you?

8 A. No.

9 Q. Now, Exhibit 255, please.

10 Now, back to the day when this happened, this is
11 where that fuel filter skid -- where the explosion is going to
12 take place, right?

13 A. That is correct.

14 Q. In the lower right-hand corner of Exhibit 25, right?

15 A. Yes.

16 Q. But the LOTO sheet you guys are working off of had
17 multiple systems that needed to be shut down all over this
18 skid, right?

19 A. I think there was multiple LOTO sheets for the whole
20 facility.

21 Q. Let's just talk about what is on the LOTO sheet you
22 guys were working on that day.

23 Do you remember that, I showed it to you?

24 A. Yes.

25 Q. That had multiple systems on it?

26 A. Yes.

27 Q. Pardon me?

28 A. Yes, it did.

1 Q. So on that LOTO sheet, it contained multiple systems
2 that needed to be shut down on Exhibit 255, correct?

3 A. Correct.

4 Q. Now, something unusual happened that day; isn't that
5 true --

6 A. Yes.

7 Q. -- besides the explosion?

8 But there was an unusual venting of gas that occurred
9 while this was all in process, right?

10 A. Yes.

11 Q. And that unusual venting of gas was occurring over
12 here where I'm indicating by this big tube near the turbine
13 package; is that right?

14 A. I can't see where you are pointing at.

15 Q. I'm sorry. Look behind you, sir, if you could.

16 The unusual venting occurred somewhere over in this
17 area; is that correct?

18 A. I think it was behind the stack.

19 Q. So behind the stack and over there, right?

20 A. More up.

21 Q. Up in here?

22 A. Yeah, up in that area.

23 Q. So there is an unusual venting there, right?

24 A. Correct.

25 Q. And that unusual venting was a loud sound of gas
26 coming out, right?

27 A. That is correct.

28 Q. And Jason King and other workers there had all

1 commented on it, like, wow, what is that, or something, right?

2 A. I don't recall that.

3 Q. Well, someone said -- you knew it was unusual, right?

4 A. That is right.

5 Q. And no one came out -- no bosses, nobody came out
6 when that unusual venting was going on and said, "Hey, let's
7 stop the whole procedure and see what is happening," right?

8 A. Not to my knowledge.

9 Q. Daniel Collins left to go check out that unusual
10 venting; isn't that true?

11 A. I don't recall.

12 Q. Over there where it happened, where the unusual
13 venting happened, there is a pressure gauge; isn't it true?

14 A. Not to my knowledge.

15 Q. Good enough.

16 Exhibit 9 beside 349, please.

17 That is the LOTO sheet that was used that day; is
18 that correct?

19 A. Yes, that is correct.

20 Q. And your initials are up here on which lines?

21 Could we enlarge those, James, these two lines.

22 A. Line 4 and 5.

23 Q. Line 4 and 5, right.

24 Now, right there, "MD," that is you over here, right?

25 A. That is correct.

26 Q. As a verifier, right?

27 A. Yes.

28 Q. All right. You can take that down, James. Leave it

1 up, though, Exhibit 9.

2 At this time happened, hadn't the custom and practice
3 with the workers become like different people would do
4 different parts of the LOTO?

5 A. Typically whoever was tasked with doing the specific
6 job would do it.

7 Q. They would go around.

8 And whatever step was closest in vicinity to you,
9 that is the step that would be done, right?

10 A. Yes.

11 Q. Not necessarily in the order indicated on the sheet,
12 right?

13 A. Right.

14 Q. Just do what steps were closest to you, right?

15 A. Yes.

16 Q. You didn't see anyone closing any valves that day;
17 isn't it true?

18 A. That is correct.

19 Q. Please 255.

20 Where were you when this happened?

21 A. When what happened?

22 Q. When the explosion happened and Daniel was killed.

23 A. I was in a building, which is on the lower portion of
24 the screen there.

25 Q. Look over your shoulder where I am pointing.

26 Is it in this area?

27 A. Over to the right, inside of that building, yes.

28 Q. So you were inside that building, and what did you

1 hear?

2 A. I heard a hiss and then an explosion.

3 Q. And that happened very quickly, didn't it?

4 A. Real quick.

5 Q. Less than a second, I take it.

6 A. Right.

7 Q. So it was just "spoooph"?

8 A. Exactly.

9 Q. And you went to Daniel, or you went out to see what
10 happened, right?

11 A. I went out and looked, yes.

12 Q. Could we have Exhibit 372 beside that one, if we
13 could -- beside 355.

14 That is the lid that is on top of the filter skid,
15 correct?

16 A. That is correct.

17 Q. I'm sorry. 255 on the right, please. If you could
18 put 255 on the left, James, I'd appreciate it, and 372 on the
19 right.

20 When you went out there and looked around, it wasn't
21 a pretty sight, was it?

22 A. I actually didn't go out and look around.

23 Q. But were you able to determine and -- see 372 there,
24 that is it the lid, right?

25 A. That is correct.

26 Q. Were you able to determine where that lid landed?

27 A. No, I was not.

28 Q. You don't know where it landed?

1 A. I know where it landed now, but at the time, I did
2 not.

3 Q. Based on what you know now, where did it land?

4 A. It landed back in, what they call a "high yard,"
5 which is behind the plant there.

6 Q. Where I'm pointing up here?

7 A. Yes.

8 Q. How far is that from where the filter tank is?

9 A. I'd say 150 yards.

10 Q. Was there a mark left by this filter tank on one of
11 these smoke stacks?

12 A. Yes. It was called a VS-V8 exhaust stack, which was
13 on the forward side there, in the top.

14 Q. In this one here?

15 A. That is correct.

16 Q. So the lid came off there and hit that and landed the
17 whole way over there?

18 A. Yes.

19 Q. How much does that lid weigh?

20 A. I have no idea.

21 Q. Have you ever picked it up?

22 A. No. But it is stainless steel, and it is pretty
23 thick, too, so it is real heavy.

24 Q. Would you say about 100 pounds?

25 A. At least.

26 Q. At least, okay. Thank you.

27 You knew Daniel Collins; isn't that true?

28 A. Yes, I did.

1 Q. Exhibit 301, please.
2 This is the Daniel Collins you knew?
3 A. Yes.
4 Q. A good man?
5 A. Very good.
6 Q. You spent time with him outside of work?
7 A. Yes, I did.
8 Q. You went with Daniel and his wife Denise to Pioneer
9 Town?
10 A. Yeah.
11 Q. What did you guys do there?
12 A. We had lunch.
13 Q. What is Pioneer Town?
14 A. It is an old town up in --
15 Q. Temecula?
16 A. Not Temecula. It is more like the Yucca Valley area,
17 up toward the mountains on Highway 247 toward Big Bear.
18 Q. Who else was with you?
19 A. He had several of his friends with him and myself and
20 my wife.
21 Q. Did you enjoy yourself with him?
22 A. Oh, yeah.
23 Q. And you saw him with Denise?
24 A. Yes.
25 Q. Give the jury a little example of how he would
26 interact with Denise.
27 A. Well, he would -- on a daily basis when I worked with
28 him, he was constantly on the phone with her or the family --

1 his son, as well.

2 Q. Did he talk to you about his son?

3 A. Often.

4 Q. I think you told us that you went to a party at his
5 house, too?

6 A. Yeah, at one time.

7 Q. Please 344.

8 Were you in his backyard?

9 A. Yes.

10 Q. And this was his house in Hemet?

11 A. Yes, it was.

12 Q. He kind of had a special area set up back there for
13 his party, didn't he?

14 A. Yeah. I think he called it the Bumper or something
15 of that nature.

16 Q. Did he call it the Tiki Bar?

17 A. I don't recall what he called it. I know there was a
18 Bumper in there.

19 Q. Do you recognize this as his backyard?

20 A. Yes.

21 Q. Can we zoom into Daniel and the guy surrounding him
22 there, the three -- the four guys across, including Daniel.

23 I know it is a little foggy there, but do you know
24 any of those guys?

25 A. I know Daniel. I don't know if -- the guy to the
26 left, I don't know if I know him or not. The picture is kind
27 of blurry.

28 Q. The guy that you are looking at, is that the guy in

1 the white hat?

2 A. Yes.

3 Q. Would that be Robert Ward?

4 A. It looks to be.

5 Q. And he worked at the plant, too, right?

6 A. Yes.

7 Q. All right. You can go back out on that. Let's look
8 at it.

9 So you mentioned that Daniel talked to his wife from
10 work on the phone, right?

11 A. Frequently.

12 Q. And his son?

13 A. Yes.

14 Q. That never interfered with his work, did it?

15 A. Never.

16 Q. And you could tell he really loved his wife?

17 A. Yes.

18 Q. And his son?

19 A. Yes.

20 Q. And Daniel was well-liked at the plant, too?

21 A. Very well.

22 MR. BASILE: Thank you. That is all I have.

23 MR. REID: If I may, Your Honor.

24 THE COURT: Yes.

25 CROSS-EXAMINATION

26 BY MR. REID:

27 Q. Mr. Delaney, you were asked a few minutes ago as to
28 whether you ever received lockout/tagout training at the

1 plant. Do you recall that?

2 A. Yes.

3 Q. Do you recall testifying in your deposition that
4 Jason King would conduct lockout/tagout training on an annual
5 basis.

6 A. Yes.

7 Q. Did you are attend those annual trainings?

8 A. I think I did one of them because I was there at that
9 point for nearly seven months.

10 Q. If I could have Exhibit 412, please.

11 This is a record of training -- if you could scroll
12 down a little bit, a little farther -- Mr. Delaney, do you see
13 your name on that training?

14 A. Yeah, line 10.

15 Q. And that was -- is that your signature?

16 A. Yes.

17 Q. And it is dated 1-21-16?

18 A. Yes.

19 Q. So it is correct to say that you did receive
20 lockout/tagout training before this incident, correct?

21 A. Correct.

22 MR. REID: If I could put 176 up, please. It is the
23 same as Plaintiff's Exhibit 49, Your Honor, just a little
24 better version of it. If you could enlarge that for me and go
25 down to page 8.

26 Q. BY MR. REID: Looking at this document and seeing the
27 authorizer, the initiator, the installer, the verifier, does
28 that refresh your recollection that you received training on

1 this document?

2 A. I don't recall.

3 Q. Do you know what the installer was for -- for his
4 lockout/tagout goes?

5 A. Yes.

6 MR. BASILE: Objection as to point in time, Your
7 Honor. I'll withdraw it. He can answer.

8 BY MR. REID:

9 Q. Prior to this incident, did you know what the role of
10 the installer was?

11 A. Not necessarily.

12 Q. Had you ever performed the role of the installer
13 before this incident?

14 A. I don't recall.

15 I take that back, I did on occasion as an installer.

16 Q. Had you ever performed the role of a verifier?

17 A. Yes.

18 Q. Did you consider Mr. Collins to be an experienced
19 operator?

20 A. Very experienced.

21 Q. In your opinion was he the most experienced operator
22 at the plant?

23 A. In my opinion, yes.

24 Q. Was he a lead operator?

25 A. Yes, he was.

26 Q. Were on his crew?

27 A. Yes. At the time, I was.

28 Q. At the time of the incident, you were on his crew?

1 A. Yes.

2 Q. Explain to me what the purpose of being on his crew
3 was?

4 A. My first partner had left the job, and then I was
5 moved to be a partner with Dan.

6 Q. And that crew was an operating crew, correct?

7 A. That is correct.

8 Q. For the purposes of operating the plant on the days
9 that you were on duty, you and Mr. Collins worked as a team,
10 correct?

11 A. That is correct.

12 Q. And during lockout/tagouts or outages, you wouldn't
13 necessarily work with Mr. Collins, correct?

14 A. That is correct.

15 Q. But you had on occasion worked with Mr. Collins,
16 correct?

17 A. Yes.

18 MR. REID: I would like to show Exhibit 264,
19 page 262. May I publish this, Your Honor? It is plaintiff's
20 exhibit, and agreed to the authenticity and accessibility.

21 THE COURT: It is in the exhibit list.

22 MR. REID: Thank you, Your Honor.

23 Q. BY MR. REID: Enlarge for me.

24 This is the annual outage for unit 3, which was done
25 February 6th of 2017. Do you recall being present at the
26 facility on that date?

27 A. Yes, I do.

28 Q. Would you scroll down a little for me?

1 On this date you were acting as the installer; is
2 that correct?

3 A. Looks like I did both, yes.

4 Q. Mr. Collins was working with you as a verifier?

5 A. Yes, he was.

6 Q. And from my review of this, there are at least two
7 steps, number 1 and number 6 where Mr. Collins acted as the
8 installer.

9 A. Okay.

10 Q. And for the rest of the time, you were the installer;
11 is that correct?

12 A. That is correct.

13 Q. Air switch 220, that first step, does that require a
14 special suit?

15 A. Yes, it does.

16 Q. What is the name of that suit?

17 A. A 40-caliber suit.

18 Q. And that is to prevent you from being shocked; is
19 that correct?

20 A. From being burned, yes.

21 Q. Being burned by the electricity?

22 A. Yes.

23 Q. On this particular date, Mr. Collins had that suit
24 on?

25 A. That is correct.

26 Q. Which is why he acted as an installer for that first
27 step, correct?

28 A. Yes.

1 Q. You testified earlier that you really didn't know
2 which valves were which or what they're purposes were; is that
3 correct?

4 A. That is correct.

5 Q. On this occasion when you were working as the
6 installer, was Mr. Collins training you for that position?

7 A. I wouldn't necessarily call it "training," but he was
8 showing me what steps to go and what to do more or less.

9 Q. So he was on the job training you how to this job; is
10 that fair?

11 A. That is fair to say.

12 Q. On February 6, 2017, after you and Mr. Collins
13 completed the LOTO, did anyone inform Mr. King that the LOTO
14 had been completed?

15 A. No, not to my knowledge.

16 Q. Scroll back up for me. That is a little too far.
17 Right there.

18 On this particular date, February 6th, 2017, Mr. King
19 is listed as the work supervisor. Do you see that?

20 A. Yes.

21 Q. Do you remember approximately what time of the
22 morning that you opened the final vent valves in steps 4 and
23 5, I believe?

24 A. I would say between 6:15 and 6:30.

25 Q. And Mr. King's initials and date and time there,
26 2-6-17, at 8:10 a.m. Do you see that?

27 A. Yes.

28 Q. Does that indicate to you that Mr. King was told that

1 this LOTO was completed by someone?

2 MR. BASILE: Objection. Lacks foundation, Your
3 Honor.

4 MR. REID: If you know.

5 MR. BASILE: Calls for hearsay.

6 THE WITNESS: I really don't know.

7 THE COURT: Overruled.

8 If you know, Mr. Delaney.

9 THE WITNESS: No, I have no idea.

10 Q. BY MR. REID: On this date and time, to your
11 knowledge, was the fuel gas system, the skid, the piping all
12 the way to the turbine package vented completely to zero?

13 A. Yes, it was.

14 Q. And that was basically at Mr. Collins' direction,
15 right?

16 A. Yes.

17 Q. Scroll down a little bit for me, please. Stop.
18 Number 7, the package manual fuel isolation valve, do
19 you know where that is?

20 A. Yes. It is under the north side of the door going
21 over the turbine skid.

22 Q. So it is over by the turbine package, correct?

23 A. Yes.

24 Q. And when that valve is closed, it shuts off the
25 turbine package from the rest of the fuel system, correct?

26 A. That is correct.

27 Q. All right. And then you open maintenance valve
28 number 8, you open maintenance valve number 9, correct?

1 A. Correct.

2 Q. And when you did that on that date, was there any
3 type of unusual venting of gas?

4 A. No. There shouldn't be ever.

5 Q. Should not ever be in --

6 A. It should be vented already at that point.

7 Q. So just looking at number step 3 and step 4 -- start
8 with step 2, I apologize.

9 Isolation valve number 1, when we looked at -- if you
10 could put up Exhibit 349, I believe, is that picture.

11 You see the picture of the fuel filter skid there?

12 A. Yes.

13 Q. All right. Thank you.

14 That valve that is on the bottom inlet to the left --
15 up a little, that one.

16 Is that isolation valve number 1, if you know?

17 A. I'm not sure.

18 Q. And, again, that is consistent with you're not sure?

19 A. Yeah.

20 Q. All right. Going back to the LOTO sheet for that
21 day, please.

22 So final filter vent valve number 1, final filter
23 vent valve number 2, those are the two valves that you opened
24 on the date of the incident; is that correct?

25 A. That is correct.

26 Q. And on the date of February 6th, 2017, when you
27 opened those two valves, was there a venting of gas?

28 A. Yes.

1 Q. Do you know about how long that lasted?

2 A. Anywhere from 30 to 45 seconds.

3 Q. And I'm not talking about the date of the incident.

4 I'm talking about February 6th.

5 A. I don't recall exactly the length of time.

6 Q. All right. If I said approximately ten minutes,
7 would that refresh your recollection?

8 A. I think that would be a little extreme.

9 Q. Ten minutes a little long?

10 A. Yeah.

11 Q. Okay. When you opened those two valves, were you
12 looking at the pressure gauge on the filter tank to see if the
13 pressure went to zero?

14 A. I was not.

15 Q. Was that something Mr. Collins ever told you should
16 be done?

17 A. No.

18 Q. Had you heard that from anyone at the plant?

19 A. I did not.

20 Q. Let me ask the question again. I apologize. I just
21 want to make sure we are totally clear.

22 Had anyone at DGC Ops, Mr. King, Mr. Walker, any of
23 your fellow employees, ever told you that you should be
24 looking at that filter gauge, the gauge on the filter tank
25 while you were venting those valves?

26 A. I don't recall anybody mentioning that.

27 Q. But, again, to your knowledge, on this date, the fuel
28 system was completed vented when you finished venting at this

1 step 3 and 4; is that correct?

2 A. Yes.

3 Q. There were no exposures on that date, correct?

4 A. That is correct.

5 Q. No one was injured on that date?

6 A. No.

7 Q. How would you describe Mr. Collins' work attitude?

8 A. He was a go-getter. He was like the first one at the
9 fire.

10 Q. Would you say that he was an aggressive worker?

11 A. Very aggressive and very knowledgeable.

12 Q. Was that your preferred method of working?

13 A. No.

14 Q. How did you prefer to work?

15 A. Slow and steady. Do it right the first time.

16 Q. And that is because this is a dangerous power plant
17 and you want to make sure that things are done correctly?

18 A. That is correct.

19 Q. On the morning of the incident, going to March 6th,
20 2017, the day Mr. Collins was killed, as you were walking out
21 of the control room, did you hear Mr. Collins say something?

22 A. I heard him say something -- I wasn't walking out of
23 the control room, he was -- him and another coworker.

24 Q. Was he walking out with Albert Palaway?

25 A. Yes.

26 Q. And what did he overhear Mr. Collins say?

27 A. He mentioned that he wanted to set a record at -- on
28 this outage.

1 Q. And at the plant, there are two types of outages,
2 correct? There is a planned outage and then there is an
3 unplanned outage, correct?

4 A. Yeah. It is a forced outage.

5 Q. A forced outage.

6 You were asked about the bonus provisions. Do you
7 know if planned outages counted against your bonus?

8 A. I have no idea.

9 Q. Do you know if forced outages counted against the
10 bonus for the plant?

11 A. Yes.

12 Q. But you don't know about the planned outages?

13 A. No, I don't.

14 Q. Going back to the February 6, 2017 meeting or outage,
15 did you attend the morning meeting?

16 A. Yes, I did.

17 Q. And you were asked about a job safety analysis?

18 A. Yes.

19 Q. Do you recall signing on to a job safety analysis on
20 February 6, 2017?

21 A. I don't recall signing on, but I'm sure I did.

22 Q. Could I have Exhibit 502, please, and enlarge it for
23 me, scroll down.

24 Is this what you recognize to be a job safety
25 analysis sheet?

26 A. Yes.

27 Q. And this was for the unit 3 annual outage, up in the
28 top there?

1 A. Yes, it is.

2 Q. If you scroll down for me, keep going, stop. Off to
3 the right-hand side -- nope, this isn't the one I want. I
4 apologize. Scroll down some more.

5 Do you see your name on that list?

6 A. Yes, I do.

7 Q. Where is it?

8 A. The twelfth line down.

9 Q. The twelfth line down, "M. Delaney"?

10 A. Yes.

11 Q. Is that your signature next to that?

12 A. It is.

13 Q. Does that refresh your recollection that you signed
14 on to the job safety analysis?

15 A. Yes, it does.

16 Q. As part of that job safety analysis, does it list
17 personal protection equipment that should be used, PPE?

18 A. Yes, it does.

19 Q. Is one of the things that is listed on that sheet
20 earplugs?

21 A. You have to back up so I can see.

22 Q. Scroll up a little, probably two pages up. I want to
23 say it is right there, but I can't see it.

24 A. It says "hearing protection."

25 Q. You understood that to be earplugs, correct?

26 A. Correct.

27 Q. By signing on to this job safety analysis and
28 reviewing it, you knew that one of the things you needed

1 during the outage was going to be earplugs, correct?

2 A. That is correct.

3 Q. In general, in doing a LOTO, a lockout/tagout, is it
4 your understanding the steps in the lockout/tagout need to be
5 done in order?

6 MR. BASILE: Point in time, Your Honor. It is vague
7 as to point in time.

8 MR. REID: Prior to the incident, Your Honor.

9 THE WITNESS: I did not.

10 THE COURT: Overruled.

11 Q. BY MR. REID: Fair enough.

12 On February 6th, 2017, while performing this LOTO,
13 did you understand that the purpose of that fuel filter skid
14 LOTO was to make sure the system was completely depressurized?

15 A. Yes.

16 Q. Did you understand that in your role of the
17 installer, that was part of your responsibility to make sure
18 that system was depressurized?

19 A. Yes.

20 Q. And is it your understanding that part of the
21 verifier's role was to double-check that that system had been
22 completely depressurized?

23 A. That is correct.

24 Q. And then finally, did you understand that the word
25 "supervisor," in many cases Mr. King, was supposed to walk
26 down the LOTO and make sure that system was completely
27 depressurized?

28 A. That would be correct.

1 Q. On the morning of the incident, you were not assigned
2 to the LOTO for the Unit 5 filter skid, correct?

3 A. That is correct.

4 Q. At some point in time, you walked out to the area of
5 the fuel filter skid, correct?

6 A. Correct.

7 Q. Do you know approximately what time that was?

8 A. Approximately probably around 6:30, 6:45.

9 Q. Did someone call you over to assist?

10 A. No.

11 Q. Did you just walk up to the filter skid?

12 A. I was just passing through.

13 Q. Who was it at the filter skid when you first arrived?

14 A. Dan Collins and Albert Palaway.

15 Q. At that point in time did Mr. Palaway ask you to open
16 the vent valves or did Dan Collins?

17 A. I don't recall who did, but one of them asked me to
18 open the vent valves.

19 Q. And at that point in time, did Albert Palaway say to
20 you "I did not complete the venting"?

21 A. I don't recall him saying that.

22 Q. Did Dan Collins say to you that the venting had not
23 been completed?

24 A. I don't recall.

25 Q. And when you opened those vent valves, how long was
26 that venting?

27 A. Thirty to 45 seconds.

28 Q. So not the normal venting for opening those vent

1 valves, correct?

2 A. That is correct.

3 Q. At any point in time while you were there at the skid
4 and you had been asked to hope the vent valves, did anybody
5 say to you you need to watch the gauge and make sure that the
6 gauge on the filter tank goes completely to zero?

7 A. Nobody.

8 Q. After the LOTO had been hung that morning -- strike
9 that. Let me back up a little bit.

10 Do you know when the LOTO was officially hung that
11 morning?

12 A. Not the actual time, no.

13 Q. Is that something that would be available on the
14 daily log sheet in the control room?

15 A. Yes, it would be -- it should be, at least.

16 Q. At any point in time, did you hear any conversation
17 between -- strike that. Let me ask it again.

18 Did you carry a walkie-talkie that morning?

19 A. Yes, I did.

20 Q. Did you hear any conversation between Ju (phonetic)
21 Kim and Mr. Collins about whether the LOTO had been completed
22 or not?

23 A. I did not.

24 Q. Approximately -- strike that.

25 At some point in time, Mr. Kim was going to disable
26 the electricity or the electronics at the field filter skid,
27 correct?

28 A. I am not aware of that.

1 Q. After that short venting, 30 to 45 seconds, was there
2 another venting that you heard?

3 A. Yes, there was. It was shortly after.

4 Q. Do you know where that gas pressure came from?

5 A. It came from the vent line up next to the turbine
6 package.

7 Q. So there is a vent line on the fuel filter skid
8 itself?

9 A. Correct.

10 Q. When you open those vent valves, it vents the fuel?

11 A. That is correct.

12 Q. And then back at the turbine package, there is
13 another vent line, correct?

14 A. That is correct.

15 Q. And do you know if when you open maintenance valves,
16 if there is gas pressure in the system it goes to that vent
17 line?

18 A. Yes.

19 Q. Is it also true that the emergency shutoff where --
20 if you hit the emergency shutoff, it closes one block valve
21 and opens another?

22 A. That is correct.

23 Q. Does that also vent at that place?

24 A. Yes, it does.

25 Q. Do you know if -- and again, you testified that
26 you're not sure if Mr. Kim unplugged the electronics at the
27 system. Do you know if that additional venting you heard was
28 because those two block valves engaged?

1 A. I have no idea.

2 Q. Thank you. As an operator of the system, you were
3 aware that there is a system in the control room that records
4 the pressure in the system for each skid; is that correct?

5 A. Yes.

6 Q. What is that system called?

7 A. It is called a Pi Historian.

8 Q. To your knowledge, can you go in and look at that
9 system and the history of that system and pull up various days
10 and look at the pressures?

11 A. You can go back as far as you want.

12 Q. Did you ever look at the history of the pressures for
13 the date of the incident?

14 A. I did not.

15 Q. Do you know as we sit here today -- strike that.

16 Do you recall that the Pi Historian keeps records of
17 two different pressures -- records of the pressure from two
18 different sensors?

19 A. I wasn't aware of that.

20 Q. Do you know if there is a pressure sensor on the fuel
21 system skid that can be viewed in the Pi Historian?

22 A. Yes, there is.

23 Q. Do you know if there is one in the turbine package
24 that also viewed from the Pi Historian?

25 A. I'm not sure of that one.

26 Q. Have you ever looked at that Pi Historian?

27 A. I have.

28 Q. And what was your purpose of looking at it when you

1 did?

2 A. Doing annual inspections on specific parameters.

3 MR. REID: That is all I have for the moment. Thank
4 you. Thank you, Mr. Delaney.

5 THE COURT: Redirect.

6 MR. BASILE: Yes. Thank you, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. BASILE:

9 Q. Exhibit 349, please.

10 Mr. Delaney, before this incident, when you opened
11 these filters or the vent valves near the fuel filter,
12 right -- Do you remember?

13 A. Yes.

14 Q. And before it workers relied on the sound of that
15 coming out to know when the venting was done, right?

16 A. That is correct.

17 Q. After you open the vents, once that sound stopped,
18 you thought the system had fully vented, right?

19 A. That is correct.

20 Q. Now, Exhibit 412, the training one, please.

21 This LOTO training that was put up there in your
22 examination from -- what is the date of -- can you enlarge
23 that for me, James, please -- 1-21-16, right?

24 A. That is correct.

25 Q. And it was combined with confined space training,
26 right?

27 A. Yes, it looks like it.

28 Q. It was just looking like a PowerPoint slide about the

1 general principals of lockout/tagout; isn't it true?

2 A. I don't recall exactly what it was.

3 Q. But what you do recall is none of that training
4 involved taking you out to that fuel filter skid and saying,
5 look, these are the steps we're using, let's go through it and
6 see what is happening -- none of that covered in this, right?

7 A. You are correct.

8 Q. And it was never brought up that we are going to have
9 a separate energy control procedure for that, does it?

10 A. Never.

11 MR. BASILE: That is all I have.

12 THE COURT: Cross-examination on redirect?

13 MR. REID: Yes, Your Honor.

14 RE-CROSS-EXAMINATION

15 BY MR. REID:

16 Q. Mr. Delaney, the -- did anyone from DG Corporation
17 ever conduct training at the facility?

18 A. Not that I recall.

19 Q. And just to confirm, Mr. Collins was providing you
20 guidance on the date of the February 6th, 2017 LOTO, correct?

21 MR. BASILE: Objection. It is vague as to the term
22 "guidance," Your Honor.

23 THE COURT: Sustained.

24 MR. BASILE: Sustained. Thank you.

25 BY MR. REID:

26 Q. Mr. Collins was showing you what to do when that LOTO
27 was done, correct?

28 A. Basically, yes.

1 MR. BASILE: Objection. Asked and answered, and it
2 is beyond the scope, Your Honor.

3 THE COURT: Overruled. No further inquiry, Mr. Reid.

4 MR. REID: Thank you, Your Honor.

5 Q. BY MR. REID: And what was your answer?

6 A. Basically, yes.

7 MR. REID: Thank you.

8 THE COURT: Mr. Basile?

9 MR. BASILE: At this time, we'd like to play the
10 sworn testimony of Ben Stanley.

11 THE COURT: As to Mr. Delaney, are we concluded?

12 MR. BASILE: I'm sorry. Of course, we are done with
13 Mr. Delaney.

14 THE COURT: Mr. Reid, as to Mr. Delaney?

15 MR. REID: We're done.

16 THE COURT: Are we subject to recall?

17 MR. REID: No, Your Honor.

18 THE COURT: Thank you for your time, Mr. Delaney.
19 You are excused.

20 MR. REID: Your Honor, if we could take a short break
21 before that Ben Stanley testimony is played?

22 THE COURT: Is this going to be as to Exhibit 616 and
23 16A?

24 MR. REID: Yes, Your Honor.

25 THE COURT: Is there anything additional that we
26 didn't discuss prior 1:30?

27 MR. REID: Mr. Forsyth is waiting to testify. My
28 suggest would be that we allow him to testify and then I can

1 review for tomorrow.

2 THE COURT: Is this a live witness, Mr. Forsyth?

3 MR. REID: Yes.

4 THE COURT: Is he in the hall?

5 MR. REID: Yes.

6 MR. BASILE: I prefer to present our case in the
7 manner in which I had indicated. I would like to play
8 Mr. Stanley's deposition.

9 THE COURT: Who is next witness after Mr. Stanley's,
10 Mr. Basile?

11 MR. BASILE: It was to be Mr. Palaway and we've made
12 a concession at the request of defense to put him off until
13 tomorrow, so I was taking then Mr. Forsyth out of order.

14 THE COURT: I see that you did represent last week
15 Mr. Walker, Mr. Delaney, who we just had, Mr. Stanley, and
16 Mr. Forsyth.

17 Based on what we discussed just prior to the jury
18 coming in at 1:30, if we can continue with Mr. Forsyth -- and
19 I only say that Mr. Basile, you have been very good about the
20 Court know ahead of time and counsel know ahead of time who
21 your witnesses are. So you are prepared for Mr. Forsyth
22 because I do see that would be your next witness here today
23 and we do that just based on travel arrangements and so many
24 witnesses coming from out of the area. I believe Mr. Forsyth
25 is not local; is that correct, Mr. Reid?

26 MR. REID: He is in Beaumont, Your Honor.

27 THE COURT: But he is here now?

28 MR. REID: He is now.

1 THE COURT: It is still out of the area, especially
2 considering fuel costs and everything.

3 Mr. Basile, I only say that because Mr. Forsyth was
4 going to be your next witness, so if we could please have him
5 come in next.

6 MR. BASILE: Okay. With all due respect, Mr. Stanley
7 was to be my next witness, but I am going to follow the
8 Court's instruction if you want me to do Mr. Forsyth next.

9 THE COURT: Thank you. It is only because of the
10 objections that were raised just prior to the lunch hour in
11 the discussion we had, Mr. Basile, otherwise the Court would
12 have overruled that.

13 MR. BASILE: Very well. I'll go with Mr. Forsyth.
14 No problem.

15 THE COURT: Thank you for your courtesy, Mr. Basile.

16 MR. BASILE: You're welcome.

17 THE COURT: No rush, Mr. Basile, if you need to get
18 your notes in order. We have time.

19 MR. BASILE: We're ready, Your Honor.

20 THE CLERK: Raise your right hand. Do you solemnly
21 state that the evidence you shall give in this matter will be
22 the truth, the whole truth and nothing but the truth, so help
23 you God.

24 THE WITNESS: I will.

25 THE CLERK: Please be seated.

26 Sir, go ahead and state and spell your name for the
27 record, please.

28 THE WITNESS: Wayne Russell Forsyth, W-a-y-n-e,

1 R-u-s-s-e-l-l F-o-r-s-y-t-h.

2 THE COURT: Mr. Basile, when you're ready.

3 WAYNE RUSSELL FORSYTH,

4 called as a witness by the plaintiffs, was sworn and testified
5 as follows:

6 DIRECT EXAMINATION

7 BY MR. BASILE:

8 Q. Good afternoon, Mr. Forsyth.

9 A. Good afternoon.

10 Q. Mr. Forsyth, I am going ask to you speak into that
11 little microphone so we can all hear you and keep your voice
12 up.

13 Will you do that for me, sir?

14 A. I definitely will.

15 Q. Now, Mr. Forsyth, you were working for Diamond
16 Generating Corporation when Daniel Collins was killed; isn't
17 it true?

18 A. That is correct.

19 Q. You are represented here today by these same lawyers
20 that represent Diamond Generating Corporation; isn't it true?

21 A. Yeah, that is correct.

22 Q. Exhibit 368, please.

23 You were first hired by Diamond Generating
24 Corporation in 2005; isn't it true?

25 A. That is correct.

26 Q. And, again, please keep your voice up. If you need
27 to, lean towards that because there are a lot of people trying
28 to listen to you.

1 A. Sure.

2 Q. That is your picture in the bottom of 368, and can we
3 enlarge that, please.

4 From 2005 to October of 2008, you were an operation
5 specialist for Diamond Generating Corporation?

6 A. That is correct.

7 Q. And as an operation specialist, you worked at various
8 plants that Diamond Generating Corporation had a financial
9 interest in; isn't it true?

10 A. The plants that they operated, yes.

11 Q. Tell us what some of those plants were that Diamond
12 Generating Corporation operated at the time that you were an
13 operation specialist for them?

14 A. They were the Indigo Generation and Lexapro Energy LM
15 6000 power plants.

16 Q. And they were both high-pressured gas power plants?

17 A. Yes.

18 Q. And they're located not too far from here, are they?

19 A. The Indigo plant is close Lexapro plant is in San
20 Diego.

21 Q. And the Sentinel Energy Center also close to here,
22 right?

23 A. Yes.

24 Q. Out on Melissa Lane, I think, right?

25 A. Yes.

26 Q. Diamond Generating Corporation, Exhibit 253, please.
27 You seen Diamond Generating Corporation's Web site,
28 right?

1 A. Yeah.

2 Q. And Diamond Generating Corporation holds themselves
3 out as a worldwide leader in the safe generation of
4 electricity; isn't it true?

5 MR. REID: Objection. Foundation, vague and
6 ambiguous as to time, and relevance, Your Honor.

7 THE COURT: Sustained as phrased.

8 Q. BY MR. BASILE: At the time -- from 2008 up
9 through 2017, Diamond Generating Corporation based on your
10 position with him held themselves out as a worldwide leader in
11 safe production of electricity; isn't that true?

12 MR. REID: Same objection.

13 THE COURT: Sustained.

14 Q. BY MR. BASILE: Do you believe that Diamond
15 Generating Corporation is a worldwide leader in the safe
16 production of electricity?

17 MR. REID: Calls for speculation.

18 THE COURT: Sustained.

19 Q. BY MR. BASILE: Diamond Generating Corporation, at
20 least at times, has a responsibility to produce safe
21 electricity; don't you agree with that?

22 A. Yes.

23 Q. Now, some of the core capabilities as they're called
24 in Diamond Generating Corporation is power plant development,
25 right?

26 A. You mean from ground up development?

27 Q. Yes.

28 A. They usually contract that out.

1 Q. But they put together the development -- they
2 contract it out to build power plants, and that is one of the
3 things they do; isn't it true?

4 A. Yes.

5 Q. By the way Exhibit 253 behind you or the one on the
6 front of the screen, that is the Sentinel Energy Center,
7 right?

8 A. Yes.

9 Q. We can take that down.
10 And another of their core capabilities at Diamond
11 Generating Corporation is asset management?

12 A. Yes.

13 Q. And operations and maintenance?

14 A. Yes.

15 Q. Back to 368 and enlarge it for Mr. Forsyth.
16 From October of 2008 until November of 2017, you were
17 the compliance and safety manager at Diamond Generating
18 Corporation; isn't it true?

19 A. Yes.

20 Q. Your office was in building -- Exhibit 361.
21 Your office was in downtown LA?

22 A. Yes.

23 Q. And this is a picture of that office?

24 A. Yes.

25 Q. And Diamond Generating Corporation occupied the 27th
26 Floor, correct?

27 A. They do now, yes.

28 Q. Ms. Cubos, who is seated over here, she works in that

1 office, right?

2 A. Yes.

3 Q. And she is the director of human resources for
4 Diamond Generating Corporation, right?

5 A. Yes.

6 Q. And she is also the director of human resources for
7 Diamond Generating operations, correct?

8 A. Yes.

9 Q. And she works there, too, in that building?

10 A. She has an office there, yes.

11 Q. Pardon me?

12 A. She has an office there, yes.

13 Q. You can take that down.

14 You were the senior compliance officer at Diamond
15 Generating Corporation in 2017; isn't it true?

16 A. Yes.

17 Q. And you had been the senior compliance officer of
18 Diamond Generating Corporation for about two years before
19 March 6, 2017 when Daniel Collins was killed?

20 A. Yes.

21 Q. Now, you agree that high pressure natural gas can be
22 dangerous?

23 A. Yes.

24 Q. Just from the pressure alone?

25 A. Yes.

26 Q. And in this plant, the Sentinel Energy Center, there
27 would 900 pounds per square inch going through pressure?

28 A. Yes.

1 Q. And a square inch is about this big, right?

2 A. Yes.

3 Q. And the pressure that goes into our homes is only
4 about one half of a pound per square inch; isn't that true?

5 A. Yes.

6 Q. So the pressure going through that Sentinel Energy
7 plant is about 1800 times the pressure that comes through the
8 gas lines in our homes?

9 A. Possibly, yes.

10 Q. It can be flammable, it burns, right?

11 A. Yes.

12 Q. It can explode, high pressure gas is explosive?

13 A. Yes.

14 Q. And it is toxic to breathe, right?

15 A. Yes.

16 Q. And when the plant is drained of this gas, it is
17 released up into the atmosphere, right? Going through the
18 annual shutdowns and actually drain it and release it into the
19 atmosphere or into the sky?

20 A. Very small amounts, yes.

21 Q. It is still released, though, right?

22 A. Yes.

23 Q. And it is the whole amount that is contained in the
24 filter tank and all those lines, right?

25 A. Yes.

26 Q. Now, you agree that corporations that produce and
27 sell electricity must develop safety policies and procedures?
28 You agree with that?

1 A. Yes.

2 Q. And they must train employees on the safety policies
3 and procedures?

4 A. Yes.

5 Q. And that should be done -- the training should be
6 done annually?

7 A. As per regulation.

8 Q. Yeah.

9 A. There are some that are not.

10 Q. As in your own policies, too, right?

11 A. Yes.

12 Q. And they should be done -- any time there is a change
13 in a procedure, a safety procedure, there should be training?

14 A. Unless it is administrative, like a change somebody's
15 name, then most likely, yes.

16 Q. The procedure for shutting down and draining all of
17 that high pressured gas in that fuel filter skid is a pretty
18 serious procedure, right?

19 A. Yes.

20 Q. If there is a change in that procedure, there
21 certainly should be training of the workers concerning the
22 change; isn't it true?

23 A. Yes.

24 Q. Now, corporations that are in the business of
25 producing and selling electricity must also enforce these
26 policies and procedures; isn't it true?

27 A. Yes.

28 Q. And they must periodically review these policies and

1 procedures; isn't it true?

2 A. Yes.

3 Q. And that is to make sure they're working properly,
4 right?

5 A. Yes.

6 Q. And that is to make is that all of the steps and the
7 procedures are being followed properly, right -- those
8 reviews?

9 A. Yes.

10 Q. That is to make sure that the people involved in the
11 steps in shutting down those fuel filter skids and following
12 those procedures is to make sure those people are qualified to
13 do that work; isn't it true?

14 A. Yes.

15 Q. Now, as part of your work as the senior compliance
16 and safety officer at Diamond Generating Corporation, you'd
17 have contacts with employees that work for DGC Ops, right?

18 MR. REID: Vague and ambiguous as to time.

19 MR. BASILE: Up until 2017 while you were --

20 THE COURT: One moment. Let me catch the second part
21 of that question.

22 Please reask the second part of that question.

23 Q. BY MR. BASILE: As part of your work as the senior
24 compliance and safety officer of Diamond Generating
25 Corporation up until November of 2017, you'd have
26 communications and contact with employees who worked for
27 Diamond Generating Corporation; isn't it true?

28 A. Yes.

1 Q. Now, what plants not including the Sentinel Energy
2 Center in the two years before Daniel Collins was killed would
3 you contact the DGC Op employees? What other plants before he
4 was killed would you contact them?

5 A. Indigo Generation, Larkspur Energy, and Mariposa
6 Energy.

7 Q. Where is Mariposa?

8 A. Central California, over by Tracy, California.

9 Q. So you would have contact with ops employees at those
10 three plants, right?

11 A. Yes.

12 Q. And you would contact the environmental health and
13 safety director, right, among other contacts?

14 A. They did not have EHS directors there.

15 Q. Okay. And did you participate in the review of the
16 lockout/tagout procedures at those plants?

17 A. Yes.

18 Q. And you would do like the annual review of those LOTO
19 systems at those plants?

20 A. No. That was the plant manager as the responsible
21 person.

22 Q. But you would review those, I think you just told me?

23 A. I would review that he had done them.

24 Q. It would be important to make sure the plant manager
25 did those annual reviews, right?

26 A. Yes.

27 Q. Now, you know in doing those annual reviews, it would
28 be important for the plant manager to make sure there was a

1 single installer on the LOTO sheets, right?

2 A. I don't know if it was specified in the procedure
3 that it was just one person who could be the installer. I
4 don't know if it was that defined.

5 Q. That is not my question.

6 My question is, sir, is, in doing -- first of all,
7 just in having a lockout/tagout procedure, standards are that
8 there should be a single installer; isn't it true?

9 A. I think the procedure infers it, but I don't think it
10 says it has to be one person.

11 Q. Well, when the procedure infers it, it is inferring
12 that there should be a single installer; isn't it true?

13 A. Yes.

14 Q. And when the procedure infers it, it says it should
15 be a single verifier; isn't it true?

16 A. Yes.

17 Q. Now, if there would be more than one installer on a
18 sheet, that would be a red flag for management to look at,
19 right?

20 A. It would draw attention to it, yes.

21 Q. Yes. And there are also tags that are used in a
22 lockout/tagout, right?

23 A. Yes.

24 Q. And I am referring to Exhibit 260.

25 What is important in this lockout/tagout is that the
26 time when something installed is recorded on the tag, right?

27 A. Yes.

28 Q. And if times are not being recorded, that would be a

1 concern, isn't it true?

2 A. Yes.

3 Q. You agree that workers that are installing LOTOs on
4 like the fuel filter skid should have up-to-date training?

5 A. Yes.

6 Q. And if they don't have up-to-date training, they
7 would be considered an unqualified person to be installing the
8 LOTO, isn't it true?

9 A. I don't know how to answer that because I don't -- I
10 don't know if, let's say, it is done annually, and they missed
11 it by two weeks, I don't know if I would say they were
12 unqualified.

13 Q. Well, if the worker was saying I was never shown or
14 told, nor did I know what valve was what, that would be an
15 unqualified worker, wouldn't it?

16 A. Yes.

17 Q. And if worker was saying no one ever took me out and
18 walked me through and showed how this is supposed to be shut
19 down before I was involved in a LOTO, that would be an
20 unqualified worker, too, wouldn't it?

21 A. Yes.

22 Q. Now, these safety policies and procedures that we've
23 been talking about, they're for the protection of the workers,
24 aren't they?

25 A. Yes.

26 Q. And without having these safety policies and
27 procedures, the danger to the workers would increase, wouldn't
28 it?

1 A. Yes.

2 Q. If these policies and procedures were not being
3 enforced, that would also increase the danger to the workers;
4 isn't it true?

5 A. Yes.

6 Q. And if the annual review was not being done of the
7 safety system, you would agree that that could increase the
8 safety to the workers; isn't it true?

9 A. Yes.

10 Q. And these annual reviews are a very important part,
11 aren't they?

12 THE COURT: Mr. Basile, the last question was to
13 increase safety? The tail end of it, I'm sorry.

14 MR. REID: The question was vague and ambiguous, Your
15 Honor.

16 THE COURT: It was confusing, as well.

17 Q. BY MR. BASILE: Let me try to make it not confusing.
18 These annual reviews of the LOTO systems, if they are
19 not done properly, it would increase the danger to workers;
20 isn't it true?

21 A. The purpose of the review is to catch if there are
22 any errors or problems with the procedure, the form, or the
23 person conducting the work. So there are multiple reasons why
24 they do the reviews.

25 Q. Thank you for that.

26 So if any those things are showing up in the annual
27 review, what you just mentioned -- those items that you just
28 mentioned, that would show that there is a problem with the

1 system, right?

2 A. At some facet, either the training or something, yes.

3 Q. Yeah, if there is a problem with the system, right?

4 A. The process, yes.

5 Q. With the process.

6 And if there is a problem with the process, that
7 could increase the danger to the workers?

8 A. Yes.

9 Q. Now, Exhibit 264, please.

10 THE COURT: Mr. Basile, 260 was a physical item?

11 MR. BASILE: Yes. 260 was a lockout/tagout.

12 For the record, I'll publish it to the jury if I can
13 just hold it up.

14 THE COURT: Sure. You are always welcome to use the
15 Elmo if it is set up.

16 MR. BASILE: I think I'll just walk by, and this will
17 be admitted into evidence in a minute.

18 THE COURT: And that is 264?

19 MR. BASILE: Yes, 264.

20 Q. BY MR. BASILE: These are LOTO sheets, correct?

21 A. Yes.

22 Q. In the upper left-hand corner it says, "Diamond
23 Generating Corporation"; isn't it true?

24 A. Yes.

25 Q. Now, these are the sheets that one would look at for
26 doing that annual audit for review, right?

27 A. Yes.

28 Q. And up to the date when Daniel Collins was killed,

1 are you aware of any evidence that there was an annual review
2 of the lockout/tagout procedure at the Sentinel plant.

3 A. No.

4 Q. Exhibit 147, please.

5 This document is labeled "Standard Operating DGC
6 Operations LLC Safety Policy." Do you see that, sir?

7 A. Yes.

8 Q. What does that LLC mean?

9 A. Limited liability corporation.

10 Q. Were you involved in selecting that for Diamond
11 Generating Operations business form?

12 MR. REID: Vague and ambiguous as to "selecting,"
13 Your Honor.

14 THE COURT: Sustained.

15 If you could elaborate.

16 Q. BY MR. BASILE: Did you have any involvement in
17 deciding to set up Diamond Generating Operations as a limited
18 liability company? Did you have any involvement in that, sir?

19 A. No.

20 Q. Now this document is labeled "Safety Policy,"
21 correct?

22 A. It is lockout/tagout LOTO policy.

23 Q. Yeah, lockout/tagout policy.

24 And you created this as part of your job as a safety
25 and compliance manager for Diamond Generating Corporation;
26 isn't it true?

27 A. Yes.

28 Q. Now, you wrote this safety policy for DGC Ops to be

1 used by DGC Ops; isn't it true?

2 A. Yes.

3 Q. This policy was given to Tom Walker by Audun Aaberg,
4 a vice president at Diamond Generating Corporation; isn't it
5 true?

6 MR. REID: Calls for speculation.

7 THE COURT: Overruled. If you know.

8 THE WITNESS: It was not. It was actually part of
9 the asset management agreement to provide safety procedures to
10 the asset manager with CPV, and for them to review and
11 approve.

12 Q. BY MR. BASILE: So Audun Aaberg provided this policy
13 to Thomas Walker; isn't it true?

14 A. I don't know that. I know that the procedures and
15 policies were submitted to the asset manager.

16 Q. Have you been given a copy of Mr. Walker's deposition
17 to review?

18 A. No.

19 Q. I would like to play for you from Mr. Walker's
20 deposition page 37, line 8, through page 38, line 3.

21 MR. SCHUMANN: Relevance, Your Honor. Objection.

22 THE COURT: Overruled. One moment.

23 It was Mr. Walker's and.

24 MR. BASILE: It is 37-8 and 38-3.

25 THE COURT: Mr. Reid?

26 MR. REID: No objection, Your Honor.

27 THE COURT: Page 37, and then we are going lines 8
28 through --

1 MR. BASILE: It is 38 and 3.

2 THE COURT: Thank you.

3 (Video recording playing.)

4 (Video recording paused.)

5 Q. BY MR. BASILE: Mr. Forsyth, these policies are for
6 the protection of the workers, right?

7 A. Yes.

8 Q. Let's talk about some of the LOTO sheets that were
9 used with Sentinel Energy Center. Exhibit 264, please.

10 This is page 1 of many.

11 But every LOTO sheet that was used at the Sentinel
12 Energy Center from the time it opened until Daniel Collins was
13 killed had Diamond Generating Corporation at the top of it;
14 isn't it true?

15 MR. REID: Calls for speculation.

16 THE COURT: If you know, Mr. Forsyth.

17 THE WITNESS: I'm not a hundred percent sure.

18 Q. BY MR. BASILE: What percent sure are you?

19 A. I never paid attention to it.

20 Q. Now, you were shown LOTO sheets that were used at the
21 Sentinel Energy Center at your deposition; isn't it true?

22 A. Yes.

23 Q. 145, please. And this is a typical LOTO sheet that
24 was used at the Sentinel Energy Center; isn't it true?

25 A. Yes.

26 Q. Exhibit 259, please.

27 THE COURT: That last one was Exhibit 145.

28 MR. REID: That is correct, Your Honor.

1 THE COURT: On the exhibit list that Court has
2 provided by counsel, it says "Reserved."

3 MR. BASILE: We'll make a note of that.

4 THE COURT: If we could have a description. Remember
5 the court clerk is typing everything into the minutes as to
6 what each exhibit is, so if we can, it says "reserved."

7 Q. BY MR. BASILE: Exhibit 259, please.

8 Now, you have reviewed the steps in the LOTO sheet
9 that was being used; isn't it true?

10 MR. REID: Objection. Vague and ambiguous as to
11 time.

12 MR. BASILE: Up until -- I'll rephrase, Your Honor.

13 Q. BY MR. BASILE: Up until the time Daniel Collins was
14 killed, you may have reviewed the actual LOTO steps that were
15 being used at the Sentinel Energy Center; isn't it true?

16 A. The steps to lock out the gas system? They have
17 multiple LOTOs.

18 Q. Okay. Take that down. Mr. Forsyth, I just want you
19 to answer this question.

20 Before Daniel Collins was killed, you may have
21 reviewed the actual steps of the LOTO sheets that were being
22 used to shut down the fuel gas system at the Sentinel Energy
23 Center; isn't it true?

24 MR. REID: Same objection, Your Honor.

25 THE COURT: Mr. Basile, I noticed in the last two
26 questions, and I will check the transcript to be sure, you're
27 question, you -- you are prefacing it with "you may have," and
28 so I'm not sure how the witness is to respond. It is either

1 he did or he didn't. I am sorry. I am curious.

2 MR. BASILE: It will all become clear in a moment,
3 Your Honor.

4 THE COURT: So sustained as to the objection, but you
5 have some leeway.

6 Q. BY MR. BASILE: You did review some of the steps that
7 were used in the LOTO sheet -- LOTO sheets that were being
8 used at Sentinel Energy Center; isn't it true?

9 MR. REID: Same objection, Your Honor. Vague and
10 ambiguous as to time.

11 THE COURT: Sustained as phrased. Mr. Basile, put it
12 the time period in, please.

13 Q. BY MR. BASILE: Before Daniel Collins was killed, you
14 reviewed some of the LOTO steps that were actually used in the
15 LOTO sheets; isn't that true?

16 A. When I look at the LOTO sheets because I'm not a
17 qualified person at the site, I'm looking more at dates,
18 signatures, times. I'm not actually looking at the exact stat
19 because I don't know the sequential order of those isolate
20 items.

21 Q. My question is, before Daniel Collins was killed, you
22 actually looked at the steps that were being used on the LOTO
23 sheet; isn't it true?

24 A. Yes.

25 Q. And you did that more than once?

26 A. Yes.

27 Q. And you were the safety and compliance officer at
28 Diamond Generating Corporation at the time?

1 A. Yes.

2 Q. Now, in 2015 as the Diamond Generating Corporation
3 safety and compliance officer, you would communicate with
4 someone that worked at the Sentinel Energy plant two to three
5 times a month in 2015; isn't it true?

6 A. Yes, I guess. I don't know who.

7 MR. BASILE: Well, this might help you.

8 Your Honor, we'd like to play page 28, lines 1
9 through 10 of Mr. Forsyth's sworn testimony.

10 THE COURT: Page 28, lines --

11 MR. BASILE: It is 1 through 10.

12 THE COURT: Wayne Russell Forsyth, page 28, lines 1
13 through 10. Please proceed.

14 (Video recording playing.)

15 (Video recording paused.)

16 Q. BY MR. BASILE: Now, Mr. Forsyth, in 2016, the amount
17 of communication that you had with the workers the at Sentinel
18 Energy Center increased; isn't it true?

19 A. Yes.

20 Q. And in 2016, you would e-mail Sentinel Energy Center
21 as the safety compliance officer about once a week; isn't it
22 true?

23 A. Yes.

24 Q. You would contact a woman out there by the name of
25 Lily Cardenas; isn't it true?

26 A. Yes.

27 Q. And she was the safety person at Sentinel Energy
28 Center?

1 A. She was the environmental health and safety
2 coordinator.

3 Q. And that is environmental health and safety, right?

4 A. Yes.

5 Q. And she was the safety person at the Sentinel Energy
6 plant, right?

7 A. Yes.

8 Q. And you were e-mailing her about once a week; isn't
9 it true?

10 A. Yes.

11 Q. In the 2016 time period?

12 A. Yes.

13 Q. Exhibit 52, please. Now, you know -- enlarge the top
14 there, please.

15 This is an e-mail that you sent, correct?

16 A. Yes.

17 Q. This was sent in January, 18th of 2017; is that
18 right?

19 A. Yes.

20 Q. You were sending this to the -- the "to" line on
21 there is various plant managers of Diamond Generating
22 Corporation's operations, right?

23 A. Yes.

24 Q. And included in this is Lily Cardenas, you see her
25 name there?

26 A. Yes.

27 Q. And this was sent by yourself as the Diamond
28 Generating Corporate Safety and Compliance Executive, right?

1 A. Yes.

2 Q. And you were sending them about a utility worker who
3 has died, right?

4 A. Yes.

5 Q. And this concerned the safety procedure, right --
6 safety procedure concerning space protocols, right?

7 A. It was a heads-up for what had happened in the
8 process, yes.

9 Q. Do you know that there were over 46,000 documents
10 produced by Diamond Generating Corporation to us in this case?

11 A. No.

12 MR. REID: Argumentative.

13 THE COURT: Sustained.

14 MR. BASILE: I'm just asking if he knew.

15 THE COURT: Sustained as to argumentative and
16 relevance.

17 MR. BASILE: Exhibit 54, please.

18 THE COURT: Mr. Basile, we'll resume with Exhibit
19 Number 54, but we're going to take our afternoon recess.

20 Members of the jury, we're going to take our
21 afternoon break. Please do not discuss the facts of the case
22 or with any of the parties involved. We will see you back at
23 3:10.

24 What you could discuss with each other is if
25 3 o'clock is an appropriate afternoon break in the morning.
26 We go from 10:00 to 12:00, and so we've been breaking about
27 11:00.

28 If this were a criminal department, we would be

1 starting at 9:00 and going to noon and then 1:30 to 4:10 or
2 4:15, something like that.

3 Because this is a civil department, we have calendar
4 in the morning, and we have other things that the Court needs
5 to do. Our schedule is a little bit different. So since we
6 start at 1:30, and we are only going until about 3:30, 3:45,
7 let me know. That you can discuss amongst yourselves. If you
8 would like an earlier break, perhaps 2:30 or 2:45, just let us
9 know and you can set your schedule with that and we'll take a
10 break according to that, otherwise we are just going to break
11 at 3 o'clock and you will probably just come back for 20 or
12 30 minutes after the break. I will inquire after the break.
13 We'll see you at 310.

14 (Proceedings out of the presence of the jury as follows:)

15 THE COURT: We're now outside the presence of the
16 jurors.

17 Mr. Forsyth, please return at 3:10, and we'll
18 continue with your testimony this afternoon.

19 Counsel, we will see you 3:10. If there is anything
20 you want to discuss, we can discuss after we are concluded
21 with evidence for today.

22 (Recess.)

23 THE COURT: Back on the record.

24 Mr. Basile, you left off on Exhibit 54. I don't know
25 if you have that in your notes.

26 MR. BASILE: Got it, Your Honor.

27 THE COURT: We are probably go about another
28 30 minutes, so probably until about 3:40. We will look for a

1 natural breaking point. So if you are in the middle of an
2 exhibit --

3 MR. BASILE: I'm going to try to finish with him in
4 20 minutes. If you can give me like five or ten.

5 THE COURT: Of course, that is what I am telling you.
6 I'm saying 3:40, but if you are in the middle of an exhibit,
7 we are not going to just let the --

8 MR. BASILE: No, I am going to try and finish with
9 him.

10 THE COURT: Okay. So we can let the jury back in.
11 Back on the record in Collins versus DG Corporation.

12 By a show of hands, I'll ask for 2:30, 2:45 or
13 3 o'clock when you would like to take your break.

14 Any takers for 2:30, which would be one hour after we
15 start at 1:30? That is four.

16 2:45? We have one.

17 3 o'clock? There is 15 of you, so we four plus one,
18 so that should be ten people for 3 o'clock.

19 Show of hands? Okay. It is more than four.

20 We'll do our afternoon breaks at 3 o'clock and then
21 we will probably go another 30 minutes or so after we return
22 from the break.

23 Mr. Basile, you left off on Exhibit 54, so whenever
24 you are ready.

25 MR. BASILE: Thank you, Your Honor.

26 Q. BY MR. BASILE: Exhibit 54, please.

27 Mr. Forsyth, I want to show you another e-mail that
28 showed up in the documents that we produced with your name on

1 it. If we can go to the top, please.

2 Where is your name on there -- excuse me. I must
3 have the wrong one. I'm sorry, Your Honor.

4 Exhibit 239.

5 Now, you are familiar with Michael Kramer, who he is,
6 right?

7 A. Yes.

8 Q. And Michael Kramer was the vice president of
9 operations and maintenance of Diamond Generating Corporation;
10 isn't it true?

11 A. Yes.

12 Q. You see the subject of this e-mail in Exhibit 239.
13 You see the subject is "Event Reports."

14 Do you see that, sir?

15 A. Yes.

16 Q. And an event report is if something happens at the
17 plant, Mr. Kramer wants it reported to him as a particular
18 type of event, right?

19 MR. REID: Foundation, relevance.

20 MR. BASILE: I'll lay the foundation, Your Honor.

21 THE COURT: Overruled.

22 If you know what Mr. Kramer likes, Mr. Forsyth.

23 Q. BY MR. BASILE: You don't know what an event report
24 is?

25 A. I do know what an event report is.

26 Q. What is an event report?

27 A. Typically it is called "significant event report."

28 But if something happens to the plant, like a plant

1 delay of less generation or a plant trip or if you had a
2 breakdown of equipment or things like that.

3 Q. I apologize to everyone. I forgot to wear my hearing
4 aides today. Could you say that again? What does an event
5 report apply to?

6 A. It applies to anything in the plant, such as
7 operations, issues, environmental issues, safety issues.

8 Q. And Mr. Kramer by this e-mail on October 4th of 2016
9 was sending out at least an attachment about event reports --
10 you would agree with that, right?

11 A. It does show there is an attachment, yes.

12 Q. Now, Exhibit 243, please.

13 I'd like to -- this is also an e-mail that -- first
14 at the top so we know what we're talking about, please. This
15 is an e-mail dated -- and I think this has already been
16 stipulated to be admitted, Your Honor. This is Exhibit.

17 This is an e-mail dated September 1st 2016 from Adam
18 Christodoulou to various recipients concerning safety
19 procedures; isn't it true?

20 A. It looks like it is just sent to one person.

21 Q. Okay. Go to the bottom of this, please, that
22 portion. Can you page down, please. Go to the bottom of this
23 exhibit. Yes. If you can enlarge the whole thing, that would
24 be great.

25 This is an e-mail -- the bottom half of this e-mail
26 chain is an e-mail dated August 8th, 2016 from Michael Kramer,
27 correct?

28 A. Yes.

1 Q. And it is to Tom Walker and other plant managers;
2 isn't it true?

3 A. Yes.

4 MR. REID: Objection, Your Honor. Relevance,
5 foundation.

6 MR. BASILE: It is been stipulated to, Your Honor.

7 THE COURT: Tom Walker and other plant managers, is
8 that the last part of the question?

9 MR. BASILE: Yes.

10 MR. REID: And further, Mr. Forsyth is not mentioned
11 in this e-mail. I don't know that he is going to have any
12 information about it.

13 THE COURT: Overruled. But, again, as to the
14 previous one as to -- Mr. Forsyth can answer if he knows what
15 other people's desire is or what they expect.

16 Q. BY MR. BASILE: Right.

17 You worked in the Diamond Generating corporate office
18 with Michael Kramer, right?

19 A. Yes.

20 Q. And Michael Kramer and others would send out e-mails
21 to the plant managers; isn't that correct?

22 MR. REID: Lacks foundation, speculation.

23 Q. BY MR. BASILE: Mr. Forsyth, based on your experience
24 there as a safety compliance officer, you know --

25 THE COURT: I'm sorry. Mr. Basile, one moment.

26 As to the last couple of questions, Mr. Basile, I am
27 going to overrule the objections, but Mr. Forsyth can answer
28 if he knows.

1 But for example, the last question was if Mr. Kramer
2 would send out e-mails to the plant managers. If Mr. Forsyth
3 happened to be cc'd on those, if he knows, but otherwise, if
4 he doesn't know, he will answer accordingly.

5 Q. BY MR. BASILE: Just a fundamental foundational fact,
6 you know as being one of the cooperative executives at Diamond
7 Generating Corporation that Michael Kramer would send e-mails
8 to the plant managers; isn't it true?

9 A. Yes.

10 Q. In this e-mail -- I mean you have read probably lots
11 of e-mails from Mr. Kramer in your experience as a safety and
12 compliance officer, isn't it true?

13 A. A few, yes.

14 Q. And this e-mail which has been stipulated as admitted
15 between the party concerns the subject matter of safety
16 procedures; isn't it true?

17 A. That is the subject line, yes.

18 Q. Right.

19 This e-mail indicates that Mr. Kramer was asking the
20 plant managers the status of safety procedures. Wouldn't you
21 agree with that?

22 A. That is what it says in the e-mail, yes.

23 Q. Thank you. Let's page up a little to that section at
24 the top, yes.

25 Now, you know that Tom Walker was the manager of
26 Sentinel Energy Center, right?

27 A. Yes.

28 Q. And he was the manager in August of 2016; isn't it

1 true?

2 A. Yes.

3 Q. And in this e-mail, the "Mike" that is being referred
4 to is Michael Kramer; isn't it true?

5 MR. REID: Lacks foundation, calls for speculation.

6 Q. BY MR. BASILE: If you know?

7 THE COURT: Overruled.

8 Mr. Forsyth, if you know from looking at Exhibit 243.

9 Q. BY MR. BASILE: From looking at the whole exhibit?

10 A. Can I see the page above that?

11 Q. Sure.

12 A. Yes. So that indicates Tom Walker sent that to Mike
13 Kramer.

14 MR. BASILE: It is already stipulated this is
15 admitted; is that correct, Your Honor? I think it is on the
16 admitted list.

17 THE COURT: It is on the exhibit list. There are no
18 grounds for objection.

19 MR. BASILE: Thank you, so we'll move on then.

20 Q. BY MR. BASILE: Exhibit 216, please.

21 Now, Diamond Generating Corporation -- page down,
22 please -- would receive daily reports from the Sentinel Energy
23 facility; isn't it true?

24 A. I don't get those reports.

25 Q. That is not what I'm asking.

26 But you know that the Sentinel Energy Center would
27 send daily reports to Diamond Generating Corporation; isn't it
28 true?

1 A. If that is one of the reports, then I would say yes.

2 Q. Okay. Thank you. Let's talk about asset management.

3 You agree that corporations in the business of
4 producing and selling electricity must pay as much attention
5 to safety as they do production?

6 A. Yes.

7 Q. Now, as part of Diamond Generating asset management
8 power plants -- when Diamond Generating, when they are the
9 asset manager of a plant would be responsible for safety;
10 isn't that true?

11 MR. REID: Objection. Lacks foundation, Your Honor.

12 THE COURT: Overruled.

13 THE WITNESS: The asset manager, yes.

14 Q. BY MR. BASILE: Now, Diamond Generating hired Tom
15 Walker as a plant manager, correct?

16 A. Yes.

17 Q. They gave him the responsibility to implement safety
18 at the Sentinel Energy Center; isn't it true?

19 A. Yes. The asset manager was responsible for safety.

20 Q. And they gave them safety procedures that you
21 created; isn't it true?

22 A. That they approved, yes.

23 Q. That they give them performance reviews each year;
24 isn't it true?

25 MR. REID: Calls for speculation.

26 THE COURT: Overruled.

27 If you know, Mr. Forsyth.

28 THE WITNESS: I assume so. I had performance

1 reviews.

2 Q. BY MR. BASILE: To the best of your knowledge, the
3 experience of being an executive at Diamond Generating
4 Corporation, they were doing performance reviews of Mr. Walker
5 annually; isn't it true?

6 MR. REID: Calls for speculation.

7 THE COURT: Mr. Forsyth, just answer questions to
8 your personal knowledge. If you don't know, please don't
9 speculate or guess.

10 THE WITNESS: I don't know.

11 Q. BY MR. BASILE: Now, there were quarterly meetings at
12 the plant managements L.A. office; isn't it true?

13 MR. REID: Calls for speculation, lacks foundation.

14 THE COURT: It's overruled.

15 If you know, Mr. Forsyth.

16 THE WITNESS: I was not included in those meetings.

17 Q. BY MR. BASILE: But you are aware of them?

18 A. I don't know the frequency how often they had them.

19 Q. But they had meetings at corporate headquarters with
20 the plant managers; isn't it true?

21 A. Yes.

22 Q. There were e-mails throughout the fall about safety
23 procedures -- we looked at them right -- between Michael
24 Kramer and the plant managers; isn't it true?

25 A. That e-mail, yeah.

26 Q. Is it your position that Diamond Generating
27 Corporation had nothing do with safety at the Sentinel Energy
28 Center?

1 MR. REID: Objection. Calls for a legal conclusion,
2 expert testimony, calls for speculation.

3 THE COURT: Sustained as phrased.

4 Q. BY MR. BASILE: You're the safety and compliance
5 officer at Diamond Generating Corporation; isn't that true?

6 MR. REID: Argumentative.

7 MR. BASILE: At the time this happened.

8 THE COURT: Wait a moment. Sustained as to the
9 previous question as phrased. You may lay a foundation,
10 Mr. Basile, and get from point A to point B if you'd like.

11 Q. BY MR. BASILE: Thank you. Now, as the safety
12 compliance officer at the time of this incident, and knowing
13 what I have just reviewed with you, that Diamond Generating
14 Corporation hired Mr. Walker, they provided him a job
15 description that included safety, they did annual reviews, you
16 provided safety procedures, you provided -- you reviewed the
17 LOTO sheets, is it your position that Diamond Generating
18 Corporation had nothing to do with safety at the Sentinel
19 Energy Center?

20 MR. REID: Same objections, Your Honor.

21 THE COURT: Sustained.

22 Q. BY MR. BASILE: Have you reviewed Mr. Walker's
23 deposition?

24 A. No.

25 Q. Do you know who -- I think you said that the asset
26 manager, your position is, I am not saying it is mine, but
27 your position is is that the asset manager is responsible for
28 safety at the plant?

1 A. Under the asset management agreement, we have to
2 provide the safety procedures for them to review and approve.

3 Q. My question is, sir, is it your testimony to this
4 jury that the asset manager had the responsibility for safety
5 at the Sentinel Energy Center?

6 A. Yes.

7 Q. I would like to play Mr. Tom Walker's deposition,
8 page 101, line 20, through 104, 12.

9 THE COURT: That would be Mr. Walker's?

10 MR. BASILE: Yes, sir.

11 THE COURT: For what purpose?

12 MR. BASILE: To cross-examine. It is a statement of
13 another witness from more than 150 miles. It is to confront
14 the witness with his testimony that he just said.

15 THE COURT: Regarding the asset manager?

16 MR. BASILE: Yes. 101-20 through 104, line 12.

17 You may play it.

18 (Video recording playing.)

19 (Video recording paused.)

20 Q. BY MR. BASILE: Now, Mr. Forsyth, Paul Sheppard was
21 are the vice president of asset management at Diamond
22 Generating Corporation where Daniel Collins was killed; isn't
23 it true?

24 A. Yes.

25 Q. Now, do you know the root cause analysis that was
26 done in this case?

27 A. I saw part of it, yes.

28 Q. And it was done by Mr. Stanley, right?

1 A. Ben Stanley, yes.

2 Q. Exhibit 34, please.

3 Now when there is a fatality at Sentinel Energy
4 Center, that is a pretty serious event, that is as serious as
5 it gets; isn't it true?

6 A. Yes.

7 Q. You were the Diamond Generating Corporation safety
8 and compliance executive at the time this happened; isn't it
9 true?

10 A. Yes.

11 Q. And Ben Stanley was selected by Paul Sheppard to do
12 this root cause analysis; isn't it true?

13 MR. REID: Lacks foundation, calls for speculation.

14 MR. BASILE: If he knows.

15 THE COURT: Overruled.

16 If you know.

17 THE WITNESS: I don't know who put Ben Stanley in
18 that spot.

19 Q. BY MR. BASILE: You reviewed that root cause
20 analysis?

21 A. Yes.

22 Q. And you agree with everything in it, don't you?

23 A. Everything, I don't remember. It was a long time
24 ago.

25 Q. Long time ago.

26 How long ago did you last review this root cause
27 analysis?

28 A. Probably right before it was submitted.

1 Q. So you haven't looked at this root cause analysis
2 since April of 2017?

3 A. To the best of my knowledge, I don't remember.

4 Q. Do you know what the items of major concern that
5 Mr. Stanley listed in the report?

6 A. I don't remember right at this point.

7 Q. Do you know that the -- that Mr. Stanley -- have you
8 read his deposition?

9 A. No.

10 Q. Has anyone told you other than your lawyers that
11 Mr. Stanley came to the conclusion that it was a system's
12 failure at the plant?

13 A. I don't recall that.

14 Q. Do you recall that Mr. Stanley has testified in his
15 deposition that the system's failure contributed to the death
16 of Daniel Collins?

17 A. Again, I don't remember -- you know, I can't recall
18 what I read that long ago.

19 Q. You were the safety compliance officer at Diamond
20 Generating Corporation when Daniel was killed?

21 A. Yes.

22 MR. BASILE: Your Honor, I have no further questions.

23 THE COURT: Cross-examination, Mr. Reid or
24 Mr. Schumann?

25 MR. REID: We will, Your Honor, but it will take much
26 more than five minutes.

27 THE COURT: Subject to recall for cross, or did you
28 want to call your defense case?

1 MR. REID: Recall for cross.

2 THE COURT: Recall for cross.

3 Do you want to begin with your cross-examination? We
4 probably have five, ten minutes.

5 MR. REID: We'd prefer not to at this point, Your
6 Honor.

7 THE COURT: That is fine. Thank you, Mr. Forsyth.
8 We'll have you come back tomorrow morning to conclude your
9 testimony. If you could come back please at five minutes to
10 10:00 and get you situated and continue with your
11 cross-examination.

12 THE WITNESS: Okay.

13 THE COURT: Thank you for your time.

14 Members of the jury, we're going to conclude for the
15 day. We're going to stay behind for a little bit. Thank you
16 again for your time today. Remember we have a short week,
17 we're back tomorrow. And then as promised, you're on your own
18 Thursday and Friday and we will continue next week. So we
19 will see you tomorrow at 9:59 a.m.

20 Again, please remember to not discuss the facts of
21 the case or to any parties involved or with each other or with
22 anyone else. Thank you.

23 (Proceedings out of the presence of the jury as follows:)

24 THE COURT: We're outside of the presence of the
25 jury. They've gone home for the day. I know there are a
26 couple of things for us to discuss. Let's first do
27 housekeeping, and we are going to go through slowly and take
28 care of the exhibits.

1 So this morning we went ahead and admitted
2 Exhibit 60. So what we have next is 614 and 614A were
3 admitted on June 29th, however we received the copies late
4 this morning. We have those now.

5 Then we have 615 and 615A redacted Tom Walker's
6 deposition, the video and the transcript. That will be deemed
7 admitted.

8 616 has not come in yet.

9 We next have 368 that was introduced this afternoon.

10 If there are any objections, just let me know as I am
11 going through this, Mr. Reid or Mr. Schumann, otherwise I will
12 have them deemed admitted.

13 MR. REID: I don't remember all of them off the top
14 of my head. So 368?

15 THE COURT: Yes. And I believe you also used it as
16 well in your -- I think you used it in your cross-examination,
17 but I think you said you had a slightly different version of
18 it. No, you referenced it. It is the who is who at DGC and
19 DG Ops.

20 MR. BASILE: It is stipulated to, also.

21 MR. REID: Yeah, no objection, Your Honor.

22 THE COURT: 368 is admitted.

23 We next had Exhibit 5.

24 MR. REID: No objection, Your Honor.

25 THE COURT: That will be deemed admitted.

26 We next had Exhibit 49, and that is SMP-3 for
27 Sentinel signed by Walker on 3-14-17.

28 MR. BASILE: Stipulated.

1 MR. REID: There is a black-and-white version. We do
2 have a better colored version. I am trying to remember which
3 one it was. But stipulate to 49.

4 THE COURT: It will deemed as admitted.

5 Next we have Exhibit 9.

6 MR. BASILE: Stipulated to, Your Honor.

7 THE COURT: It is a LOTO sheet from 3-6-17, the date
8 incident.

9 MR. REID: No objection.

10 THE COURT: Next we have Exhibit 344, a photo of
11 Daniel with Wagner.

12 MR. REID: No objection.

13 THE COURT: That will be deemed admitted.

14 We next have 301. It is photo of Daniel looking out
15 to sea.

16 MR. REID: No objection.

17 THE COURT: Deemed admitted.

18 Next have 18. This is -- the description says
19 "Incident of post photo of ladder near skid with circle around
20 gauge."

21 MR. REID: No objection, Your Honor.

22 THE COURT: Then we have exhibits that were discussed
23 during your cross-examination, Mr. Reid. It is 412.

24 MR. BASILE: No objection, Your Honor. It is already
25 stipulated to.

26 THE COURT: Thank you, Mr. Basile. It is a record of
27 a confined space training. That will be deemed admitted.

28 However as we are deeming them admitted, I noted this

1 last week, again, just for the transcript, but some of these
2 exhibits are multiple pages. So I'm only -- portions of only
3 certain pages are being shown. So for appeal purposes, as to
4 what was actually introduced and published to the jury, it may
5 be a 20-page exhibit, but perhaps the party is only shown
6 page 10, and the Court is doing its best not to interrupt.

7 Some parts of the record, I know we were pointing the
8 laser pointer around and saying "here" or "there," and there
9 was no reference to what was being pointed to the exhibit.
10 The Court stayed quiet. It is your record ultimately.

11 But on the exhibit, unless you tell me differently,
12 is it going to be the entire exhibit then?

13 MR. BASILE: Yes, sir.

14 MR. REID: Exhibit 264 is probably the most egregious
15 example. It is a 300 page document. I'm picking out specific
16 pages. There are probably 12 or 13.

17 THE COURT: How many pages is 412 in the exhibit
18 list?

19 MR. REID: Three or -- I thought that was pretty
20 small.

21 THE COURT: The Court is operating off of hard
22 copies. If we were in a different department, the Court would
23 have asked for you to provide a PDF version. Perhaps I will
24 revise my rules come the new year. But the PDF version would
25 be easier for the Court to scroll through, so when I ask you
26 to it is because -- otherwise, I'm going to have to go through
27 all of your binders.

28 MR. REID: It would be easier for us to provide you

1 PDF versions. I have them.

2 THE COURT: If you would like to provide the Court a
3 courtesy copy, if you already have the exhibits saved on
4 the --

5 MR. REID: I have them here on the hard drive.

6 THE COURT: A flash drive would be much appreciated,
7 however whichever side would like to do it. Because I have
8 four boxes of lodged transcripts, and then there is one, two,
9 three, four, five exhibit binders back there. When I am
10 asking, it is not because I don't want to reference it, it is
11 a lot of material.

12 MR. REID: Your Honor, if I might, they need to be
13 correct with some exhibit issues, like 145. Maybe they can do
14 it. We're happy to do it make, but I want to make sure we
15 have an accurate copy for you.

16 THE COURT: If you don't have an electronic version,
17 don't worry about it. If you don't and you would like to
18 provide a courtesy copy to either side, but you don't have to
19 go out of your way and make one if you don't have one.

20 MR. REID: Your Honor, I can do it two ways. It is a
21 lot for just a little flash drive. We can have a link sent to
22 your clerk to download it if that is preferable.

23 THE COURT: That is fine.

24 MR. REID: Whatever make it is easier for you, Your
25 Honor.

26 THE COURT: It is fine. Thank you, though, Mr. Reid.
27 Exhibit 412 will come in its entirety. You mentioned
28 it was three pages, or did I hear correctly.

1 MR. REID: Yes, Your Honor.

2 THE COURT: So 412 will be deemed admitted.

3 We next have Exhibit 176, Mr. Reid, and that was
4 during your cross.

5 MR. REID: That is the better version of the S- --

6 MR. BASILE: No objection, Your Honor.

7 THE COURT: Looks like 176 was already admitted last
8 week.

9 And next we have 264.

10 MR. REID: That is the 300-pager that I was referring
11 to, Your Honor.

12 THE COURT: So 264 is described as an annual outage
13 LOTO sheet from February 3rd, 2004 -- '14 to March 6, 2017.

14 I do recall this exhibit. And this is one that was
15 just -- I think I referenced page 8 was one of the pages we
16 started on. Again, it is your record, let us know what you
17 would like to introduce.

18 MR. BASILE: Your Honor, on 264, we can narrow that
19 down and we will do it. I think everyone in this room -- of
20 course, I never know what I might hear there -- but I think
21 everyone in this room, we want each LOTO sheet for each year
22 related to the annual shutdowns. So there are eight a year.
23 So from 2014 up until March of 2017 -- the expert is going to
24 be testifying about it tomorrow -- but those are all those and
25 the LOTO tags that I held up that are related to those. That
26 is all that needs to be in 264.

27 I apologize that it somehow got up to 300 pages. I
28 don't think it need to be that high. What I would like is,

1 I'll have Mr. Sullivan meet and confer and see if we can make
2 264 just related to the LOTO sheets of those eight units over
3 that period of time and the tags that go with them for the
4 Exhibit 264.

5 THE COURT: So 264 was introduced by defense today.
6 We're going to reserve it being admitted.

7 If the parties could reach a stipulation on which
8 pages can come in, let the Court know, and we will deal with
9 it at the close of evidence or sooner if you like. We just
10 need to know. Because if you have ever served on a jury, when
11 you go back, there is a sticker on the exhibit, we need to
12 know what to mark. If you want to mark all 300, then we will
13 mark all 1 through 300 and put a sticker on the back of that.
14 If it is going to be less than that, then we will pull out the
15 pages. We need to know for your records.

16 So 264 will not be admitted at this time. It will be
17 at some point. We just need to know what the final version
18 will be.

19 MR. SULLIVAN: Right. I'm looking at it right now.
20 It looks like it has the LOTO sign-in sheets included, so we
21 can probably reduce it.

22 MR. BASILE: We'll work on it, Your Honor.

23 THE COURT: Mr. Reid, is that agreeable?

24 MR. REID: Yes, Your Honor. I need to go through
25 this and just make sure I don't need those LOTO sign-in sheets
26 for anything.

27 THE COURT: And I'm inquiring of you because you
28 introduced it today. I just want to make sure that whatever

1 you intended to come in is ultimately what is submitted.

2 MR. SULLIVAN: I think the Court's idea of putting it
3 on thumb drive and just make that available.

4 THE COURT: No. You have seen the courthouse. There
5 is no laptop or anything like that back there. It is a whole
6 separate thing. Thank you, though, for that. I meant more
7 for the Court.

8 MR. SULLIVAN: They are already in the binders.

9 THE COURT: So 264 we are going to reserve. It was
10 introduced today, but it won't be admitted.

11 So 502 would be next, JSA roster U3.

12 MR. REID: That was our introduction, Your Honor.

13 THE COURT: That is --

14 MR. REID: I believe it is stipulated to
15 admissibility.

16 MR. BASILE: It is not.

17 THE COURT: There is an objection as to relevance,
18 and that will be overruled.

19 So it will be the whole exhibit?

20 MR. REID: Yes, Your Honor.

21 THE COURT: Is this the 300 page exhibit?

22 MR. REID: No.

23 THE COURT: So 502 will be deemed admitted.

24 The others are -- I think 368 is already in. Oh, 368
25 is a new one. Oh, we already discussed that at the beginning,
26 so that is already admitted.

27 253 is the next one. That one was new for today.

28 That is CPV Web site photo with the Sentinel Energy Center.

1 MR. REID: Your Honor, the problem with all of those
2 types of exhibits is we don't know when they pulled them off
3 of the Web site. We don't know if it is post-incident or if
4 it is preincident. I have inquired a number of times and have
5 gotten no response. If they are post-incident, then they lack
6 foundation and there is no relevance to the incident.

7 THE COURT: Mr. Basile, do you know when they were
8 taken?

9 MR. BASILE: Do I know when those pictures were
10 taken?

11 No. I know what the witness testified to, Your
12 Honor. He recognized the photograph as the Web site. He
13 recognized what was contained on it. He finally came around
14 there and admitted that what is on there is that there is a
15 worldwide leader in safe production of electricity, so I'll
16 submit it, Your Honor.

17 THE COURT: As to the exhibit, 253 will be admitted.
18 I think the record will reflect in terms of the line of
19 questions regarding that exhibit, several of the questions
20 were -- the objections were sustained.

21 I understand there was leading there, but that is
22 kind of -- I think every corporation tries to claim that there
23 a worldwide leader in something. Those were sustained as
24 phrased. But the exhibit will be deemed admitted, so that is
25 253.

26 MR. BASILE: It is admitted?

27 THE COURT: Yes.

28 MR. BASILE: Thank you.

1 THE COURT: Just careful with the paraphrasing of the
2 witness' answer with that, Mr. Basile. You may want to look
3 at the transcript.

4 MR. BASILE: The only thing about that, Your Honor,
5 every single Diamond Generating Corporation witness, Sheppard
6 is going to testified to, has asserted that. I'm not just
7 pulling it off the Web site.

8 MR. REID: And I made those objections at the time of
9 the depositions, Your Honor, that we had no clue when they
10 were taken.

11 THE COURT: So as to the exhibit, that is overruled
12 and admitted. I was just making comment on the line of
13 questioning.

14 MR. REID: Understand, Your Honor. Thank you.

15 THE COURT: And 261, a photo of DGC Headquarters. I
16 believe this was taken from the ground level, you know, facing
17 up.

18 MR. REID: No objection, Your Honor.

19 THE COURT: And 261 will be deemed admitted.

20 We next have 260. Mr. Basile, if we could have that,
21 please.

22 MR. BASILE: Yes, sir.

23 THE COURT: 260 is a sample LOTO tag. If you please
24 show Mr. Reid and Mr. Schumann if they haven't seen it
25 previously.

26 MR. REID: Yeah, no objection, Your Honor.

27 THE COURT: I am having you look at it to make sure
28 there is no writing on. Well, there some writing, but no

1 objection.

2 THE COURT: So no objection. 260 will be deemed
3 admitted. It is being marked. It is now ours. If you would
4 like it again, please ask us to get it for you.

5 Next is -- we have 264. We just talked about that.
6 That is the one we are going to come back to.

7 And 147, I believe this is the reserved one.

8 THE CLERK: That was 145, Your Honor.

9 THE COURT: Okay. 147 is lockout/tagout policy read
10 in by Forsyth for the description introduced by the plaintiff
11 today.

12 MR. REID: No objection, Your Honor.

13 THE COURT: How many pages is that?

14 MR. REID: Eight.

15 THE COURT: So that will be the entire document as to
16 147.

17 We next have -- 145 was the one where there was
18 something put on the screen and then taken off when -- under
19 30 seconds. But when I inquired as to what it was supposed to
20 be, it was 145 on the latest exhibit list as reserved. So
21 whatever that was, it was not introduced, and it won't be
22 admitted at this time.

23 MR. REID: It was a duplicate of another exhibit,
24 Your Honor. I think it was the one we agreed to take out.

25 THE COURT: This isn't my exhibit list. This is your
26 exhibit list, so just double-check.

27 MR. SULLIVAN: The confusion came in when it was
28 removed, Your Honor. Mr. Basile was using it because that was

1 the number of the exhibit that had been used by the witness in
2 the depo as opposed to the new order of exhibits.

3 THE COURT: It is fine. But as I mentioned, both
4 sides obviously worked very hard on this. There are a lot of
5 binders up here, and I don't like interrupting. But if it is
6 something like that where I am trying to keep track of the
7 exhibits where the numbering is off, I have to interrupt, and
8 I don't like it.

9 MR. SULLIVAN: How would you like us to correct the
10 problem? Want us to add the exhibits back in there?

11 THE COURT: Just double-check your work, please.

12 THE CLERK: Do you want it reflected in the minutes,
13 Your Honor?

14 THE COURT: I mean, 145, it was discussed, but not
15 admitted.

16 Next was 259.

17 MR. BASILE: No objection to that.

18 THE COURT: That will be deemed admitted. We talked
19 about that.

20 Next would be 52. This was during plaintiff's direct
21 examination of Mr. Forsyth.

22 MR. BASILE: It is stipulated to. There is no
23 objection noted.

24 MR. REID: No objection, Your Honor.

25 THE COURT: That will be deemed admitted.

26 Next is 239, and it is a February 16, 2016 Kramer
27 e-mail to Walker regarding template reports.

28 MR. REID: No objection, Your Honor.

1 THE COURT: Next 243, an August 2016 Kramer e-mail.

2 MR. BASILE: No objection.

3 MR. REID: Again, no objection, Your Honor.

4 THE COURT: So 239, 243 admitted.

5 And then finally we have 216, Sample Sentinel Daily
6 Report 8-23-2016 with all e-mails sent to --

7 MR. BASILE: Stipulated to, Your Honor.

8 MR. REID: No objection, Your Honor.

9 THE COURT: Finally, the last one I have is --
10 Exhibit Number 34 was referenced at the end of the day with
11 Mr. Forsyth. I think just a cover page was shown.

12 MR. BASILE: We've already stipulated earlier at the
13 beginning of the case that that whole report is being
14 admitted, absent the attachment that is redacted and taken off
15 and not there.

16 THE COURT: The description says, "Root cause
17 analysis without attachments."

18 MR. REID: Yes, Your Honor, that is stipulated to.

19 THE COURT: So should we just go ahead and admit it
20 today?

21 MR. REID: Yes, Your Honor. I'm sure we all will be
22 referring to it.

23 THE COURT: Okay. So with exception of the 264, I
24 think we covered everything.

25 The last question we had from this morning was,
26 Mr. Basile, with the Exhibit 615 and 615A, in the video there
27 was reference to other exhibits. Are you going to be
28 introducing those subsequently? Is that part of your case in

1 chief?

2 MR. BASILE: Yes, it is. The exhibits that were
3 referenced in the deposition that was played to Tom Walker are
4 parts of the case in chief. Those exhibit numbers of the
5 deposition that was played correspond to the exhibit numbers
6 in the sheet, many of which are stipulated to, if not all of
7 this. It is the same numbers, Your Honor. And I think I
8 submitted a list of the exhibit numbers.

9 Your Honor, do you want me to put my jacket on?

10 THE COURT: No, you're fine.

11 As to that last part, you said you submitted a list?

12 MR. REID: It is in the back of the --

13 THE COURT: Yes, I did see that. I just wanted to
14 make sure if there was anything separate.

15 Mr. Reid, have you read that list or do you still
16 need additional time?

17 MR. REID: I'd like to double-check it, Your Honor.
18 I will do that.

19 THE COURT: Okay. So tomorrow morning before the
20 jurors come back in, I'm going to ask about that and then the
21 court clerk and I can go ahead and update the Court's records.

22 The plan is, unless there is any objections, those
23 exhibits will be deemed admitted. We won't do it today, so
24 they will reflect for 7-6.

25 Let me make a note for myself here for tomorrow
26 morning, review the exhibits from Thomas Walker video
27 deposition.

28 At least if we have time this afternoon, we can start

1 preparing.

2 MR. BASILE: Your Honor, while we are on
3 Exhibits 351, 352, and 353 were the judicial notice, I think
4 they have been admitted with only one of those published, and
5 it was also brought up in Mr. Walker's and I'd like that
6 admitted at this time.

7 THE COURT: We'll do it tomorrow morning. I do
8 recall you asking for judicial notice, and I recall some of
9 them being brought up in the video deposition. I don't
10 remember all of them. But I do remember the secretary of
11 state questioning with Mr. Walker in the video.

12 MR. BASILE: When can we talk about scheduling, Your
13 Honor.

14 THE COURT: That was the next thing.

15 Who are your witness for -- tomorrow morning, we are
16 picking up with the cross-examination of Mr. Forsyth.

17 And Mr. Basile, is it your intent to play the
18 deposition of Mr. Stanley?

19 MR. BASILE: No, Your Honor. Here is the situation
20 I'm in. I appreciate how trials go. We got interrupt, we got
21 to take people -- I move Mr. Palaway, I took Mr. Forsyth here,
22 all that was out of order --

23 THE COURT: Who would you like to call tomorrow,
24 Mr. Basile?

25 MR. BASILE: Our expert first. He's here from the
26 state of Washington, and he has flown in. As you know, Your
27 Honor, if he doesn't testify tomorrow, then we have to pay for
28 him to go back to Washington, fly back here, and do it again.

1 So I would like to start off with Mr. Lane, and I'd
2 like to follow with Mr. Stevick. Mr. Stevick has flown out
3 from Texas. My plan was to put both of them on tomorrow and
4 have that done and out of the way.

5 I have planned my case, they're here, they have both
6 flown in yesterday. So as far as planning for witnesses, I
7 would like to start tomorrow with Mr. Lane interrupting
8 Forsyth -- go with Mr. Lane, Mr. Stevick, and then they can
9 finish Forsyth when we are done with him and then bring in
10 Mr. Palaway after that.

11 THE COURT: How much cross-examination do you think
12 you have with Mr. Forsyth, Mr. Reid?

13 MR. REID: I probably have 45 minutes, I would
14 expect.

15 Your Honor, with Mr. Stevick there is still the
16 question about whether he is going to be disqualified or not
17 or whether there is going to be a 402.

18 THE COURT: There is pending motion in limine on
19 that.

20 I addressed one of the motions in limine, which is
21 the last thing we are going to do this afternoon. There is
22 still number 16. I still have it right here in front of me
23 that I reserved ruling on it. So in terms of him coming in,
24 I'm not sure why you flew him in for tomorrow if we still
25 haven't addressed that issue.

26 MR. BASILE: Your Honor, I expressed what I want to
27 do, and I will abide by whatever you tell me to do, Your
28 Honor. If you want to go with Forsyth, we'll pay for Lane to

1 fly home and back. I just want this case moving forward.

2 THE COURT: We are moving forward. And thank you,
3 Mr. Basile.

4 The part with this afternoon was in part
5 self-inflicted with the whole issue with the Stanley
6 deposition transcript in that the Court wasn't in receipt of
7 one version of it and then Mr. Reid raising the issue about
8 three versions. So because of that, and since you already had
9 Mr. Forsyth listed as next witness today, I wasn't going to
10 put you on the spot and have you do direct examination of a
11 witness that maybe you hadn't prepared for today, so we moved
12 that around. So we are going to continue tomorrow morning
13 with the cross-examination of Mr. Forsyth.

14 Mr. Reid, I ask you -- obviously, take your time, but
15 I ask professional courtesy in terms of your estimate being
16 reasonable amount to -- sometimes judges would say if you
17 don't finish your case -- if you finish your case today and
18 you don't have any more witnesses, you are going to rest your
19 case. So the next thing you know the attorneys are dancing
20 and trying to get to the next day so they wouldn't have to
21 rest.

22 So please don't stretch it so that Mr. Basile's
23 witness doesn't have to testify tomorrow.

24 MR. BASILE: Can I have an estimate, Your Honor?

25 THE COURT: I think Mr. Reid estimated 45 minutes.

26 MR. BASILE: No, an estimate for Mr. Lane. How long
27 may we question Mr. Lane? They deposed him. They know what
28 he's going to say, so I ask before they probably send him back

1 to Texas.

2 THE COURT: Mr. Forsyth, approximately 45 minutes?

3 MR. REID: About 45 minutes to an hour, yes, sir.

4 THE COURT: And now it is an hour?

5 MR. REID: I don't want to put expectations out there
6 that are not reasonable, Your Honor. I will get through him
7 as quickly as I can.

8 I deposed Mr. Lane for four hours, Your Honor. I
9 anticipate at least two hours for cross-examination.

10 THE COURT: I'm not going to give you an estimate on
11 that. You haven't even heard his testimony.

12 MR. REID: Exactly, Your Honor.

13 THE COURT: Although, in the deposition transcript
14 there was a motion in limine, so I anticipate you know what
15 he's going to say.

16 We're going to go with Mr. Forsyth in the morning.
17 Have your expert Mr. Lane ready to testify, you know, shortly
18 -- probably after the morning break, and then they'll continue
19 into the afternoon.

20 I won't hold you to anything else tomorrow,
21 Mr. Basile. I imagine that will take up the remainder of the
22 day, so don't bring in any other witnesses. If we finish at
23 3:20, I'm not going to say, Mr. Basile, where is your next
24 witness?

25 MR. BASILE: Your Honor, we are planning on calling
26 Ms. Cubos, so whenever we need to fill some time, I can just
27 call her.

28 MR. REID: Your Honor, they did not notice Ms. Cubos

1 as a witness. She going to be testifying in our case in
2 chief. They can cross-examine her, but they can't call her in
3 their case in chief as I understand it.

4 MR. BASILE: Why not? It is a joint witness list.

5 THE COURT: Was she noticed to appear for the first
6 day of trial?

7 MR. REID: No, she was not, Your Honor.

8 MR. BASILE: No, but she's here.

9 I'm just saying if we need time and I need to call
10 someone, that is what I'll do.

11 THE COURT: We will revisit that issue. If she
12 wasn't noticed, my inclination is to let defense call her.
13 You will have your opportunity to cross-examine her.

14 MR. BASILE: We'll look forward to that.

15 THE COURT: Which is ultimately what we were going to
16 do anyway.

17 So tomorrow -- let's get back on topic. We have the
18 cross-examination of Forsyth, then we have the plaintiff's
19 expert.

20 The Court will keep in mind, Mr. Basile, if there are
21 any questions in terms of the foundation, just -- the Court
22 will keep that into consideration because now that you are
23 calling your expert out of order, and I assume there is -- or
24 am I assuming incorrectly, is there some pieces of evidence
25 that hasn't come in?

26 MR. BASILE: Well, 264, all those past LOTO sheets,
27 he's reviewed.

28 THE COURT: But is there any witness testimony that

1 should be coming before his testimony?

2 MR. BASILE: I can live with where we're at, Your
3 Honor.

4 THE COURT: If there is a foundation objection on
5 that, I'll keep that in mind. That is why I inquired at the
6 beginning if there was anything dealing with Sanchez, and the
7 parties said no. I think that is where we are at.

8 MR. BASILE: I'll deal with it, Your Honor. We're
9 fine. I'll have Mr. Lane here and that will take care of the
10 rest of the day.

11 THE COURT: Okay. Cross-examination of Forsyth
12 tomorrow and then the plaintiff's expert, Mr. Lane.

13 I will try to give you answer tomorrow on Mr. Stevick
14 so you can prepare for the following week of whether he's
15 coming or not.

16 Finally, I want to address this last issue with
17 defense motion in limine, Number 13. There are two pending
18 ones that the Court reserved ruling on. Number 16 is Stevick,
19 and we will have an answer for you today.

20 Number 13, though, the tentative was to grant. The
21 final is going to be to grant in parts.

22 We do have a reporter so we will be making a record
23 here.

24 Date of incident in this matter is March 6th of 2017.
25 So defense motion pursuant to Evidence Code Section 1115 --
26 I'm sorry, 1151 is to preclude any introduction of subsequent
27 remedial measures, and the Court is going to grant that,
28 however there is subsequent remedial measures and then there

1 is investigation as to what may have contributed to or led to
2 the incident of March 6, 2017.

3 So the latter part, what contributed to it or what
4 led to it, any evidence regarding that, the Court is going to
5 allow to come before the jury. But anything after that
6 dealing with, well, after this, we went ahead and came up with
7 this new safety policy or this other entity proposed this new
8 safety policy, that is not admissible.

9 The relevance here -- it is not so much the
10 relevance. There are issues regarding control and handling of
11 safety procedures at the plant. So in that regard, there is
12 relevance. But 1151 deals with public policy consideration.
13 We want entities, especially ones running power plants, if
14 there is something that happens, for them to be able to take
15 subsequent remedial measures without the reprisal of, you
16 know, being used against them in a subsequent suit.

17 So because of that, the Court is not finding that
18 there is relevancy, but the public policy consideration.
19 However, again, the Court is making that distinction between
20 subsequent evidence showing control or to use a jury
21 instruction, there is an undertaking of safety policies and
22 procedures at the plant, which would be admissible versus
23 remedial measures, which would be inadmissible.

24 So the motion is granted in part with those terms
25 that I just specified on the record.

26 Any questions?

27 MR. BASILE: No, Your Honor.

28 MR. REID: No, Your Honor.

1 THE COURT: And Mr. Basile and Mr. Sullivan, I will
2 be looking to you, so ultimately you are presenting the case
3 as you see fit. You need to double-check that. If you are
4 playing any transcript testimony or any exhibits, check them
5 for -- if the jury doesn't have voluminous exhibits, and we
6 have been talking about that, it is your case and protect your
7 records, and Mr. Reid and Mr. Schumann are doing the same for
8 respective clients.

9 MR. REID: I would like to raise one particular
10 exhibit. Mr. Buchynsky -- and they will know what I am
11 talking about -- Mr. Buchynsky post-incident sent an e-mail to
12 all of DGC operations regarding safety policies and
13 implementation and things like that. Maybe the e-mail shows
14 control, but the attachment with all of the changes to the
15 policies, I think that would be subsequent remedial measures.
16 That is the major one I can think of.

17 THE COURT: If it is something that needs to be
18 redacted to conform to the Court's ruling, then we'll
19 definitely make sure we do that. The e-mail itself, the way
20 -- as you have just described to the Court doesn't seem
21 inadmissible, but attachments or discussions of, hey, we used
22 to do X, Y, and now we're going do, you know, Z and A, that
23 latter part would be inadmissible.

24 MR. REID: Thank you, Your Honor.

25 MR. BASILE: As long as they tell us what exhibit it
26 is, I will make sure.

27 THE COURT: That would be helpful, Mr. Basile, but
28 ultimately it is your case at this point.

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MR. BASILE: It sure is.

THE COURT: And the Court has provided, I would say "guidance," but in order to what you should be doing.

MR. BASILE: Got it.

THE COURT: Thank you.

(Proceedings adjourned.)

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COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT - DIVISION TWO
APPEAL FROM THE SUPERIOR COURT OF RIVERSIDE COUNTY

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DENISE COLLINS and CHRISTOPHER) DCA No. E080233
COLLINS,,)
)
Plaintiffs/Respondents,) Superior Court
) Case No. PSC1901096
vs.)
)
DIAMOND GENERATING CORPORATION,) Volume 7 of 19
) Pages 1001 - 1106
Defendants/Appellant.) (1107 - 1200 Blocked)
)

REPORTER'S TRANSCRIPT ON APPEAL
BEFORE THE HONORABLE MANUEL BUSTAMANTE - DEPARTMENT PS2
July 6, 2022

APPEARANCES:

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Reported by: DEMETRIA BISCHOFF, CSR 12602

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SUPERIOR COURT - STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

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DENISE COLLINS; CHRISTOPHER)	
COLLINS,)	
)	
)	Plaintiffs,
)	Case No. PSC1901096
)	
vs.)	
)	
CPV SENTINEL ENERGY CENTER, LLC,)	
MOTT MACDONALD, LLC, GEMMA POWER)	
SYSTEMS, LLC, and DOES 1 to 15,)	
Inclusive,)	
	)	Defendants.
)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE MANUEL BUSTAMANTE - Department PS2

July 6, 2023

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EXHIBITS

PLAINTIFF'S EXHIBITS:

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67	DOCUMENT	1068	N/A
141	DOCUMENT	1094	1094
149	DOCUMENT	1035	N/A
157	DOCUMENT	1036	N/A
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1 JULY 6, 2022 - AFTERNOON SESSION

2 BEFORE THE HONORABLE MANUEL BUSTAMANTE

3 THE COURT: Let's formally call the matter of Collins
4 versus DG Corp. All parties are present. I'm sorry all
5 counsel are present, and we're outside the presence of the
6 jury. Mr. Reid.

7 MR. REID: Your Honor, it pains me to bring this up
8 but this morning as Ms. Cubos was walking out of the
9 courtroom, Mr. Basile was leaning over and whispering in her
10 ear, about, I can't wait for your testimony or words to that
11 effect. One, that's a communications with a represented
12 party. And two, it's obviously intended to try to intimidate
13 Ms. Cubos. It's unacceptable, Your Honor. We feel we had to
14 bring it to the Court's attention.

15 THE COURT: Mr. Basile.

16 MR. BASILE: I was holding the door for her, that was
17 it. I was trying to be kind. I said I'm looking forward to
18 your testimony, Ms. Cubos. I apologize if I offended anyone.
19 That's all I said. That's all I did. I'll submit,
20 Your Honor.

21 THE COURT: Please refrain from those comments. I'm
22 not going to comment any further on it myself, but thank you
23 for bringing it to the Court's attention, Mr. Reid.
24 Mr. Basile.

25 MR. BASILE: Got you.

26 THE COURT: And jurors aren't here or anything. We
27 don't need to hold the doors for people. Deputy is in charge
28 of courtroom security. Everyone has their respective role.

1 As you realized this morning, we couldn't go in session, one
2 of our team members was needed somewhere else. You don't need
3 to hold the doors. Probably in your experience and this
4 Court's experience, I can think of a couple instances where
5 holding doors always resulted in something. So, please.
6 Thank you.

7 (Pause in the proceedings.)

8 THE COURT: Good afternoon. Back on the record on
9 Collins versus DG Corp. All members of the jury panel are
10 present. Thank you, again, for your patience. Our court
11 reporter is back, after a nice drive to Indio and back. So,
12 it's a reflection of the limited resources the Court currently
13 is having but also how hard our team members are working.
14 Thank you for your patience.

15 Mr. Basile, when you're ready. I'll add this, but
16 sorry, counsel. In an ideal world we would like to present
17 the cases in chronological order; however, sometimes witnesses
18 need to be called out of order, you know, unpredicted things
19 happen, such as this morning happened, regarding availability
20 of court staff. Because of that, there will be a witness that
21 will be called out of order, just not through any fault of the
22 parties. I thought I'd mention that to you. Okay.

23 MR. BASILE: Your Honor, we'd call Christopher Lane.

24 THE COURT: We'll resume with Mr. Forsyth
25 cross-examination on another date.

26 MR. SCHUMANN: Thank you, Your Honor.

27 MR. REID: Thank you, Your Honor.

28 THE COURT: Thank you for that professional courtesy,

1 Mr. Reid.

2 MR. REID: Absolutely, Your Honor.

3 THE CLERK: Please raise your right hand.

4 You do solemnly state that the evidence you shall
5 give in this matter shall be the truth, the whole truth, and
6 nothing but the truth, so help you God?

7 THE WITNESS: Yes, I do.

8 THE CLERK: Thank you. You may be seated.

9 THE WITNESS: Thank you.

10 THE CLERK: For the record, please state and spell
11 your first and last name.

12 THE WITNESS: Christopher Lane,
13 C-h-r-i-s-t-o-p-h-e-r, last name Lane, L-a-n-e.

14 THE CLERK: Thank you.

15 CHRISTOPHER LANE,
16 called as a witness by Plaintiff, was sworn and testified as
17 follows:

18 DIRECT EXAMINATION

19 BY MR. BASILE:

20 Q. Good afternoon, Mr. Lane.

21 A. Yes, sir.

22 Q. Mr. Lane, have you come to court this afternoon
23 prepared to offer your opinions on the LockOut/TagOut system
24 that was used at the Sentinel Energy Center?

25 A. Yes, sir.

26 Q. Are you also prepared to offer your opinions about
27 the documented training of the workers at the Sentinel Energy
28 Center?

1 A. Yes, sir.

2 Q. One last area, are you prepared to offer opinions
3 regarding the change in procedure that occurred in 2017?

4 A. Yes, sir.

5 Q. All right. Before we get into that, sir, I'd like to
6 ask you some questions that qualifies you to offer such
7 opinions. Could you tell the jury what your educational
8 background is?

9 A. Yes, sir. Starting with, I graduated from high
10 school. I started college at UC Irvine, actually under a
11 water polo scholarship, that didn't work out really well. I
12 was faced with the possibility of being drafted into the
13 Vietnam War. I joined the Navy. They were looking for people
14 like me who were in heavy sciences. They put me in an ROTC
15 program midstream and sent me to Oregon State University where
16 I completed my bachelors degree in physics. I then got lucky
17 once again, and they sent me immediately to their graduate
18 school in Monterey, California. It's called the Naval Post
19 Graduate School where I earned a masters degree in nuclear
20 physics. I considered every bit as much as that kind of
21 education, I was then sent to nuclear power program, which is
22 the Nuclear Power School and prototype training.

23 Q. Do you hold any special certifications?

24 A. I do. I'm a qualified professional engineer, even
25 though I was a physics major, there's a program where you can
26 get registered as a professional engineer, it's extra two
27 years of -- I'll call it internship and passing examinations.

28 Q. Are you a registered professional engineer in the

1 state of California?

2 A. I am, yes, sir.

3 Q. In the state of Arizona?

4 A. Yes, sir.

5 Q. And in the state of Washington?

6 A. Yes, sir.

7 Q. Do you hold professional memberships in engineering
8 societies?

9 A. I do. There's two of them, they're important.
10 Society of mechanical engineers. That's important because
11 it's heavily involved in regulation of power plant systems,
12 high pressure vessels in particular and the other is the
13 national society of professional engineers, which is a lot
14 about the practice of engineering and very heavily influenced,
15 heavily influence on the industries ethic.

16 Q. Now, are you a past member of the board up in
17 Washington of the Society of Professional Engineers?

18 A. Yes, I was a board member for two years.

19 Q. Okay. Do you have experience in propulsion systems?

20 A. Yes, sir.

21 Q. Can you tell the jury a little bit about that?

22 A. Initially it was in the U.S. Navy, I was a nuclear
23 trained engineering officer. My specialty was propulsion
24 plant. I was the main propulsion assistant, senior divisional
25 officer in charge of the reactor plant and steam plant,
26 turbines and most of the other axillaries. When I got out of
27 the Navy, I stayed in that business. I liked it. I stayed in
28 the business of hands on operation and maintenance, mostly

1 some design work, which is why I also went and got my
2 engineering contractor's license in California, that's
3 required for a lot of that kind of work.

4 Q. Let's talk about your specific experience with LOTO
5 policies and procedures. We've already heard a lot about what
6 they are. Can you briefly tell the jury what a LOTO procedure
7 is?

8 A. Lock Out/Tag Out procedure is the formal procedure to
9 ensure that equipment that's going to be accessed for
10 maintenance repair is placed in safe conditions as it relates
11 to pressurized systems which is the focus of this case. It
12 has to do with ensuring that the source of the energy is
13 isolated presented from getting into the area that's being
14 worked on. And the energy that was in that equipment is
15 vented off or drained out so that it is safe to work on.

16 Q. Now, could you share with us some of the facilities
17 where you've been involved with Lock Out/Tag Out procedures?

18 A. Yes. It's a very long list, but I'll maybe highlight
19 some. First, in the Navy, though I was fairly senior
20 reporting to my first ship, it was in overhaul. So we
21 couldn't get underway. So I couldn't get qualified. So I was
22 assigned for the better part of the year to be the auditor,
23 every day auditor of the Lock Out/Tag Out programs. We did
24 20 percent of the Lock Out/Tag Outs each weekday. In addition
25 to that, I was standing watch under instruction and being
26 trained in various watch stations, that was a full year of
27 doing that every single weekday.

28 Q. What type of equipment was that on your initial Lock

1 Out/Tag Out?

2 A. That was our propulsion plant and nuclear power
3 plants of a sub ma convenient that involved high pressure
4 steam systems, very high pressure air systems up to
5 4500 pounds of air pressure, high pressure hydraulics up to
6 3,000 pounds. Sea water systems that import, went that high,
7 when you get underway. They're upwards of 700 pounds
8 pressure, pound per square, I think so each little square inch
9 has pressure.

10 Q. Were you also involved in Lock Out/Tag Out policy
11 procedure in nuclear power plant in Idaho Falls?

12 A. I was. Part of the program there was in -- that
13 preceded my time on the Edison, on the ship. That's where you
14 first do your very hands on applications of Lock Out/Tag Out.
15 You get qualified on certain systems then you're authorized to
16 be an installer or verifier. You do that along with your
17 other training as you're being qualified to be a watch officer
18 on this plant.

19 Q. Have you also ever been involved in the Lock Out/Tag
20 Out policies and procedures on the USS Thomas Edison?

21 A. Yes, sir. Yes, sir, I was. I was a division --
22 engineering division officer on that ship for three and a half
23 years including about 12, 13 months in major overhaul. During
24 the overhaul, every system would be worked on. So the Lock
25 Out/Tag Out, we would have, I think, nevertheless than 40
26 active LOTOs, we called them short form, active LOTOs,
27 sometimes upward of a hundred LOTOs on the entire ship.

28 Q. Were you in charge of overseeing that whole program?

1 A. I was in charge of auditing it. We had not gotten
2 underway, I could not be qualified. I couldn't sign the LOTO
3 to be implemented. I could audit the LOTOs and that's how I
4 trained on the system. As soon as we got underway, that was
5 the first 12 months, 13 months. As soon as we got underway, I
6 was qualified. Then I was authorized to execute the entire
7 program, the LOTO program I could be the authorizer which most
8 junior officers like me do, but the interesting thing about a
9 submarine, there's never a critical system that's put in a
10 certain condition. Valves move, you know, rearrange to
11 certain positions. They all must be checked by an officer.
12 So always checked by a division officer like I was. You were
13 intimately involved in that, just routine.

14 Q. Now, that's some of your experience in the Navy with
15 Lock Out/Tag Outs. Let's bring it here locally around here.
16 Have you been involved in the Brawley Geothermal Power
17 Production Plant?

18 A. Yes. We -- under the company I work for called West
19 Tech Services. We operate that plant geothermal plant under
20 contract with southern California Edison, we were a hundred
21 percent responsible for operations maintenance of plant. I
22 was in charge of that group. I authorized LOTOs until we had
23 a qualified plant manager, then I would go and do the audits.

24 Q. Also were you involved in the Salton Sea Geothermal?

25 A. Yes, very similar plant.

26 Q. How about the -- is it the Heber Plant, am I saying
27 that right?

28 A. Heber was an amazing plant. It was 15 Mega watt, not

1 huge, but fairly large. It had incredibly working crew, I has
2 -- it was a mixture of isobutane, isopentane, high pressure,
3 every bit of an explosive, dangerous as natural gas or maybe
4 more so.

5 Q. You were involved in Lock Out/Tag Outs?

6 A. Yes, sir.

7 Q. San Jose Cogeneration facility.

8 A. San Jose was the first of a particular type of gas
9 turbine plant, where they would inject steam into the gas
10 turbine, it was pretty unusual. I was part of the initial
11 commissioning group, and I worked with the owner to develop
12 the LOTO program for that plant, and that carried on to other
13 plants that they developed.

14 Q. Have you also worked on LOTO programs in the private
15 energy production such as with the Bank of America in
16 Los Angeles and San Francisco?

17 A. Yes, I was. That was a program -- yes, I was. Those
18 were critical data center for the bank and other clients they
19 have, we put together not only a LOTO program but a complete
20 critical environment control program to basically avoid
21 accidents and extraordinary expensive outages.

22 Q. Have you worked at the El Segundo Energy Center?

23 A. That's a large utility power plant, high pressure
24 steam, super heated steam.

25 Q. That involved LOTOs there?

26 A. Yes. Yes, sir. We did a lot of little projects for
27 them. We would initiate our own LOTOs. We would be signing
28 on some of their LOTOs, so we were right in there. We were

1 part of that crew.

2 Q. Just a couple more to cover. The Ontario
3 Cogeneration Plant, you worked there too, right?

4 A. Yes, sir.

5 Q. Doing the same type of work?

6 A. Yes, sir.

7 Q. Now, you've also done it in Mexico; isn't that true?

8 A. That's true, yeah, with high pressure natural gas for
9 doing some work on some metering stations.

10 Q. And you've done it in Alaska?

11 A. Yes, sir.

12 Q. All right. Has being an expert witness been part of
13 your professional practice?

14 A. It has been, but it's never been my main business,
15 always been a side business.

16 Q. Okay. And how would you describe your main business?

17 A. Hands on engineer because I like it hands on
18 engineering of operations, maintenance, commissioning work,
19 probably the best -- the best part of my business has really
20 been successful, I really like is commissioning new power
21 plants.

22 Q. Now, have you been retained as an expert in other
23 cases involving Lock Out/Tag Outs?

24 A. Yes, sir.

25 Q. About how many?

26 A. I think it's five.

27 Q. What states were those?

28 A. There were -- there were two in Texas, in Houston

1 area. There was one in Arizona, that very large coal fired
2 plant. There was one that was all about high pressure natural
3 gas in New Mexico, north east New Mexico in the oil fields.
4 There was one that involved a boiler explosion in San
5 Francisco.

6 Q. Let's talk about this case. What work have you done?
7 You reviewed documents, correct?

8 A. Yes, sir. I was provided -- which I like. I was
9 provided something like 45,000 pages of documents. So as is
10 necessary, first thing I do is try to sort through what
11 documents are pertinent to the questions I've been asked and
12 which ones are not.

13 Q. We're going to get to those in a bit. Have you also
14 read the depositions of Tom Walker?

15 A. Yes, sir.

16 Q. Michael Delaney?

17 A. Yes, sir.

18 Q. Albert Palalay?

19 A. Yes, sir.

20 Q. Why Robert Ward?

21 A. Yes, sir.

22 Q. Jason King?

23 A. Yes, sir.

24 Q. Ben Stanley?

25 A. Yes, sir.

26 Q. Wayne Forsyth?

27 A. Yes, sir.

28 Q. Mark McDaniel?

1 A. Yes, sir.

2 Q. Paul Sheppard?

3 A. Yes, sir.

4 Q. Any others that I missed?

5 A. The Collins family.

6 Q. You've read their depositions?

7 A. I did, yes.

8 Q. Now, were you provided photos of the site in this
9 case?

10 A. Yes, I reviewed photos, and I visited the site.

11 Q. And you visited, actually went out, walked through
12 the area where this happened?

13 A. Yes, sir.

14 Q. I was there with you?

15 A. Yes, sir.

16 Q. Okay. And where's your office located?

17 A. It's in the Seattle area.

18 Q. Did I come to your office on a number of occasions so
19 you can teach me to control hazardous energy and LOTOs?

20 A. Yes, sir. You certainly did.

21 Q. How much time have you spent with me in person trying
22 to teach me about this stuff?

23 MR. SCHUMANN: Relevance, Your Honor.

24 THE COURT: Overruled.

25 THE WITNESS: I would say somewhere between five and
26 six hours where we spent talking specifically about Lock
27 Out/Tag Out energy, how much energy there was in that system.

28 Q. That's both in person and over zoom, right?

1 A. That's correct.

2 Q. Now, do you agree that corporations that produce and
3 sell electricity must develop safety and procedures?

4 A. I do.

5 Q. They must train workers in procedures?

6 A. Yes, sir.

7 Q. They must review and enforce the procedures?

8 A. Yes, sir.

9 Q. Okay. Let's talk about the policies and procedures,
10 that are developed, Exhibit 176, please. Are you familiar
11 with this?

12 A. Yes, sir, I am.

13 Q. I think it's also on the one in front of you, the
14 monitor whichever is easier for you, whatever is easier for
15 you to look at?

16 A. I can turn around. Here it is. Thank you.

17 MR. BASILE: Thank you, deputy.

18 Q. BY MR. BASILE: This is Lock Out/Tag Out procedure
19 from the Sentinel Energy Center, isn't that?

20 A. SMP-3.

21 Q. You had an opportunity to review it?

22 A. Yes, sir.

23 Q. Based on your view of the depositions of Mr. Walker
24 and others, do you have an opinion as to how this policy was
25 developed?

26 A. The way I -- what I got from the documentation,
27 depositions, this was the result of a marriage of some prior
28 documents that they had from DGC and even when that predated

1 that that Jason King had, but it was Mr. Stanley, as I believe
2 was the key member who came and worked with Mr. King in order
3 to put together this particular procedure.

4 Q. Is it your understanding that Mr. Walker was hired to
5 given policies for DG Corporation?

6 A. That's my understanding, yes, sir.

7 Q. Now, Exhibit 349, please. Now, we've seen this a
8 number of times. Just briefly, Mr. Lane, this is the fuel
9 filter skid where the explosion occurred killing Daniel
10 Collins?

11 A. Yes, sir.

12 Q. You've been out to the site scene there?

13 A. Yes, sir.

14 Q. As a quick review, the high pressure gas comes into
15 the bottom up the tank and out the top; is that correct?

16 A. That's correct.

17 Q. The dangers of high pressure gas is the pressure,
18 right?

19 A. Yes.

20 Q. And it's flammable?

21 A. Yes.

22 Q. Explosive?

23 A. Yes.

24 Q. And toxic?

25 A. And toxic.

26 Q. Now, have you reviewed the documented training of the
27 workers that as it applies to Lock Out/Tag Out procedures at
28 the Sentinel Energy Center?

1 A. Yes, sir.

2 Q. Exhibit 182, please. Could you highlight that. Are
3 there requirements to qualify to be a qualified employee to
4 work on a Lock Out/Tag Out?

5 A. Yes, sir, there is.

6 Q. Were they outlined in the procedure at the plant,
7 this SMP-3, which I have up there now, Exhibit 182?

8 A. Yes. This talks about what makes a qualified
9 employee that includes the training requirements.

10 Q. What were the training requirements that needed to be
11 met to be a qualified employee based on their own policy?

12 A. It required that, a new employee be qualified by
13 specific training on Lock Out/Tag Out, that there be refresher
14 training annually, that there be training whenever there was a
15 change in policy or a change in system, in system design or
16 operation.

17 Q. Okay. And let's see, you've looked at the training
18 records produced in this case by the defendant?

19 A. Yes, sir, I have.

20 Q. Exhibit 62, please. This is the record of training.
21 Could you enlarge the top half of that please, James. Is this
22 correct, sir?

23 A. Yes, it is.

24 Q. This was a record of training that was done on
25 March 20th of 2013; is that right, sir?

26 A. That's correct, yes.

27 Q. The length of training noted on the document, one
28 hour, 15 minutes; is that right?

1 A. Yes, sir.

2 Q. Okay. Was LOTO training included in this from what's
3 listed on the exhibit?

4 A. Well, it shows it is, amongst many other things, yes,
5 sir.

6 Q. Were there 29 different subjects covered on this?

7 A. I believe that's correct, correct number.

8 Q. Could you page down some. And enlarge. No. No.
9 Same page. Just enlarge all the underline parts, please.
10 There you go. Are these the subjects that were covered in
11 that one hour, 15 minutes?

12 A. That's what's been documented, yes, sir.

13 Q. So, I see at the top it says, SMP-002, I'm pointing
14 out with the laser here, it says Lock Out/Tag Out, see that
15 sir?

16 A. Yes, sir.

17 Q. And Lock Out/Tag Out on the next line, SMP -- SP
18 6003?

19 A. Yes, sir.

20 Q. And SP 6004, right? Now, in addition to that, all of
21 these other items were covered in that training according to
22 this document; isn't that true?

23 A. Yes, sir, I believe -- in fact, I believe 6004,
24 safety shoe goes with the one behind it.

25 Q. Safety shoe, work clothing, purchasing?

26 A. Yes, sir.

27 Q. The other one just speaking for them still, there's a
28 near miss area here also covered, correct?

1 A. Yes.

2 Q. All these other items covered in that 75 minute
3 training, right?

4 A. Yes, sir.

5 Q. All right. Next exhibit is, that was 62, I believe,
6 right? Exhibit 267, please. This is a record of training,
7 also could you enlarge just that part right there. Thank you.
8 This record of training is subjects covered on the SMP-3 Lock
9 Out/Tag Out program, correct, sir?

10 A. Yes, sir.

11 Q. It was three hours of training at that time, correct?

12 A. That's correct.

13 Q. And the date of this training was March 28, 2013?

14 A. Yes, sir.

15 Q. Could we page down to this, the syllabus right there.
16 On this document, there's nothing listed as training aids
17 used, right?

18 A. That's true. That's true.

19 Q. Could we go on down just a little bit below that,
20 what that line says, James, under the training aids. That's
21 all it was on this sheet other than signature lines; is that
22 correct?

23 A. Yes, sir.

24 Q. Thank you. Exhibit 268. Again, just that first
25 part, James, please. This is a record of training dated
26 April 24th, 2013, correct?

27 A. Yes, sir.

28 Q. And this under subjects it says, monthly safety

1 meeting, LOTO procedure; is that correct?

2 A. That's correct.

3 Q. Forty-five minutes, right?

4 A. Yes, sir.

5 Q. And let's see, it says LOTO procedure is a training
6 aid that was used, correct?

7 A. Yes.

8 Q. And in all your review of these training records,
9 were there any documentation that workers were actually taken
10 out to that fuel filter skid and had hands on training?

11 A. No, sir, there was no fuel skid or any other hands on
12 system.

13 Q. Okay. You can take that down. That's from 2013.
14 We're building a timeline, Mr. Lane. And based on your review
15 of the documents, were you able to find any document training
16 in the year 2014 for Lock Out/Tag Out?

17 A. No, sir.

18 Q. Were you able to find any document training for Lock
19 Out/Tag Out in the year 2015?

20 A. No, sir.

21 Q. Was there any documentation of any new hires in the
22 years of 2014 and 2015 receiving Lock Out/Tag Out training?

23 A. No, sir, not that I found.

24 Q. Exhibit 269, please. Again, let's highlight the top
25 part of Exhibit 269. And this is a record of training dated
26 January 21, 2016, correct?

27 A. Yes, sir.

28 Q. The subjects covered on this exhibit are LOTO and

1 confined space; is that right?

2 A. That's correct.

3 Q. And it says training aids used, hand outs and power
4 point; is that right?

5 A. Yes, sir.

6 Q. There's no indication on how long this was, right?

7 A. No, sir.

8 Q. And confine space training is something different
9 than LOTO training; isn't that true?

10 A. It is very, very little overlap that you do apply
11 LOTO when you define confined space. It's for all intense and
12 purpose, it's completely different.

13 Q. Okay. And this is dated January 21, 2016, correct?

14 A. Yes, sir.

15 Q. And under handouts, power points, let's take a look
16 at the power point that was presented that day. Pull up
17 Exhibit 270, please. Have you had an opportunity to review
18 this?

19 A. Yes, sir, I have.

20 Q. Let's go through briefly. Is this a power point
21 presentation?

22 A. Yes, sir.

23 Q. And before we go through it, was there anything
24 specific in this presentation, this training in January of
25 2016 related to the actual fuel filter skid involved in this
26 case?

27 A. No, sir.

28 Q. Okay. Let's go through some of these pages, James.

1 First page. This is general information, correct?

2 A. Yes, sir.

3 Q. Okay. Next page. How many pages are there on this
4 exhibit, does it say?

5 A. I don't recall. It was quite a few.

6 Q. Fifty. I'm not going to go through 50 pages. Just
7 in summary, this was like a general information about Lock
8 Out/Tag Out, correct?

9 A. It is, and it's minor point, but it references the
10 wrong -- the wrong code number actually for power plants which
11 is 269, instead of 147. They are similar, but to be
12 particular, this was the wrong -- this was wrong one.

13 Q. Okay. And so this was just general information about
14 what a Lock Out/Tag Out procedure is, right?

15 A. Yes, sir. Yeah, we, in the business, we refer to it
16 as motherhood.

17 Q. Pardon me.

18 A. Motherhood, that's what we refer to it. They give
19 you general things, you're supposed to be a good boy but
20 there's no specifics. You're supposed to do this and that,
21 but there's no specifics.

22 Q. There's no indication as to how long this training
23 took either?

24 A. No, there's none.

25 Q. It was also combined with a confined space training,
26 right?

27 A. Yes, sir.

28 Q. Okay. Thank you. And we'll move to admit that so

1 the jury will have it, Your Honor. Exhibit 272, please. And
2 could you enlarge just the top three or four lines so we can
3 explain what this is.

4 You've reviewed this exhibit, Mr. Lane?

5 A. Yes, sir I have.

6 Q. And is there a record of -- well, tell us what it is?

7 A. It's a record of program training that they have on
8 line training, so it's a -- they retained, they've purchased
9 from a training company.

10 Q. Is it where an employee like sits down at a computer
11 and just run through like a slide show and take an exam?

12 A. Yes.

13 Q. On the left there, do you see the name Dan Collins?

14 A. Yes, sir.

15 Q. Can you highlight that?

16 A. Yes, sir.

17 Q. Okay. And go page down, I want to get all the ones
18 that Dan Collins is shown on, if you could, James. Okay. Is
19 there any specific LOTO training that Dan Collins had in
20 1-5-17?

21 A. Not that I recall from are the review, no, sir.

22 Q. This was a GP online learning; is that correct?

23 A. Yes, sir.

24 Q. Okay. I believe there is -- can you enlarge that at
25 all, James. Let's go to the next page, please. And do you
26 see Dan Collins' name on there?

27 A. There's one about six, seven down.

28 Q. There two of those. If you can enlarge those two

1 lines for me, please. On down. There's a couple lines that
2 say, I think, Lock Out/Tag Out?

3 A. Yes, sir, there is. I see those.

4 Q. This list is a whole list of different routines,
5 safety things that people would watch online, right?

6 A. Yes, sir.

7 Q. And now, this training from January 5th, '17, was an
8 online, right?

9 A. Yes, sir.

10 Q. It did not involve any hands-on training, did it?

11 A. To the best of my knowledge, no, sir, there's no
12 indication of that.

13 Q. There was no documentation or evidence in your review
14 in this case of where Dan Collins or any of the workers were
15 told about a change in the procedure of shutting down that
16 fuel filter; isn't that true?

17 A. That's correct.

18 Q. Let's look at what was here. Again, this is just
19 done online; is that correct?

20 A. Yes, sir.

21 Q. By online, like somewhere plant workers just sit down
22 and plug in on the computer and pull up something and is just
23 general information about it?

24 A. My understanding is it follows the OSHA codes in
25 these training programs.

26 Q. Now, you see over in that time on the columns over
27 there?

28 A. Yes, sir.

1 Q. Does that stand for two minutes and 15 seconds?

2 A. I hope not. I don't know.

3 Q. Okay. Nonetheless, it was completed and passed,
4 right?

5 A. Yes, sir.

6 Q. And the other module two was completed and passed,
7 right?

8 A. Yes, sir.

9 Q. But again, this was just general information along
10 with other things, right?

11 A. Yes, sir.

12 Q. Okay. Now, will you take that down, please. You
13 have prepared a slide of the timeline of what we've just
14 discussed; isn't that true?

15 A. Yes, sir, I have.

16 Q. We'd like to pull up slide 19, which is from the
17 opening statement, Your Honor. It could be marked if the
18 Court so desires as next in order, 617. Is this the timeline,
19 sir?

20 THE COURT: Do you wish to have it marked or just for
21 demonstrative purposes?

22 MR. BASILE: We can have it marked 617. I have it
23 here.

24 THE COURT: Mr. Reid.

25 MR. BASILE: We don't have a copy here, we'll supply
26 one.

27 THE COURT: Hearing no objection, we'll go to the
28 next one in order 617, this is a one page document.

1 MR. BASILE: Thank you, Your Honor.

2 Q. BY MR. BASILE: This is the timeline that you
3 assisted in providing this information, correct?

4 A. Yes.

5 Q. This was those documents we just reviewed in your
6 testimony, correct?

7 A. Yes.

8 Q. It shows there was a 75-minute training on the 23rd
9 of March, correct?

10 A. That's correct.

11 Q. Then 2013, then there was a three-hour training back
12 in March of 2013, correct?

13 A. Yes, sir.

14 Q. Forty-five minute training in April of 2013, correct?

15 A. Yes, sir.

16 Q. No documented LOTO training the entire year of 2014
17 based on your review of they records?

18 A. They were in the record, that's correct.

19 Q. And none in 2015, either?

20 A. That's correct.

21 Q. The two we reviewed was January of 2016 was that
22 general power point presentation, correct?

23 A. Yes, sir.

24 Q. And then this JP Learn we just went over in
25 January 2017, correct?

26 A. Yes, sir.

27 Q. Now, is there a requirement that LOTO training be
28 documented?

1 A. Yes.

2 Q. Okay.

3 A. Yes.

4 Q. Your understanding is that this explosion happened in
5 March of 2017, correct?

6 A. Yes, sir.

7 Q. All right. Thank you. Let's talk about audits and
8 reviews of LOTO systems, all right, sir?

9 A. Yes, sir.

10 Q. They're critical, aren't they?

11 A. They are.

12 Q. Explain to this jury why reviews of these LOTOs
13 systems are so critical?

14 A. It's a quality assurance process to make sure that
15 the procedures are being done properly, and to identify
16 deficiencies and correct them, particularly things like near
17 misses, any signs of complacency. Complacency in this kind of
18 business is all too common. You need to focus on it and
19 become insidious where people think they know more than they
20 recall.

21 There's things they miss, you have to keep -- the
22 safety is so important that you have to be on top of the
23 program.

24 Q. Exhibit 178, please. Now, did the Lock Out/Tag Out
25 procedure at the Sentinel Energy Center have the requirements
26 for these annual reviews?

27 A. They do. They have the requirement for monthly
28 reviews and annual reviews.

1 Q. Let's enlarge the first highlighted section, James,
2 please. And Exhibit 178 is from this SMP-3, correct?

3 A. Yes, sir.

4 Q. And this says the plant managers responsible for
5 monthly reviews, right?

6 A. Yes, sir.

7 Q. And also says that a qualified employee may do the
8 monthly review, right?

9 A. That's correct.

10 Q. Qualified employee would be what, under your
11 understanding?

12 A. Someone who's formally qualified and beyond that the
13 plant manager should not assign this to anyone who's not
14 really on top of that program, really what I'll call an expert
15 in the program.

16 Q. To be an expert in the program you'd have to know
17 that the LOTO sheet should have a single installer?

18 A. Yes, sir.

19 Q. And single verifier?

20 A. Yes, sir.

21 Q. Is this installer and verifier ever go out together
22 and install the LOTO?

23 A. One exception, the general answer is no.
24 Independence is important to be a true verification. You
25 can't be there, and be working with the same person who's
26 hanging the tags. It's so easy to coerce someone knowingly or
27 unknowingly, you want to get along. They'll approve something
28 that someone knows is a mistake. The only exception is when

1 there's a question, you get together with the installer, the
2 verifier and the work supervisor or authorizer usually work
3 supervisor and you go out there together and resolve the
4 problem before you proceed.

5 Q. Is that why this annual and refresher training is so
6 important?

7 A. Yes.

8 Q. So that worker's understand the importance of single
9 verifier and single installer?

10 A. Yes, sir, I believe that's something that I didn't
11 see anywhere in their program that they practice.

12 Q. Okay. Could you take that down, James. Let's
13 enlarge the C part that is not blown up there or not
14 highlighted. Now, the requirement was that the plant manager
15 is responsible for performing the annual LOTO; is that
16 correct?

17 A. Yes, sir.

18 Q. He shall not delegate to another employee, "shall"
19 means he's got to do it, right?

20 A. That's correct.

21 Q. It should read -- this program is outlined, requires
22 that random LOTOs be reviewed from the previous 12 months,
23 right?

24 A. Correct.

25 Q. And that the advantage of doing this is to ascertain
26 the knowledge about level of each person involved in actually
27 doing the Lock Out/Tag Out, correct?

28 A. Yes, sir.

1 Q. And any deviations got to be addressed, right?

2 A. Absolutely.

3 Q. First safety of workers?

4 A. Absolutely.

5 Q. All right. The last section there three on
6 Exhibit 178, please, James. And once again, this required the
7 plant manager has to actually do it and then take steps if
8 there's any problems that he finds, right?

9 A. That's correct.

10 Q. Okay. Let's go on. Now, have you reviewed the LOTO
11 sheets that were used at the plant from the time it was opened
12 until Daniel Collins was killed?

13 A. Yes, sir, as it relates to the fuel system.

14 Q. Okay. Exhibit 254, please. So there are eight units
15 at the plant, correct?

16 A. Yes, sir.

17 Q. And symbol by each of these large stacks, correct?

18 A. That's correct.

19 Q. Each year they would be shutdown using a LOTO sheet?

20 A. One at a time, yes, sir.

21 Q. There would be eight LOTO sheets for each year from
22 2014 up until this happened?

23 A. Yes, sir.

24 Q. Okay. Exhibit 264, please. Exhibit 264, Mr. Lane,
25 you're probably going to say you're all too familiar with,
26 it's a rather large exhibit, does it contain all the LOTO
27 sheets that were used from 2014 up until the date of this
28 incident?

1 A. Yes, sir.

2 Q. And does this also include all of the LOTO tags like
3 Exhibit 206 that were used?

4 A. For the most part there were some that were not
5 available, those only apply to a few.

6 Q. And does that exhibit not only contain all of those
7 but contain people that are signing onto the LOTO, correct?

8 A. Yes, sir.

9 Q. Okay.

10 A. Excuse me. Let me clarify that. That's signing onto
11 the implementation, hanging the LOTO, the approval of the
12 LOTO, separate from the workers who sign onto the log sheet to
13 do the work under the LOTO.

14 Q. So first, it's supposed to be installed with these
15 workers, with supposed to have a single installer and single
16 verifier on this sheet?

17 A. Yes, sir.

18 Q. Once that's done, anybody that's going to work on
19 that equipment signs a separate sheet going to say we're going
20 to have to work on it, basically?

21 A. Yes.

22 Q. Okay. Thank you. Now, on all of these tags, for all
23 of those years that you reviewed that was produced by
24 defendants, in the years through 2016, was it properly filled
25 out as date and time on any of them?

26 A. I'm trying to remember if any of them were. I think
27 the answer was not one, if there were any, it was very few.

28 Q. Very few. That's a red flag if you're doing one of

1 these audits, if you looked at one of these tags?

2 A. Yes, sir.

3 Q. Okay. Now, could we pull up Exhibit 149 beside
4 Exhibit 363, which is slide 23 from the opening, which can be
5 marked next in order 618. It's Exhibit 149 beside
6 Exhibit 363. Mr. -- let me lay a little foundation here.
7 Mr. Lane, you've assisted in the preparation of this?

8 A. Yes, sir.

9 Q. And I didn't ask you but when you were reviewing all
10 of these LOTO sheets, did every single one contain Diamond
11 Generating Corporation at the top?

12 A. Yes, sir, they were all the same form and they all
13 did.

14 Q. Now, you reviewed every single one, right?

15 A. I did yes, sir.

16 Q. And so this one from the outages, I lost my laser
17 here. There it is. In reviewing -- like you reviewed the one
18 at the top of this sheet, which is Exhibit 363 on the right.
19 You would review unit three outage from 2-3-14, right?

20 A. Yes, sir.

21 Q. You reviewed each of these outage LOTO sheets like
22 are shown on the left side for each of those that are
23 indicated on the left of this diagram; is that correct?

24 A. Yes, sir.

25 Q. And you provided a list in the dark blue across the
26 top of Exhibit 363 that says single installer, single
27 verifier, time on tags, qualified installer and qualified
28 verifier, correct?

1 A. That's correct.

2 Q. As you went through them there was not a single
3 installer you would make a check of a red flag, correct?

4 A. Yes, sir.

5 Q. If there was not a single verifier more than one that
6 would be a red flag, correct?

7 A. Yes, sir.

8 Q. If there was no times on tags, times whenever that
9 step was installed, you would note that's a red flag; isn't
10 that true?

11 A. Yes, sir.

12 Q. As far as qualified installer, that's someone who had
13 up-to-date training?

14 A. That's correct.

15 Q. You checked to see names on these sheets to see
16 qualified installers or qualified verifiers?

17 A. Yes, sir.

18 Q. After you went through 2014, these are the red flags
19 that you noted?

20 A. Yes, sir, that's correct.

21 Q. Let's go to Exhibit 157 beside Exhibit 364. This is
22 also slide 25 from the opening, which could be next in order
23 619. Is this it, James? Okay. Thank you.

24 You did the same process we went through for the year
25 2015, correct?

26 A. Yes, sir.

27 Q. Each one you looked at individually, right?

28 A. That's correct.

1 Q. And after you did it, you came up with these red
2 flags; is that correct?

3 A. Yes, sir.

4 Q. Okay. Lets to go to Exhibit 158 besides Exhibit 365,
5 which is slide 26 from the opening, which we can mark next in
6 order, Exhibit 620. I do need to repeat that, Your Honor.

7 THE COURT: So, counsel, what we have, we have
8 side-by-side, for example, if you have 158 and 365 here, the
9 previous slide was 364 and 158, the Court confusion, you're
10 also saying next in order, what's being marked next in order?

11 MR. BASILE: I meant, if we want to do this, this
12 whole thing connected here, I've shown here, just so we have a
13 complete record of next in order 618, is what I just said.
14 That's all I was saying. I guess I can back up and do it.

15 THE COURT: We're happy to mark off the exhibits that
16 you're marking here, but we're just -- our confusion is with
17 what do you mean next in order? It's something that's in the
18 binder and we don't have it?

19 MR. BASILE: No, it's this. This is slide 26 from
20 the opening which contains previously agreed upon Exhibit 158.

21 THE COURT: Okay.

22 MR. BASILE: This is what I just -- thought I had
23 laid the foundation for right side of this with Mr. Lane. So,
24 these combined then would be next in order of what we had, we
25 left off at 617, I believe was the timeline.

26 THE COURT: Okay.

27 MR. BASILE: You follow me, Your Honor.

28 THE COURT: So let's do it one 158 and 365 on this

1 one. Then we can discuss outside the presence of the jury
2 whether we need duplicative exhibits combining two exhibits
3 that we'll mark for you.

4 MR. BASILE: Thank you for letting me move on.

5 Q. BY MR. BASILE: So this is what you reviewed of these
6 LOTOs for the year 2016; is that correct?

7 A. Yes, sir.

8 Q. You went through and determined whether it was
9 multiple installers, verifiers and times on tags, qualified
10 installer, qualified verifier, correct?

11 A. That's correct.

12 Q. These red flags, you found from that review, correct?

13 A. Yes, sir.

14 Q. All right. Thank you. Let's talk about the change
15 in procedure. That happened in 2017. You reviewed documents
16 that are prepared to offer some opinions on that, sir?

17 A. Yes, sir.

18 Q. I'd like to pull up Exhibit 349 next to Exhibit 358.
19 And for the record, this is slide 11 in the opening statement,
20 which is Exhibit 349 beside Exhibit 358, which we would ask to
21 be marked next in order 621.

22 THE COURT: You may proceed, Mr. Basile.

23 MR. BASILE: Thank you, Your Honor.

24 Q. BY MR. BASILE: Mr. Lane, that's the turbine package
25 we talked about, right?

26 A. The gas system for the turbine package, yes, sir.

27 Q. You have, in your work in is assisting me on this
28 case and offering your opinions, have helped us come up with

1 what is this power point presentation shown as Exhibit 358,
2 correct?

3 A. Yes, sir.

4 Q. Is that a fair and accurate demonstration of how the
5 fuel filter skid gas flowed through the fuel filter skid?

6 A. Yes, sir.

7 Q. Is it a fair and accurate representation of how you
8 can demonstrate closing the valves to isolate the energy and
9 opening the vents to release the energy?

10 A. Yes, sir.

11 Q. And does this help you in expressing your opinion to
12 this jury to refer to that?

13 A. Yes, sir.

14 Q. Okay. Now, how this rates on the right is ISO valve
15 one on the bottom would be closed, correct?

16 A. That's correct, this is pre- 2017.

17 Q. Thank you for pointing that out. Before 2017 this is
18 basically how it operated, this valve would be closed and then
19 the next step would be closing ISO valve two up here, right?

20 A. Yes, sir.

21 Q. This was shown on the picture up here, then each vent
22 would be opened, it would be drained and safe to work with,
23 correct?

24 A. Yes, sir, after proper authorization, yes, sir.

25 Q. I know there has to be each step should be a single
26 installer, then after that, the single verifier, each time
27 that each step is done needs to be on the tag, right?

28 A. Yes, sir.

1 Q. None of that was shown in any of those LOTOs that you
2 reviewed, right?

3 A. That's correct.

4 Q. All right. Let's go to Exhibit 259. And this is
5 from slide 36 of the opening. We can mark it next in order
6 which is 259, slide 36. Okay. Now, the LOTO, the LOTO sheet
7 on the left was before 2017, correct?

8 A. Yes, sir.

9 Q. And the one is after 2017?

10 A. That's correct, beginning to use in 2017.

11 Q. Let's talk about the order on the one before 2017
12 here. All four of those steps that we just reviewed were
13 pretty close in order on that LOTO sheet; is that right?

14 A. Yes, they were. They're logical, they have the
15 isolation valves, which really 16 is a supply valve, which is
16 normally closed, this is the logical order for the system.

17 Q. Okay. And then it got changed in this 2017, the LOTO
18 sheet on the right; is that correct?

19 A. That's correct.

20 Q. And now, the ISO valve two is now moved further steps
21 down on the LOTO sheet, right?

22 A. That's correct.

23 Q. And again, there was no training on this, and no
24 notices in any of the evidence you reviewed to the workers?

25 A. There is nothing in the record that showed any of
26 that. There was evidence in the form of some testimony that
27 they didn't know where it came from.

28 Q. Yes. We've already heard from Mr. Delaney about

1 that. We'll be hearing from Mr. Palalay. So it was moved
2 down the steps that's indicated on the right in 2017?

3 A. That's correct.

4 Q. All right. Thank you. Exhibit 37 next to two -- I'm
5 sorry. Exhibit 259 beside Exhibit 361, please. This is slide
6 37 from opening, which could be marked next in order, 623. We
7 just talked about what's shown here on the left, these two
8 changes, correct?

9 A. Yes, sir.

10 Q. And here was the old Iso valve two that I'm circling
11 in the upper left of the demonstrative exhibit, right?

12 A. That's correct.

13 Q. That got changed to now Iso valve two to down here on
14 the right, the new Iso valve two, right?

15 A. Yes, sir.

16 Q. And now, it was ISO valve 1 closed, then open the
17 vents, according to the sheet on the right, correct?

18 A. That's correct.

19 Q. And then, workers were used to be in the same
20 vicinity, right?

21 A. Right.

22 Q. And ISO valve 2 would be closed, right?

23 A. That's correct.

24 Q. That was trapping the gas?

25 A. That's what happened.

26 Q. Done the old way, this would never have happened?

27 A. That's very true.

28 Q. So, if the new step was being used, and the workers

1 were still turning the old way, nothing would have happened,
2 right?

3 A. That's correct, it was an inherently safe way of
4 depressurizing that vessel.

5 Q. Okay. Thank you. Let's go to Exhibit 358 beside
6 Exhibit 361. Now, on the left side is how it was done before,
7 correct?

8 A. That's correct.

9 Q. And on the right side of this exhibit, Exhibit 361
10 was now how it was changed, correct?

11 A. Correct.

12 Q. Now, they throw ISO valve 1 and then, they would
13 throw ISO valve 2 up here, and now on the new one, they had
14 opened the vents, right?

15 A. That's right.

16 Q. Then they open the vents now in this method was there
17 evidence that workers would get used to hearing the gas vent
18 out and when they, hearing the stop, they know it was vented?

19 A. That's what the evidence indicated from people's
20 testimony.

21 Q. Now, in the new way, throwing that ISO valve 2 later,
22 so many steps down, the time was a lot longer that was
23 required; isn't that true?

24 A. That's true.

25 Q. That was never brought to anyone's attention based on
26 your review of the evidence?

27 A. In the new version, you're not just venting the
28 filter assembly and stub pieces of pipe connected to it, you

1 were venting the balance of the system, goes all the way to
2 the turbine, so there was more gas to vent.

3 Q. Now, in this new way they had to wait so the time was
4 now critical to wait longer, wasn't it?

5 A. That's correct.

6 Q. And not only were they trained on that, was there
7 ever added a line on that LOTO sheet in those four years for
8 the workers to record the pressure in the tank before they
9 work on the filter tank?

10 A. No, sir.

11 Q. So you mentioned to me before when you were teaching
12 me about this, this change, you told me it was dangerously
13 different; is that right?

14 A. It was dangerously different, and it accomplished
15 nothing useful.

16 Q. Okay. And could you explain to the jury why this
17 change was dangerously different?

18 A. Well, the way that original system was, you close the
19 ISO valve 1 and the original ISO valve 2, you opened the
20 vents, keep venting the whole time, it vents while you're
21 going in there to get the verifier to come out, it vents when
22 -- it just keeps venting until it's completely depressurized.
23 The area being worked on, the new system is completely
24 different in that it vents until you close the new ISO valve
25 2. And that relies on people understanding this system, more
26 than it is clear than they did. I'll add one more thing,
27 there's an argument about double block and bleed valves and
28 things like that, it's a moot argument. Because when they

1 went from version one to version two, all they did was change
2 from have double block and bleed on the other side to double
3 block and bleed on this side, they didn't accomplish anything.
4 There was no improvement.

5 Q. So not only was there no improvement, what you're
6 saying this made it more dangerous?

7 A. I think they outsmarted themselves trying to do
8 something, it was just not done right.

9 Q. Now, you reviewed evidence of a near miss that
10 happened before this, right?

11 A. Yes, back in, I think it was 2014.

12 Q. And there was no root cause analysis after that,
13 correct?

14 A. No, there was none, no.

15 Q. There was no training after that?

16 A. And no change to the procedure and to the form.

17 Q. Now, based on your work on this case, Mr. Lane, do
18 you have an opinion of how you would describe this system that
19 was in place at the Diamond Generating Corporation's project,
20 the Sentinel Energy facility?

21 MR. SCHUMANN: That lacks foundation. Calls for
22 speculation. Assumes facts not in evidence.

23 THE COURT: The way the question began was "Based on
24 the work on your case," I assume there will be a follow-up
25 question after the answer.

26 MR. BASILE: Yes, Your Honor.

27 THE COURT: Overruled.

28 THE WITNESS: Well, colloquial, this was a mess. The

1 procedure itself is, is not perfect, but it's not
2 unacceptable, but the application was just not done per the
3 procedure. There were just over and over again, there were
4 error beyond the graphic that you showed when we look deeper
5 into the system, into the people logging on, logging off, to
6 work under the LOTOs. There's dozens and dozens of more
7 discrepancies. People, it's clear people weren't qualified
8 who were trying to do this work. They were not independent.
9 They were out there together. It just was not effective
10 program. It was not audited to be corrected until there was
11 this horrible accident.

12 Q. BY MR. BASILE: That's based on your review of that
13 SMP-3, correct?

14 A. Yes. And all the other documents that showed what
15 they actually did.

16 Q. It's based on your review of finding all of those red
17 flags?

18 A. Yes, sir.

19 Q. It's also based on the fact that lack of training?

20 A. Yes, sir.

21 Q. Okay. And the LOTO sheet in your opinion was unsafe
22 then?

23 A. It was. It was clearly that the people who were
24 using it, didn't know how to use it. They didn't -- they
25 didn't know what actually authorized a tag to be done, they
26 didn't know when there wasn't the formal system, so you knew
27 when the installer was done and ready for the verifier. All
28 those things, SMP-3, there were several things in there they

1 were skimmed.

2 Q. One area I didn't ask you, shouldn't there have been
3 a separate energy control procedure just for this fuel filter
4 skid?

5 A. Yes.

6 Q. That was also contributed to the problems?

7 A. Yes.

8 Q. Because there was multiple systems on that?

9 A. Yes. Yes.

10 MR. BASILE: Thank you. Nothing further, Your Honor.

11 THE COURT: Mr. Reid or Mr. Schumann,
12 cross-examination.

13 MR. REID: I'll be examining, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. REID:

16 Q. Good afternoon, Mr. Lane.

17 A. Thank you, yes.

18 Q. Hi. You recall that I took your deposition
19 approximately a month ago now?

20 A. Yes, sir.

21 Q. All right. And I asked you a series of questions.
22 You answered them to the best of your ability and under oath,
23 correct?

24 A. That's correct.

25 Q. Very good. We talked at the beginning of the
26 deposition about a number of different entities that were
27 involved in this -- in this project, either with partial
28 ownership interests as operator, those types of things,

1 correct?

2 A. Correct.

3 Q. Sentinel Energy was the owner of the project, it's
4 their project?

5 MR. BASILE: Objection. Lack of foundation.
6 Relevancy. Beyond the scope, Your Honor. He doesn't know
7 ownerships.

8 THE COURT: Overruled. If you know, Mr. Lane.

9 THE WITNESS: You know, I've only known what I've
10 been told in context of people who weren't necessarily trying
11 to explain to me in detail, I really don't know.

12 MR. REID: Okay, Your Honor. Excuse me.

13 You're not -- Your Honor, I apologize.

14 Q. BY MR. REID: Diamond Generating Corporation, we've
15 been referring to them as DG Corp., you understand who they
16 are, correct?

17 A. I do.

18 Q. Okay. And Diamond Generating or DGC Operations, LLC,
19 you know who they are, correct?

20 A. I understand them to be a subsidiary of DGC.

21 Q. They were the operator at the project?

22 A. That's correct.

23 Q. Have you reviewed the asset management agreement
24 between Sentinel and CP Sentinel Energy Management LLC?

25 A. No, sir.

26 Q. So it's correct you won't be offering any opinion
27 regarding the duties and obligations to the parties to that
28 agreement, correct?

1 A. That's true.

2 Q. Have you reviewed --

3 THE REPORTER: Please slow down?

4 Q. BY MR. REID: I apologize. Have you reviewed the
5 operations and maintenance agreement between Sentinel and DGC
6 Operations.

7 A. I have not.

8 Q. So fair to say you won't be offering any opinions
9 regarding the obligations and duties of the parties to that
10 agreement, correct?

11 A. That's true.

12 Q. There are a number of California regulations, the
13 CPUC, California Public Energy Commission, CAL OSHA that this
14 plant was responsible for complying with, correct?

15 A. That's correct.

16 Q. Was it Operations Ops that were responsible for
17 complying with those regulations?

18 MR. BASILE: Objection. Beyond the scope. Lack of
19 foundation.

20 THE COURT: Overruled. You may, Mr. Lane, if you
21 know Mr. Lane.

22 THE WITNESS: I don't know. I just -- I just know
23 there are regulations like the law, they have to be complied
24 with. I don't know how to segregate who has to comply with
25 what part. They have to be complied with.

26 Q. BY MR. REID: Okay. Do you have any information that
27 DG Corp. specifically undertook the task of ensuring DG OPS
28 complied with regulations issued by CAL OSHA?

1 A. Only to the extent I've seen documents of review that
2 was done by DGC to the ones. So there was some involvement in
3 it and it included safety reviews.

4 Q. What documents are you referring to?

5 A. From Mr. Forsyth, I believe. It was -- I saw some,
6 there was some. I don't know exactly where I saw them, line
7 items where there was reviews done by Mr. Forsyth of
8 Mr. Walker. I think it was Mr. Walker or the project, and it
9 was just basically saying that there had been no reportable
10 accidents that is that they had satisfactory grade for the
11 safety.

12 Q. Are you referring to the performance reviews of the
13 plant manager Tom Walker?

14 A. I think they might have been part of that. May have
15 no excerpts. I didn't review them the whole review documents.

16 Q. Did DG Corp. parent company of DG Operations
17 understand, take the task of development training and
18 enforcement of Lockout/Tagout policy and procedures to ensure
19 worker's safety at the facility?

20 MR. BASILE: Objection. Beyond the scope. Compound.
21 Vague and ambiguous. Lack of foundation. Calls for legal
22 conclusion.

23 THE COURT: Sustained on that last ground.

24 MR. REID: These are questions he was asked in his
25 deposition, and he answered, with no objections.

26 MR. BASILE: Same objection, Your Honor.

27 It's calling -- this is going to be the jury's
28 decision.

1 THE COURT: Sustained on the last grounds.

2 MR. BASILE: Thank you, Your Honor.

3 Q. BY MR. REID: Would you agree that Tom Walker is the
4 DGC OPS employee manager of the facility at the time of the
5 incident had the responsibility to make sure the policies and
6 procedures, specifically the Lockout/Tagout policy and
7 procedures were being followed and administered in a safe
8 manner.

9 A. I understand he was indeed the manager at the time
10 and accordingly, he has with SMP-3, he had repressibilities
11 for Lockout/Tagout.

12 Q. Would you agree that Jason King, operations manager
13 of DG OPS, employee, also had the responsibility to ensure
14 policy and procedures were being followed and administered in
15 a safe and reasonable manner?

16 A. I would agree with that, without knowing for sure
17 those exact ways you asked, it is the language that would
18 apply, but I generally agree with that.

19 Q. And would you also agree that the employees were
20 responsible for performing the work in safe and reasonable
21 manner?

22 A. To their best ability, yes, sir.

23 Q. Would you include Daniel Collins in that as an
24 employee?

25 A. Yes, sir.

26 Q. To your knowledge, was there any DGC employees at the
27 facilities on the date of the incident?

28 MR. BASILE: Objection. Lack of foundation. No

1 foundation.

2 THE COURT: Sorry. This is rough, with DG Corp.
3 employees?

4 MR. REID: Yes, sir.

5 THE COURT: Overruled. If you know, Mr. Lane.

6 THE WITNESS: I don't know.

7 Q. BY MR. REID: Do you have any evidence that DG Corps.
8 specifically undertook the task of supervising on the day of
9 the incident.

10 MR. BASILE: Objection. Calls for legal conclusion.

11 MR. REID: It's asking if there's evidence of it,
12 Your Honor.

13 MR. BASILE: Beyond the scope, too.

14 THE COURT: Sustained as to calling for legal
15 conclusion.

16 MR. BASILE: Thank you.

17 Q. BY MR. REID: We mentioned SMP-3 policy was Tom
18 Walker's responsibilities for conducting monthly audits of the
19 loyalty sheets as plant manager?

20 A. Yes, sir.

21 Q. Was the plant manager responsible for conducting the
22 yearly audits of the LOTO sheets?

23 A. Yes, sir.

24 Q. Did Mr. Walker fail in his responsibility to conduct
25 monthly and yearly audits in your opinion?

26 A. Yes, he did. That doesn't say that there weren't
27 monthly audits. We can talk about -- I would disqualify the
28 vast majority of those as being real audits. I didn't find

1 evidence of any annual audits.

2 MR. REID: Move to strike beyond "Yes, he did."

3 THE COURT: After "Yes, he did"?

4 MR. REID: Yes, Your Honor.

5 THE COURT: Overruled.

6 Q. BY MR. REID: Do you have any evidence that during --
7 I'll strike that. Talking about Mr. Walker's performance
8 reviews, I'd like to bring up Exhibit 181. Do you recognize
9 this as a document that you were referring to earlier, one of
10 the documents you were referring to earlier?

11 A. No, sir.

12 Q. Okay.

13 A. I don't recognize this.

14 Q. You never seen this document?

15 A. Not that I can recall.

16 Q. I'm going to represent to you this is a DGC
17 Operations LLC performance review of the plant manager Tom
18 Walker, do you see that?

19 A. I do.

20 Q. And the reviewer is Mr. Mike Kromer, do you know who
21 Mr. Kromer is?

22 A. No, I don't.

23 Q. This is the review period from January 1st, 2015 to
24 December 31, 2015, do you see that?

25 A. I do.

26 Q. If you scroll down to the last page -- last page.
27 Thank you. And you see the date of this review?

28 A. I do.

1 Q. April 1st, 2016?

2 A. Yes, sir.

3 Q. All right. I'm going to represent to you, this is
4 the last performance review that was done for Mr. Walker
5 before he left the plant in 2017. Are you aware of that?

6 A. No, I'm not.

7 Q. Well, upon that representation, would anyone from DGC
8 Corp. -- or DG Corp. had the ability to review Mr. Walker's
9 performance for the 2016 year?

10 MR. BASILE: Objection. Lack of foundation. Calls
11 for speculation and overbroad.

12 THE COURT: Overruled. If you know.

13 THE WITNESS: I don't know.

14 Q. BY MR. REID: Given that my representation that this
15 is the last performance review that was done for Mr. Walker,
16 would any of the documents regarding the LOTOs that are done
17 in 2017 been available for review?

18 MR. BASILE: Objection. Foundation. Lack of --
19 calls for speculation.

20 THE COURT: Overruled. I believe beginning of
21 Mr. Lane's testimony was that he reviewed approximately 45,000
22 documents so.

23 MR. BASILE: I'll withdraw the objection.

24 THE COURT: The Court doesn't know what he's -- what
25 he's actually looked at.

26 MR. BASILE: If he's familiar, he can answer.

27 THE COURT: Thank you.

28 MR. REID: Just based on the dates.

1 THE WITNESS: Yes, based on the dates, yes, that
2 would be necessarily true.

3 Q. BY MR. REID: Other than what you've testified to
4 already, do you have any evidence that DGC Corp. Had a
5 responsibility to oversee safety at the plant?

6 MR. BASILE: Objection. Calls for legal conclusion,
7 Your Honor.

8 THE COURT: I'm trying to hear it. Overruled.

9 THE WITNESS: I don't know. I don't know the legal
10 requirements of a parent corporation and subsidiary relates to
11 that.

12 Q. BY MR. REID: Okay. Did operations, the operator
13 employer of Mr. Collins have responsibility to oversee safety
14 at the facility?

15 MR. BASILE: Objections calls for legal conclusion.

16 THE COURT: Sustained.

17 Q. BY MR. REID: Did Mr. Walker, the plant manager have
18 the responsibility to oversee safety at the facility?

19 MR. BASILE: Same objection, Your Honor.

20 THE COURT: Overruled.

21 THE WITNESS: In accordance with SMP-3 as plant
22 manager he had that responsibility.

23 Q. BY MR. REID: Did Mr. King, as the operations and
24 maintenance manager, have similar responsibility?

25 A. Yes, I believe so.

26 Q. Who had responsibility for placing warnings on the
27 fuel filter assembly?

28 A. That's a soft subject. Sometimes manufacturers of

1 the actual apparatus do it as a matter of course. Some times
2 design engineers do it. That's not often in my experience,
3 it's usually done through a program that the owner operator
4 puts together what kinds of markings they wanted and colors
5 they want, codes, what kind of valve numbering system they are
6 going to use, et cetera. It's something that's done for the;
7 owner operator to their specifications, but often done by the
8 -- put on by the construction crew. I've seen a lot of
9 different combinations of that.

10 Q. You testified in your deposition that Mott McDonald
11 had responsibility -- that the designer of the system, the
12 designer of the plant had a responsibility to place warnings
13 on the that fuel filter assembly in regard to checking the
14 pressure. Do you recall that testimony?

15 A. I do. I'd sure like to see how I worded that because
16 it's not as -- it's not as clear and in that common for the
17 construction company to have that responsibility. I've seen
18 it both ways.

19 MR. REID: Okay. If I can pull up Lane depo, page
20 102, line 21 to page 24, line 10, there's a series of
21 questions there. We'll just address the first one.

22 May I publish, Your Honor.

23 THE COURT: It was line 102, page 102.

24 MR. REID: Page 102, line 21 to page 104, line 10.

25 THE COURT: Seems like it starts on page 103. That's
26 fine Mr. Reid, if you want to start on page 102.

27 MR. REID: I'm just doing this late at night. So, if
28 we can pull that up. So, you're correct, Your Honor, it's

1 103, page -- line 5.

2 Q. BY MR. REID: You see that Mr. Lane?

3 A. I do, and that's what I was remembering. I was
4 thinking I fudged that answer a little bit and then it says, I
5 think there's some responsibility.

6 Q. Okay. So the question that was asked you, do you
7 assign any responsibility for lack of warning the designer of
8 the system? And your answer was, "I think there's some, I do.
9 I actually do, yeah. That one part they wouldn't have
10 anything to do with putting the verification on the LOTO, but
11 I do, there should have been a warning sign." Is that
12 accurate?

13 A. That's fine, yes, sir.

14 Q. When you're saying verification of the LOTO, you're
15 talking about adding a line to the LOTO sheet regarding
16 checking the pressure, correct?

17 A. That's correct.

18 Q. So the designer Mott McDonald would not have had
19 responsibility for that at least?

20 A. That's correct.

21 Q. Did Sentinel facility, the owner of the plant, also
22 have a responsibility to place appropriate warning signs
23 including a warning on the gas filter skid?

24 A. I honestly don't know.

25 Q. Okay. Let's go back to that same section of
26 testimony. Scroll down a little bit, I'm sorry. Line 18
27 through 25. And the question was, "What about Sentinel, as
28 the owner of the facility, did they have a responsibility to

1 ensure there were appropriate warning signs, including warning
2 on the natural gas filter skid?" And your answer was,
3 "Probably. I'd have to think about that a little bit, but I
4 would think so. On the high pressure system, if it was very
5 dangerous high pressure system, I would say yes."

6 So is it your testimony that Sentinel, the owner of
7 the facility, also had the responsibility to place the warning
8 on that filter tank?

9 A. It isn't any more. I thought about that. I bet
10 Sentinel doesn't even know how that system works. They
11 wouldn't be in a position to make that kind of decision.

12 Q. And did DGC OPS, the party operating and maintaining
13 the facility, did they have the responsibility to place
14 warning signs on the fuel filter skid?

15 MR. BASILE: Objection, Your Honor. That calls for
16 legal conclusion as far as responsibilities go.

17 THE COURT: Overruled as worded.

18 THE WITNESS: I just think it's a really good idea.
19 Responsibility sort of borders on the legal question of what
20 the requirement is, I think it was a good idea.

21 MR. REID: I'm going to move to strike the answer,
22 Your Honor, and move that we read his testimony a little
23 further down, the same section.

24 THE COURT: Overruled on the striking the testimony,
25 and you may read from the deposition transcript.

26 Q. BY MR. REID: The question was, "DGC OPS as the party
27 that was operating, maintaining the facility, did they have
28 the responsibility to place warnings signs on the fuel filer

1 skid?" Your answer was, "Yes." Have you changed your mind?

2 A. No. I think they have a responsibility, I just --
3 that word responsibility bothers me when I get it from a
4 lawyer. It's too much like a requirement. I don't know of
5 any code requirement.

6 Q. Is it your opinion that Jason King was negligent with
7 regard to this accident?

8 A. Yes.

9 Q. Is it your opinion that Tom Walker was negligent with
10 regard to this accident?

11 MR. BASILE: Objection. That's a legal conclusion.
12 That the jury will decide.

13 THE COURT: Sustained.

14 Q. BY MR. REID: Do you have any opinions regarding the
15 labelling of the valves on the fuel filter system?

16 A. Yes.

17 Q. What's your opinion?

18 A. They should have been clearly labeled and they
19 shouldn't have been used the same name for two different
20 valves.

21 Q. Okay. We'll get to that. Who, in your opinion,
22 should have been placing labels on those valves?

23 A. That should have been done at new construction by the
24 owner operator, the group commissioning the plant.

25 Q. That would have been Sentinel?

26 A. I don't know.

27 Q. Do you know who constructed the plant?

28 A. Actually, I don't recall. I think I've seen that.

1 But I don't recall.

2 Q. Does Jamma Power System LLC ring a bell?

3 A. It does, yes.

4 Q. Does that refresh your recollection that they were a
5 construction company that built the plant?

6 A. Yes.

7 Q. Would you expect them to place labels on the valves?

8 A. No. The labelling system on valves and instruments
9 is a company by company system. For instance, just for
10 example, in my system, those valves would be like FV 5-1, FV
11 5-2, et cetera, fuel valve, unit one; valve two, valve three,
12 that's not something construction companies do. I've only
13 seen people in commissioning business put those together.

14 Q. Is your opinion DC Corp. Should have been placing
15 labels on the valves?

16 A. I don't know how to make the differentiation between
17 whoever was controlling that kind of work.

18 Q. One of the original allegations that plaintiff was
19 making was there was a lack of double block and bleed out.

20 A. Repeat the question.

21 Q. One of the plaintiff's allegations in the Complaint
22 was that there was a lack of a double block and bleed on the
23 outlet side of the system, are you aware of that allegation?

24 MR. BASILE: Objection. It's beyond the scope,
25 relevancy, lack of foundation.

26 THE COURT: Sustained.

27 MR. REID: Your Honor, the witness has already been
28 asked about this double block and bleed issue.

1 THE COURT: That's been in the past time period. I
2 don't know what discovery occurred since that time we're here
3 at trial.

4 MR. REID: They asked him about it today, Your Honor.

5 THE COURT: Regarding something in the Complaint?

6 MR. REID: Not necessarily the Complaint, Your Honor,
7 but regarding the allegation that there was a lack of double
8 block and bleed on the outlet side of the system.

9 THE COURT: If you can rephrase your question.

10 Sustained as worded.

11 MR. REID: Thank you, Your Honor. All right.

12 Q. BY MR. REID: Mr. Lane, do you recall testifying
13 regarding the double block and bleed on the outlet side of the
14 system in your deposition?

15 A. I only remember vaguely we talked about that.

16 Q. And I asked you at the time, are you going to be
17 providing testimony regarding the double block and bleed on
18 the outlet side of the system; do you recall that?

19 A. Only vaguely.

20 Q. Okay. And I'm going to ask we put up page 99, lines
21 9 through 19 of Mr. Lane's deposition.

22 THE COURT: I apologize, Mr. Reid.

23 MR. REID: Page 99.

24 THE COURT: Line numbers.

25 MR. REID: Nine through 19.

26 THE COURT: You may proceed.

27 Q. BY MR. REID: All right. Are you going -- line 9.
28 "Are you going to be providing testimony regarding the double

1 block and bleed on the outlet side of the system?"

2 "I'm certainly knowledgeable in that area, so I can,
3 yes. The term negligently is an area we've been, I have an
4 opinion and so does OSHA have an opinion on this subject."

5 "And what's your opinion and what is CAL OSHA's
6 opinion?"

7 "My opinion is and there should have --" I'm
8 paraphrasing. Let me read it?

9 THE COURT: Pleads don't paraphrase if you're reading
10 from a transcript so.

11 MR. REID: My mind is filling in the things.

12 The answer says, "Well, my opinion is you should have
13 a double block and bleed system."

14 Q. BY MR. REID: Do you recall that testimony now?

15 A. I do.

16 Q. And is it still your opinion that there should have
17 been a double block and bleed on the outlet side?

18 A. It is. I think it is a good thing to do, but it is
19 not a requirement by Code, specifically, they address that as
20 not being required. It's just a good idea. There's
21 application there's -- it gets kind of complicated. It didn't
22 matter in this case because the valve didn't leak.

23 Q. What codes are you talking about?

24 A. The CAL OSHA, I believe that's -- they articulate
25 that when possible, that a double block and bleed should be
26 provided. And the reason it's complicated here is because
27 there's two supplies, there's a main supply and there's a
28 bypass.

1 THE COURT: Okay. Mr. Reid, we're going to stop
2 there. Per your request, we'll be taking the 3:00 o'clock
3 break. So thank you, members of the jury, we're going to take
4 a 15-minute recess. Please come back at 3:14, so I guess
5 little less than that. See you then. Thank you. Please do
6 not discuss the facts of the case or the parties involved with
7 each other or anyone else.

8 (Outside the presence of the jury.)

9 THE COURT: We're outside the presence of the jury.
10 Counsel are still present. We're going to take our recess,
11 but is there anything before we take our recess?

12 MR. BASILE: Yes, Your Honor. I just want to point
13 this out in my practice and experience, there's one lawyer per
14 one witness. They both have been objecting. Both of them.
15 They did it earlier. They did it with this witness. So, I
16 don't know what the Court's preference is. I think that's
17 what the rules are.

18 THE COURT: That is. Well, I'm not sure if there's
19 an actual formal rule. I know most court's practice only one
20 witness is to do the examination and everything; however,
21 between trying to keep up with the exhibits. We're going to
22 come back to that at the end of the day. In trying to keep
23 track of everything, I only hear Mr. Reid. I see Mr. Schumann
24 for whatever reason, he's choosing to sit quietly at the
25 table. So I --

26 MR. BASILE: That will be the rule from here on.

27 THE COURT: Yes. I see Mr. Schumann quietly
28 communicating with Mr. Reid as far as like who's making the

1 objections to the Court, I only here Mr. Reid, am I mistaken,
2 Mr. Reid?

3 MR. REID: No, Your Honor.

4 THE COURT: Okay.

5 MR. SULLIVAN: That's not accurate.

6 MR. SCHUMANN: I'll try to be quiet as well.

7 THE COURT: I must of had my head down at that point
8 for a majority. Both sides moving forward, that is the
9 practice at least I was used to. Yes. One side, elect
10 someone and proceed accordingly.

11 MR. REID: Understood, Your Honor.

12 MR. BASILE: Thank you very much, Your Honor.

13 (Brief Recess.)

14 THE COURT: Okay. Let's formally go back on the
15 record in the matter of Collins versus DG Corp. We left off
16 with the cross-examination of Mr. Lane. I'm sorry, for the
17 record all members of the jury panel are back and present.
18 Mr. Reid, whenever you're ready.

19 MR. REID: All right. Exhibit 349.

20 Q. BY MR. REID: All right. Mr. Lane, this is a
21 photograph of the fuel filter skid, correct?

22 A. Yes, sir.

23 Q. All right. And there are three large red handles in
24 the photograph, correct?

25 A. Correct.

26 Q. And the one at the bottom left -- so, all right.
27 Yeah. That one right there, you see it?

28 A. Yes.

1 Q. And that's isolation valve whoops, I'm sorry. That's
2 not the one I want. It's the one up above that. Just that
3 one, there we go. Thank you. That's the handle for isolation
4 valve Number 1, correct?

5 A. In both versions, yes, sir.

6 Q. In both versions. And isolation valve Number 2 at
7 least for the 2017 year, go ahead and drop that, and that one
8 you highlighted before there, we go to that one. In the 2017
9 version, that's isolation valve Number 2, correct?

10 A. That's correct.

11 Q. All right. And those two valves and the vent valves
12 which are on the other side of that inlet line, those create
13 the double block and bleed on the inlet system for the 2017
14 version, in your opinion, correct?

15 A. It does, yes.

16 Q. Okay. And isolation valve 1 and isolation valve 2
17 and the two vent valves, that is the designed double block and
18 bleed for the inlet side of the system, correct?

19 A. It would it appear so. I haven't -- the design
20 drawings don't call out, that I recall, that way.

21 Q. You don't know as you sit here today?

22 A. It's certainly configured that way.

23 Q. And it's your testimony that this valve up here on
24 top on the outlet side in 2016 was identified as isolation
25 valve Number 2; is that correct?

26 A. Yes.

27 Q. Okay. What do you base that opinion on?

28 A. Golly.

1 Q. Let me ask it a little different way. Do you base
2 that opinion on your review of the LOTO sheets from the date
3 that the plant opened or from the first LOTO in 2014 up until
4 2016?

5 A. Well, in part because it would be in practical, you
6 would end up if it were not true, you would have had this
7 accident much more likely because you have to give time to
8 vent the system. And the testimony of people indicates to me
9 that it was clear that ISO 2 was the upper valve prior to
10 2017.

11 Q. Whose testimony are you referring to, sir?

12 A. Well, Ward, Robert Ward, in particular, responded in
13 a way when questioned by Mr. Collins, I've seen where he's
14 responded that he didn't know when they made the change. And
15 that it moved the operation of ISO valve 2 also down to the
16 LOTO sheet.

17 Q. Okay. So when you're talking about this dangerously
18 different change, you're talking about just the fact that the
19 isolation valve was renamed?

20 A. It's -- it's not just the single thing but that made
21 it possible. I mean, again, the whole point of the LOTO
22 system is defense in depth, not single failure, no single miss
23 operational issue because someone will come along and identify
24 and each person will verify it's de-energize, you can't pick
25 one thing and say that's the total, yes, sir.

26 Q. Well, again, my question was, how did you decide that
27 isolation valve Number 2, the one on the top, had been
28 relabeled isolation valve Number 3 and that the one on the

1 bottom to the right had been labeled isolation valve Number 2?

2 A. My understanding from the documents and testimony
3 here.

4 Q. Again, I asked you whose specific testimony are you
5 referring to?

6 A. Well, I told you, Mr. Ward. I just know Mr. Palalay
7 was confused as was Mr. Delaney. It's not shown in any
8 document as having been documented that I saw.

9 Q. Okay. All right. On this particular system that the
10 inlet, the fuel filter skid, the piping over to the turbine
11 panel, are you aware that there are two pressure sensors in
12 this system?

13 A. Two pressure sensors, yes, in addition to a
14 differential sensor. That's also on this filter tank.

15 Q. There's actually a gauge, analog gauge on the filter
16 tank itself?

17 A. Yes, that's correct.

18 Q. We can't see the filter gauge from this angle. Your
19 Honor, I'm going to request to publish Exhibit 600 which is a
20 photograph of the fuel tank showing the gauge on the date of
21 the incident. It's a different angle than what we've seen
22 before.

23 THE COURT: All right. When you're ready, Mr. Reid.

24 MR. REID: Number 600, please. Can you zoom in on
25 that for me.

26 Q. BY MR. REID: Do you recognize this as a photograph
27 of the filter tank assembly and the ladder that was placed by
28 Mr. Collins on the date of the incident?

1 A. I don't know if that was the placement he had. But
2 that's the filter unit that's where I was told that ladder had
3 been placed.

4 Q. And you see where I'm pointing here, that's the gauge
5 that's on the fuel filter assembly, correct?

6 A. Correct.

7 Q. Okay. Do you have any opinion as to whether that
8 gauge is visible prior to climbing up the ladder?

9 MR. BASILE: Objection. Beyond the scope of his
10 testimony, Your Honor.

11 THE COURT: Overruled.

12 THE WITNESS: I believe it's not visible once you
13 start, you're up on the ladder. But just before you get on
14 the ladder, I believe it is visible.

15 Q. BY MR. REID: Thank you. You can take that down.
16 All right. So we've got three pressure sensors, an analog we
17 just saw and then there are two sensors, one near the fuel
18 filter skid and one in the turbine package; is that correct,
19 that's your understanding?

20 A. That's my understanding.

21 Q. And those two filter sensors or those two pressure
22 sensors, you can read the pressure in the control in the
23 system, in the control room; is that your understanding?

24 A. Yes, you can.

25 Q. All right. And do you know the name of that system?

26 A. I have it, there's a generic name called SCDA.
27 Supervisory control and data acquisition.

28 Q. I'll represent to you that it's the PI historian

1 system that's the terminology they use at the plant, PI
2 historian?

3 A. That's the recording part you can read it on the SCDA
4 and PI, records the data.

5 Q. Okay. Thank you. Are you aware that you can look at
6 that recorded data and go back to the dates when these LOTOs
7 were performed and observe the pressure in the system?

8 A. Generally, yes. I don't know how far back they go.
9 That depends on the data concentration.

10 MR. REID: I'd like to publish Exhibit 67. It's a
11 printout of an excel sheet for the date of the incident. It's
12 been stipulated to.

13 THE COURT: Thank you, Mr. Reid, you may proceed.

14 MR. REID: Thank you. All right.

15 Q. BY MR. REID: All right. Let's scroll do, you know,
16 a little bit to the first yellow highlighting, there we go.
17 And in looking at this system, you can see the pressure
18 increase in the system, pressure at about 609 to 610, they go
19 from normal pressure to operating pressure; is that your
20 understanding?

21 A. I don't know which sensor this one is. Is this the
22 one down the turbine or the one in the filter skid.

23 Q. Fair question. Let's go back to the top of the
24 document. Enlarge that top part. So the one on the left is
25 the pressure sensor at the filter skid. One to the right is
26 the pressure sensor at the gas turbine; does that make sense
27 to you now?

28 A. I understand.

1 Q. And that, when I showed you the increase in pressure,
2 is that your understanding that they were operating other
3 units on that date?

4 A. I have no specific knowledge, but I do know they were
5 operating some.

6 Q. Okay. And again, just for the record, this the unit
7 5 maintenance outage on 3-6-2017, which is the date
8 Mr. Collins was killed, correct?

9 A. Yes.

10 Q. Let's scroll down. There's a larger highlighted
11 yellow section. Yeah, right there. Have you seen this
12 document before?

13 A. I believe I have.

14 Q. Okay. And is it your understanding that this time
15 frame from 6:32 to 6:38 was when Mr. Palalay began the initial
16 venting and then stopped?

17 MR. BASILE: Lack of foundation, Your Honor, but if
18 he knows an answer.

19 THE WITNESS: I can only say I believe that that is
20 also -- it's true, but it was -- I also have to say that
21 Mr. Delaney also testified that he operated the vent valves.

22 Q. BY MR. REID: Okay. Question for you, do you know
23 where the pressure transducer sensor is in the filter skid?

24 A. I don't recall. I think it's in the vicinity. No, I
25 don't know. I just know it measures the pressure in the
26 vessel.

27 Q. If I said to you that it's on the outlet side, near
28 the bypass valve, would that refresh your recollection?

1 A. No, not really. I don't recall.

2 Q. Okay. Fair enough. I'm going to make that
3 representation to you that that's where that particular sensor
4 is, the pressure transducer, it's on the outlet side of the
5 filter, it si past that valve that we've been variously
6 calling isolation valve and -- ISO 2 and 3, perhaps, I
7 apologize.

8 A. Okay.

9 Q. Does that make?

10 A. It does, and that -- I mean rings the bell that's
11 where it was.

12 Q. Okay. Fine. So as we sit here today, you can't say
13 one way or the other whether this is reflective of Mr. Palalay
14 opening the vent valves and then closing them?

15 A. I cannot.

16 Q. Scroll down a little farther. All right. Let me
17 have that line and the ones to the bottom of the page. So
18 again, that right side pressure is the pressure that's being
19 measured in the turbine package?

20 A. Correct.

21 Q. Correct. Do you recall testimony that there was an
22 unusual venting besides the initial venting from the skid?

23 A. Definitely, yes.

24 Q. Okay. Do you recall where that unusual venting came
25 from based on the testimony?

26 A. Well, it cams from the turbine area, and it came, as
27 I understand it, as I studied it, was a result of when
28 de-energizing the valves, the instrumentation technician

1 de-energizes the system, when the control valves are
2 de-energized, they fail safe and they supply valve goes shut
3 and the vent goes open and that would explain to me the source
4 of that vent.

5 Q. Okay. So, let me back up just a little bit. So,
6 there were four ventings on that morning; is that correct? Is
7 that your understanding?

8 A. No, I don't know that. I -- no, sir, I don't know
9 that.

10 Q. So, let me just go through them as I understand them.
11 First venting was when Mr. Palalay opened the vent valves,
12 closed them, so he could go get ear plugs, correct?

13 MR. BASILE: Objection, Your Honor, lack of
14 foundation. Leading. Well, not leading. Well, it's lack of
15 foundation. He says he doesn't know.

16 Q. BY MR. REID: Well, you reviewed Mr. Palalay's
17 deposition?

18 THE COURT: Are you withdrawing your question?

19 MR. REID: No, I'm not.

20 THE COURT: Okay. Sustained.

21 MR. BASILE: Thank you.

22 Q. BY MR. REID: You reviewed Mr. Palalay's deposition,
23 correct?

24 A. I did.

25 Q. Mr. Palalay testified that he began the venting
26 process, then stopped so he could go inside and get ear plugs
27 and a jacket?

28 MR. SULLIVAN: Objection. Misstates the testimony.

1 THE COURT: The objection is overruled.

2 THE WITNESS: I'm sorry, Your Honor.

3 THE COURT: That's fine. Mr. Lane, you may proceed.

4 MR. REID: My understanding is that from his
5 testimony, and we can revisit the details but was that he was
6 present, and then he went and got the earplugs. I don't know
7 that -- I don't recall that it was clear that he was the one
8 who operated the vent valve.

9 Q. Did you review the Root Cause Analysis?

10 A. I did.

11 Q. And what I've just asked you about, is Mr. Palalay
12 consistent with what the root cause analysis says?

13 A. I'd have to go back and look at the root cause
14 analysis. I don't recall whether -- specifically whether it
15 was he or Mr. Delaney.

16 Q. Okay. I'm going to represent to you there were two
17 more ventings. One at 6:53, and can we pull it up. It is
18 Exhibit 579. Yeah, side-by-side with this one if you would.
19 That's not the one I wanted. I apologize. Let me just double
20 check. 379, I apologize. And do you recognize these as the
21 LOTO tags for the date of the incident?

22 A. Yes, I do.

23 Q. Okay. And can we enlarge that and scroll down to --
24 I believe it's tag 8, 9 and 10. Let's try nine, please. So
25 earlier you mentioned that none of the LOTO tags had times on
26 them, do you recall that testimony?

27 A. We were talking about the history historically, I
28 believe I said that to the best of my knowledge there were

1 none but if there were, there were just a few.

2 Q. On the date of the incident, there were times on the
3 tags, correct?

4 A. There was some, yes, I believe that's true.

5 Q. And 6:33 approximately in this venting that we saw,
6 at six -- yeah. Down lower. Sorry. Next page. You know, I
7 apologize. I'm bouncing you around. Go back one page, one
8 line and highlight the bottom for me. Yeah. There you go.
9 Perfect. Enlarge that. Tag says at 633, the package
10 isolation fuel valve was closed by Mr. Collins; is that
11 correct? Maybe you can't see that.

12 MR. BASILE: Objection. Calls for speculation. It's
13 just the initials. And we don't -- there's no foundation as
14 to who actually wrote those initials, Your Honor.

15 MR. REID: Was it your understanding?

16 I apologize, Your Honor.

17 THE COURT: Overruled. If you know Mr. Lane from
18 your review of the 45,000 pages you were provided.

19 THE WITNESS: The problem is, you don't know. And
20 you have to look at the LOTO sheet and the LOTO tag number in
21 order to sort of piece these together. This has a generic
22 name on the valve, you don't know which valve, package manual,
23 fuel isolation valve, so which valve is that?

24 Q. BY MR. REID: Well I can describe it for you or we
25 can look at the LOTO sheet. Which is Exhibit 589. So take
26 these down. 589, please. And then enlarge the bottom
27 portion. Does that help you, step nine, package fuel manual,
28 fuel isolation valve?

1 A. Yeah, I believe it does. Yes.

2 Q. Okay. And do you know where that package manual fuel
3 isolation valve is located?

4 A. Not absolutely. I think it's to the turbine package.
5 I'd have to look at the drawing. I'd be making an educated
6 guess, that's right, but I'd look at the drawing to be sure.

7 Q. You went out to the plant, you looked at this system,
8 correct?

9 A. Yes, sir.

10 Q. Okay. And based on your knowledge, based on the
11 deposition transcripts, you've reviewed other documents, you
12 can't say for sure where that valve is?

13 A. No, I'd have to look at the drawing.

14 Q. Okay. And step Number 10 and step Number 11,
15 maintenance valve Number 1 and Number 2, do you know what
16 those are?

17 A. I believe they are vents and they were over in the
18 turbine area.

19 Q. So, closing package manual fuel isolation valve, step
20 nine, would isolate the turbine package from the rest of the
21 system; is that correct?

22 A. I believe that's true. I would like to see the
23 drawing to tell you that for sure.

24 Q. Which drawing are we talking about?

25 A. The fuel system drawing, the drawing for the turbine
26 fuel system to the extent it has been annotated to show -- to
27 confirm these names but I believe what you're saying is true.

28 Q. We asked you if you were ready to give your final

1 opinions, correct, when we took your deposition? Mr. Basile
2 asked you that when we started today, correct?

3 A. Yes.

4 Q. So you don't know looking at these sheets for sure
5 which valve is which, correct?

6 A. Of these valves, I don't think these valves had
7 anything to do with the accident at all. I can't say I
8 studied them.

9 Q. Did you review testimony by anyone, Mr. Delaney,
10 Mr. Palalay, Mr. King, Mr. Johnson, that package fuel
11 isolation valve number 9 was closed by Mr. Collins and then
12 the two maintenance valves were opened at that point in time,
13 there was another short burst of fuel released?

14 A. Yes. That's normal. I didn't think of that as a
15 meaningful vent, it's a normal vent when you isolate --
16 there's an isolation valve that's always at the turbine skid
17 at least one vent valve. Here they have two. So you would
18 have a very brief vent for that, yes, sir.

19 Q. So when the people that were there that day,
20 Mr. Palalay, Mr. King, Mr. Delaney, Mr. Ward, Mr. Kim, when
21 they talked about this, this was an unusual venting sound,
22 you're saying it's normal; is that correct?

23 A. -- no. I think we're talking about apples and
24 oranges here. I don't think this is one they were talking
25 about. The one they were talking about had to do with the
26 de-energizing the control valve, electric control valves, when
27 you do that, they fail safe. And the isolation valves go
28 close, the vent goes open, and I saw that on a drawing.

1 Q. Let's go back to 60 -- 87, please.

2 A. I should add, the valves I'm talking about, you can't
3 operate.

4 Q. That's all.

5 A. Okay.

6 Q. Let's go back to 607, please. Sorry. I can't read
7 my own notes going back to the pressure historian for the day
8 of the incident, let's scroll down, that first yellow is the
9 pressure up, yeah. Next one is what we believe is when
10 Mr. Palalay opened the venting and then closed it, next one
11 down, and this is an indication that the pressure transducer
12 inside the turbine panel, went to zero; is that correct, last
13 four?

14 A. Yes.

15 Q. Okay. And if the package manual isolation valve was
16 closed at that point in time, we would have been venting fuel
17 inside the turbine package, correct?

18 A. Well, no, you never vent fuel inside the turbine
19 package. It's a vent that's routed outside. I believe it's
20 more likely than not, this was corresponded to when the fuel
21 control electronic valves were de-energized, they vented.

22 Q. Let's scroll down. There's one more yellow
23 highlighted. Can you give me about three lines on either side
24 of that yellow highlight. When the system says "bad," do you
25 understand what that means?

26 A. Yes, I do.

27 Q. What does that mean it?

28 A. It can mean two things. It means it's de-energized,

1 it can also mean it's gone off range where it's reading beyond
2 negative, lower than it's allowed and it's programmed to be
3 safe at.

4 Q. Would this be consistent with Mr. Kim de-energizing
5 the system?

6 A. Possibly. I'd have to look at the circuit.
7 Sometimes the -- usually the instruments have a feed and the
8 control valves have a separate feed. It could be from the
9 same upstream breaker, but they might not. I'd have to look
10 at the drawing to know.

11 Q. You don't know as you sit here whether that's a
12 reflection of Mr. Kim de-energizing the turbine package and
13 filter skid.

14 A. I do believe that has to do with Mr. Kim
15 de-energizing, but what I don't know is whether the
16 de-energization is a single step or two steps. It's often a
17 two step, I didn't study the instrumentation drawing to that
18 degree.

19 Q. Okay. When you're talking about block valves, I call
20 block valves, you call them something else, the fail safe?

21 A. Fail safe valves, electronically controlled valves.
22 You can't manually operate them.

23 Q. Those two valves, there's one just outside the filter
24 skid on the outlet side, correct?

25 A. I don't recall where they are. I just know in the
26 drawing system I know where they are. Physically, I wasn't
27 corned about those valves.

28 Q. Okay.

1 A. Exactly.

2 Q. Okay. So those two valves create the emergency stop
3 for the turbine package, correct?

4 A. That's correct.

5 Q. And if you hit emergency stop it closes the one valve
6 and opens the others and vents gas to the turbine, so the
7 turbine shuts down, correct?

8 A. It does. It shows -- shuts off the supply and vents
9 the header.

10 Q. You get the same effect if you turnoff the power to
11 those two switches, correct?

12 A. Exactly.

13 Q. Okay. So when the power was turned off and there was
14 another venting, it was venting the gas in the lines between
15 those two valves, correct, where they are located?

16 A. That's correct.

17 Q. All right. This excel spreadsheet or printout from
18 excel spreadsheet that we're looking, have you seen the actual
19 excel spreadsheet, the live version of it, for lack of a
20 better word, the native file?

21 A. I have seen the graphic. It wasn't great quality, I
22 seen the graphic.

23 Q. There was a graphic included in the root cause
24 analysis which is one page, it's difficult to read, correct?

25 A. Yes.

26 Q. Have you seen the actual excel spread sheet that was
27 provided to plaintiff counsel prior to Mr. Johnson's
28 deposition and talked about in Mr. Johnson's deposition?

1 A. I did.

2 Q. Okay. I'm going to --

3 MR. REID: I'm going to ask to publish Exhibit 489,
4 Your Honor.

5 THE COURT: 489?

6 MR. REID: Yes, Your Honor. I apologize. You may
7 have it as a piece of paper. It's actually an excel spread
8 sheet with pressures from five different days on it.

9 THE COURT: It's a unit maintenance outage pressure
10 gauge.

11 THE REPORTER: Can you state that again, please.

12 THE COURT: Mr. Lane's not the only one who speaks
13 fast. Unit maintenance outage pressure reading dated March
14 6th, 2017. It's an excel spreadsheet.

15 MR. REID: Not only March 6th but it has three other
16 pressure readings from the February LOTO outages and then one
17 from 2016.

18 THE COURT: That's fine, Mr. Reid.

19 MR. REID: Please.

20 Q. BY MR. REID: All right. So, this first one is the
21 one we were looking at from March 6th of 2017, see that?

22 A. I do.

23 Q. Okay.

24 A. Yes, sir.

25 Q. And there were multiple ventings in that first
26 spreadsheet, correct?

27 A. As I recall, there were. I recall three, but I don't
28 recall four.

1 Q. So let's go to February 6th, 2017. Next tab. That
2 one, scroll down for me. Yellow highlighted area. All right.
3 Stop. That's good. And this is the venting that occurred on
4 February 6th, 2017. Do you recall who the participants in
5 that LOTO were?

6 A. No, I don't.

7 Q. Okay. That's fine. Let's pull up Exhibit 264, pages
8 262 and 263. If you can enlarge that first page for me.
9 Scroll down farther. Stop. That's fine. Participants in
10 that LOTO as testified to here by Mr. Delaney were Dan Collins
11 and Mike Delaney; is that your understanding?

12 MR. BASILE: Objection, Your Honor. Lack of
13 foundation, if he knows.

14 THE COURT: If you know, Mr. Lane. Overruled.

15 THE WITNESS: I believe that's correct based on the
16 initials, the way I sort of decipher them.

17 Q. BY MR. REID: This is one of the LOTO sheets that you
18 say the labelling of isolation valve Number 2 was changed,
19 correct?

20 A. I never said they were labels were changed.

21 Q. Not the labels, excuse me. They were identified
22 differently, correct?

23 A. Somewhere along the weigh they were identified
24 differently. I don't -- I believe that they may very well, in
25 fact, more likely than not, were operated on this one per the
26 old procedure.

27 Q. All right. Let's go back to the excel spreadsheet,
28 if we could. So, again, the left side column pressure

1 readings are at the filter skid?

2 A. Correct.

3 Q. The right side are at the turbine package?

4 A. Correct.

5 Q. And at 6:37 a.m. we start out at 910 PSI and 908 PSI,
6 which is consistent with the variation of the gauges, fair?

7 So same pressure?

8 A. Yes. Yes.

9 Q. And that pressure drops all the way to zero, both of
10 them?

11 A. It does. So they vented the entire system at the
12 same time.

13 Q. That's consistent with the LOTO sheet for that date,
14 correct?

15 A. That's correct.

16 Q. Close isolation valve Number 1, open the two vents,
17 and it was vented all the way to zero?

18 A. Fully vented, I stand corrected. This would be the
19 new system, and it would vent where they took time to vent the
20 entire system.

21 Q. Okay. And the LOTO on this day which Mr. Collins
22 participated in, which Mr. Delaney participated in, the system
23 was vented all the way to zero without incident, correct?

24 A. That's correct.

25 Q. There were no accidents on this date, correct, no one
26 was injured?

27 A. To my knowledge, that's true, yes.

28 MR. REID: If we can put up the Exhibit 264 again,

1 pages 272 to 273. Enlarge that bottom.

2 Let's enlarge the top.

3 Q. BY MR. REID: This was unit four annual outage which
4 was performed on February 13th of 2017, correct?

5 A. I believe that's correct.

6 Q. Scroll down to the bottom for me and enlarge.

7 Looking at this, this is the new procedure as you described
8 it?

9 A. Should be, yes, sir.

10 Q. Okay. So isolation valve Number 1 is closed and in
11 step Number 3, final filter vent valve 1 and 2 are closed in
12 steps 4 and 5, and at that point in time the entire system
13 should vent down?

14 A. You said close, you meant open.

15 Q. I meant open. Isolation valve one is closed, vent
16 valves are open?

17 A. That's correct.

18 Q. The time it takes to vent the system, is that
19 function of how far those vent valves are opened?

20 A. Well, of course, it could be but that would be --
21 that would not be how those valves would open. Those are ball
22 valves, they would be fully opened or fully closed.

23 Q. Do you recall any testimony from any of the
24 witnesses' depositions that you reviewed that they would open
25 one of the valves and crack the other one so that they
26 wouldn't vent the system too quickly?

27 A. I don't recall that. I've seen that done, so that's
28 possible.

1 Q. All right. So you recognize the initials for either
2 one of people the installer or the verifier in this one?

3 A. I'd have to go back to my cheat sheet, I don't know.

4 Q. If I said Robert Ward and Ernest Jones, would that
5 refresh your recollection?

6 A. It would, yes.

7 Q. Let's go back to the excel spreadsheet 489.

8 THE COURT: Mr. Reid, I apologize but we want to -- I
9 notice you have five excel spreadsheets, if we can.

10 MR. REID: I'll try to move on.

11 THE COURT: We have to be mindful of the jurors'
12 time. We said 3:30ish, but people are planning accordingly.
13 We're almost at 4:00 o'clock.

14 MR. REID: I probably have at least another half hour
15 here. I hate to bring him back.

16 THE COURT: Well, we -- staffing reasons.

17 MR. REID: Are we done?

18 THE COURT: We don't have another half hour. If you
19 have -- we'll go -- is it okay if we go 4:00? Any objection?
20 Not seeing any hands. Okay. We'll go to 4:00 o'clock, then
21 we'll end there.

22 Q. BY MR. REID: All right. So, excel spreadsheet for
23 February 13, third tab over. Scroll down. Stop. And this is
24 another LOTO where the venting was all the way to zero on both
25 the turbine panel and the fuel filter skid, correct?

26 A. Yes.

27 Q. That venting went from 6:59 to 7:14, approximately
28 15 minutes, correct?

1 A. Correct.

2 Q. Next one over number 4. Yeah. February 20th.
3 Scroll down again. This is another indication where the
4 venting went, both the turbine packages and the fuel filter
5 skid from the operating pressure at the time all the way down
6 to zero, correct?

7 A. Correct.

8 Q. All right. And February 17th or excuse me.
9 February 6th, February 13, February 20, all use that new
10 procedure, correct?

11 A. It appears so, yes.

12 Q. And all three of those LOTOs were accomplished, the
13 system was completely vented, no one was injured, correct?

14 A. To my knowledge, that's true.

15 Q. Mr. Collins was involved in the February 3 one,
16 correct?

17 A. He was involved, yes, sir.

18 Q. He performed the verifier role?

19 A. We should go back to that. I believe he was all over
20 that document as part-time was installer, part-time verifier.

21 Q. Let's back to 264 and 262 and 263. 262. Sorry. All
22 right. So enlarge the bottom half for me. So, I see
23 Mr. Collins' initials on Number 1. I see Mr. Collins'
24 initials as the installer on Number 6. Other than that, I see
25 Mr. Delaney was the installer, Mr. Collins was the verifier?

26 A. Correct.

27 Q. There were two steps where they switched things up?

28 A. Yes.

1 Q. For whatever reason, but for the most part,
2 Mr. Delaney did the install and Mr. Collins did the verify,
3 correct?

4 A. That's correct.

5 Q. All right. For all three of these dates, let's go
6 back to the excel spreadsheet, February 6, February 13,
7 February 20, do you have any knowledge as to whether the work
8 supervisor walked down the LOTOs on those days?

9 A. I do not. It's not recorded on the document.

10 Q. You don't know one way or another. The fact remains
11 all these three of those dates using the same LOTO that was in
12 use on the day of incident at least as far as the fuel
13 isolation steps were concerned, all three of those were done
14 successfully without any accidents, without any incidents,
15 correct?

16 A. Correct.

17 Q. What was the difference on March 6th, the day
18 Mr. Collins died?

19 A. Different people, different combination of
20 involvement of people who were not qualified, who admittedly
21 said they didn't really know how the system worked.

22 Q. Was Mr. Collins qualified?

23 A. Well, technically no, he hadn't had refresher
24 training, I don't think. But that's a bit of splitting a
25 hair. He had done some online, and he was a knowledgeable
26 experienced operator.

27 Q. Have you read testimony where Mr. Collins was
28 described as probably the most experienced operator at the

1 plant?

2 A. To that effect, yes, sir.

3 Q. So the difference on March 6th -- March 6th -- let me
4 back up. In your deposition testimony, I asked you if you
5 agreed with the fact that isolation valve Number 2 was closed
6 out of sequence on March 6th; so is that correct?

7 A. That's correct.

8 Q. And that's your belief also from the review of the
9 data?

10 A. I believe that's necessary for that to have happened.

11 Q. Do you have any idea who closed isolation valve 2?

12 A. I do not.

13 Q. Okay. Let's look at the LOTO sheet Exhibit 589 and
14 the tags 379, second page of the LOTO sheet. Number 14. And
15 then the second page of the LOTO sheet. Tag 14, isolation
16 valve, final fuel filter number 2, initial installed are DC.
17 Do you believe that Mr. Collins was the one who installed that
18 tag and closed that valve?

19 A. That's two questions and, to one, I honestly don't
20 know. And the reason is that the document shows Mr. Collins
21 operating the vents, but Mr. Delaney testifies that he did the
22 vents. And then elsewhere, Mr. Palalay operated the vents.
23 So who operated the vents?

24 Q. The question before us is who closed isolation valve
25 Number 2? Do you have any reason to believe it was anyone
26 other than Mr. Collins?

27 A. For the reason I told you, there was a bit called
28 radioing the document, doing the document quickly with

1 initials and then hanging tags. Part of the complacency
2 problems that the root cause analysis talks about.

3 THE COURT: We're going to stop, Mr. Reid.

4 MR. REID: Thank you, Your Honor.

5 THE COURT: It's now 4:00 o'clock. Thank you,
6 members of the jury. I know we went a little over. I try to
7 maximize the loss of our time we had this morning. I
8 appreciate the extra time. Everyone have a nice remainder of
9 the week, weekend. We'll see everyone back Monday July 11th,
10 10 a.m. in this department. Thank you, again. Please do not
11 discuss the facts of this case or any parties involved with
12 anyone else. Thank you. Have a nice weekend.

13 (Outside the presence of the jury.)

14 THE COURT: We're outside the presence of the jury.
15 All counsel are present. It is now 4:02. We can go a little
16 bit later, looks like we're going to have to resume with
17 Mr. Lane's testimony when we come back Monday.

18 Mr. Basile

19 MR. BASILE: I don't have any other choice, do I?

20 THE COURT: Mr. Basile, I can't -- it's too a certain
21 extent, the Court can't control how the length of questioning
22 will go. That's ultimately up to you and counsel, yes. So if
23 you can have Mr. Lane back Monday morning, first, so that
24 would be 7-11, 10:00 a.m. So we're going to continue with the
25 cross-examination of Mr. Lane.

26 Who would be the next witness, Mr. Basile?

27 MR. BASILE: We got to finish Forsyth.

28 THE COURT: Okay.

1 MR. BASILE: But hold on a second, Your Honor.
2 Because of all of this, I have Dr. Gianna O'Hara who has to
3 testify first thing Monday morning. Dr. Gianna O'Hara, she's
4 a practicing physician. She has clinic at 1:30 in the
5 afternoon. She's on-call throughout the rest of the week.

6 MR. REID: This is a complete surprise to us. We
7 have no idea who this is. She wasn't designated as an expert.

8 MR. BASILE: She's Daniel Collins' niece, Your Honor.
9 She's a damage witness. She's listed. She's been disclosed.
10 The fact she's a medical doctor I'm not going to ask any
11 opinions, you know.

12 MR. REID: I thought this was another expert.

13 THE COURT: Okay. So not for me to say, Mr. Basile,
14 but I'm going to go ahead and say it any ways. You keep
15 announcing, I have this witness but they need to be done by
16 exact time. Almost like you're inviting the fact that we're
17 going to extend past your time limits. If you want to tell us
18 your witnesses, the Court's here, but I can't put a
19 restriction on Mr. Reid saying you have ten questions, use
20 them wisely. If he wants to do his cross-examination, you
21 know, whether it's five minutes, with limitations, of course,
22 within reason. So, be cautious, you keep telling us like this
23 witness can only be here this time period. Inevitably, we are
24 going to end up in the situation we are in now. Today you
25 mentioned now that Mr. Lane had to leave as soon as you said
26 that, the Court knew, okay, this is going to take the
27 remainder of the afternoon. It's just, you know, whether
28 intentional or not. Okay.

1 It's your case, how would you like to proceed.

2 MR. BASILE: Well, Gianna O'Hara can only testify
3 Monday morning. That's what she's been telling me. First we
4 were going to call her before when we had her available. How
5 this went, that's what she's telling me. She's a medical
6 doctor. I can try to get in touch with her, I know she's
7 stressing. She has clinic that afternoon. That's the only
8 time, Monday morning, she can do it.

9 So, Your Honor, I can only control what I can
10 control. I don't know how long it's going to go. Here's some
11 good news.

12 THE COURT: Please, please. Think about your good
13 news for a moment. You would like to call, this witness's
14 name is?

15 MR. BASILE: Gianna O'Hara.

16 THE COURT: Gianna O'Hara, you would like her to go
17 first Monday morning.

18 MR. BASILE: I'll call and see -- I don't know how
19 long he's going to be. If I can squeeze her in before noon.
20 I only anticipate her being 20 minutes to half an hour. She's
21 a damage witness, that's it. Who knows, I have no idea if
22 they'll cross examine her how long she needs to be out of here
23 by noon.

24 MR. REID: We have no objection to this witness being
25 called first. We do want to finish Mr. Lane. We do want to
26 finish Mr. Forsyth. They want to play Mr. Stanley's
27 deposition. I don't know where that is. Mr. Palalay is still
28 up in the air waiting.

1 THE COURT: I'm trying to accommodate your request,
2 Mr. Basile. So Gianna O'Hara sometime Monday morning. If I
3 can't, how much -- do you have a time estimate, Mr. Reid as to
4 the cross.

5 MR. REID: No more than an hour, Your Honor.

6 THE COURT: So that will take us to 11:00 a.m., that
7 would leave -- I don't know how much redirect you plan,
8 Mr. Basile.

9 MR. BASILE: Next to none as it stands now. I would
10 have said no questions, if he would have ended today. I don't
11 know what's coming.

12 THE COURT: So, I'll leave it to you. If you want to
13 continue your cross-examination of Mr. Lane first, with a time
14 estimate of an hour or do you want to squeeze in Gianna
15 O'Hara.

16 MR. SULLIVAN: She has to go to LA.

17 MR. BASILE: Be there by 1:30. We have no objection,
18 Your Honor, starting with her. We'll start with her,
19 Your Honor.

20 THE COURT: The Court will be here Monday, Tuesday,
21 Wednesday of next week and the following week. So it's your
22 case. However you would like to present it, start with Gianna
23 O'Hara, correct?

24 MR. BASILE: Yes, sir.

25 THE COURT: Okay.

26 MR. BASILE: Then they can finish with Lane.

27 THE COURT: Cross-examination.

28 MR. BASILE: Okay.

1 THE COURT: Of Lane.

2 MR. SCHUMANN: Then we have Forsyth to finish.

3 THE COURT: Then cross-examination of --

4 MR. BASILE: Your Honor, I want to remind the Court
5 that Mr. Forsyth was called under 776. So I was doing the
6 cross-examination. They are going to do direct examination.
7 They can't lead them, it's as though he's on direct. I know
8 it's been confusing.

9 MR. REID: I don't think there's been objection as to
10 leading as of yet, Your Honor. I've been very mindful of what
11 he's talking about. I try to be careful.

12 THE COURT: There was a lot of leading with this
13 afternoon's expert witness. I assume that was an agreement
14 among the parties to speed things up.

15 MR. SCHUMANN: It wasn't. I let him lead all he
16 wanted, otherwise it would take two days to get the testimony
17 out of this guy.

18 THE COURT: That's assumption on the Court's part.

19 MR. SCHUMANN: No, it wasn't --

20 THE COURT: Experienced attorneys usually work that
21 out amongst themselves. I assume that's what occurred here.

22 MR. SCHUMANN: Now, he wants us not to lead.

23 THE COURT: Gianna O'Hara, cross-examination of Lane
24 and then continuing with Forsyth. So, anyone else we should
25 plan for on Monday? I probably have room for one more
26 potentially.

27 Mr. Basile.

28 MR. BASILE: Brian Caprino.

1 THE COURT: Okay. That you'd like to do that before
2 the Stanley video deposition.

3 MR. BASILE: Yes, sir.

4 THE COURT: Okay. Brian. How do you spell Caprino?

5 MR. BASILE: C-a-p-r-i-n-o.

6 THE COURT: Okay.

7 MR. REID: Your Honor, since we're discussing
8 witnesses, where are we with Mr. Stevick? I'm not trying to
9 be pushy, just curious.

10 MR. BASILE: Your Honor, that's the good news, we'll
11 not be calling Mr. Stevick.

12 THE COURT: All right. I was about halfway through
13 his deposition. Frankly, in reviewing it this, I wanted to
14 kind of see if some parts of it was going to be duplicative of
15 it Lane's testimony. That was part of what the Court was
16 taking into consideration. You're saying it's a moot point,
17 Mr. Basile?

18 MR. BASILE: It certainly is.

19 MR. SCHUMANN: Mr. Stevick's withdrawn.

20 THE COURT: So for the minute order, it will be,
21 defense motion in limine number 16, exclude testimony of
22 expert witness of S-t-e-v-i-c-k, that will be withdrawn then
23 based on that representation.

24 MR. REID: Yes, Your Honor.

25 THE COURT: So the motion is withdrawn. And
26 plaintiffs will not call him.

27 MR. BASILE: I just figured out last night, the state
28 of the evidence, you can -- I wanted to advise the Court, you

1 can continue reading it.

2 THE COURT: In the Court's spare time.

3 Let's finally, so we can send you gentlemen on your
4 way.

5 MR. SCHUMANN: Antidote, after I got scolded for
6 objecting out of turn with witnesses, Mr. Sullivan objected
7 out of turn with another witness.

8 THE COURT: This must be strategic objection, I must
9 be looking down at realtime when -- so, again --

10 MR. BASILE: I have a large voice, everyone hears me.

11 THE COURT: Okay.

12 MR. REID: Although I can talk to fast. We looked at
13 the exhibits listed in the back of Mr. Walker's video
14 transcript.

15 THE COURT: Give me one moment. That was a pending
16 issue from yesterday. One moment.

17 There was something this morning we need to clean up.
18 616. We reviewed with two of the staff helping with the
19 Court's clerking duties today, was it 616?

20 We don't have 616. If we can please have version of
21 one hour, 28 minutes and 51 seconds. Do we have a CD of that?

22 We have -- it hasn't been introduced yet. We won't
23 tag it.

24 Second, we had the exhibits that were with the Thomas
25 Walker video deposition. So Mr. Reid, I'm sorry, you were
26 saying?

27 MR. REID: Saying we went through a list, I think we
28 can go through it pretty quickly. I would point out that we

1 had the issue with 145 being reserved in the list. 210 and
2 217 also appear to be reserved in the list.

3 MR. SULLIVAN: 210, Mitsubishi exhibit, Your Honor,
4 we're not going to introduce that.

5 THE COURT: I'm going to go in order here from the
6 end of the exhibits. So you let me know. Let's start with
7 141.

8 MR. REID: That's admissible, Your Honor.

9 THE COURT: That's admissible?

10 MR. REID: Yes Your Honor.

11 THE COURT: Okay. So we're going to deem this
12 introduced as of yesterday, so admitted today. We'll go with
13 the admitted date let's do 7-6. Okay.

14 THE CLERK: 141, Your Honor.

15 THE COURT: Yes, thank you.

16 Next 179.

17 MR. SCHUMANN: We agree that should be admitted,
18 Your Honor.

19 THE COURT: Okay. Admitted. 180.

20 MR. SCHUMANN: Admitted.

21 MR. REID: 181 was introduced today by defense.

22 THE COURT: I think that was also referenced in that
23 video deposition?

24 MR. REID: Yes, admitted.

25 THE COURT: Admitted. 190.

26 MR. REID: Just comment about 190, Your Honor. There
27 we objected to a lot of these photographs, and things as being
28 cumulative. At some point that's going to become an issue.

1 They are slipping them in through videos and other things.
2 Like for instance, they showed pictures of Mr. Collins over
3 Mr. Walker's testimony, which those pictures weren't shown at
4 his deposition. So, just concerned about that, it's going to
5 become an issue sooner or later. For purposes of 190 today,
6 we'll deem admitted, Your Honor.

7 THE COURT: The Court had the exhibit list, but the
8 Court will note that we didn't receive exhibit binder until
9 sometime after we did motions in limine. So, 190 will be
10 admitted, if there's an objection, it's overruled.

11 193.

12 MR. REID: I can save you sometime Your Honor, 193 to
13 208, we agree those should be admitted.

14 THE COURT: 193 will be admitted to 208. 196, will
15 be admitted. 197, will be admitted. 198 will be admitted.
16 199 will be admitted. And 200 previously admitted, pages 1,
17 2, 3 and 4 on June 29. 204 will be admitted. You'll say up
18 to 208, Mr. Reid.

19 MR. REID: 206 and 208 are what's left.

20 THE COURT: 206 will be admitted.

21 MR. BASILE: Is 205 in there, too?

22 MR. REID: No.

23 THE COURT: I'm sorry, I skipped over 205.

24 MR. SULLIVAN: I had it on my list.

25 THE COURT: I do have it here on the video
26 deposition.

27 MR. REID: I missed it. I apologize.

28 THE COURT: That's fine. 205 will be admitted as

1 well as 206. 208 will be admitted. 209 will be admitted.

2 210. What's 210?

3 MR. BASILE: I believe --

4 MR. REID: They said that was the Mitsubishi exhibit.

5 MR. SULLIVAN: That was the Mitsubishi exhibit.

6 We're not going to seek to admit it. That was in the clip.

7 THE COURT: Okay. 215.

8 MR. REID: Admitted, Your Honor.

9 THE COURT: Will be admitted. 216.

10 MR. REID: Admitted.

11 THE COURT: Previously admitted on yesterday,

12 July 5th, 2017, is reserved as well.

13 MR. BASILE: Yeah, that was.

14 MR. SULLIVAN: That was an org chart, previous
15 version of it that we had withdrawn because we had the updated
16 one. It was referenced in there because that's the one
17 version that was in play at the time that Tom Walker did it.
18 I don't think we need to actually admit it.

19 THE COURT: Okay. We'll withdraw that. Then 62.

20 MR. BASILE: Stipulated to, Your Honor.

21 THE COURT: Okay. That was admitted, another portion
22 of testimony. Okay. So one moment. We need to finish this
23 up because I mentioned, we didn't have half an hour much as we
24 like Deputy Lee, we're not going to start paying overtime by
25 going past a certain time period.

26 MR. REID: Is that --

27 MR. SULLIVAN: There was one other issue. Exhibit
28 number -- where did it go? 192, which is the statement of

1 information showing Walker's depo, that's the same as
2 Exhibit 353, certified copy of the same document. We'd move
3 to admit 353, the certified copy into evidence, Your Honor.

4 THE COURT: Let's go through exhibits from today.
5 So, page one -- sorry. Exhibit 182. 182 was referenced in
6 Mr. Lane's testimony this morning.

7 MR. REID: No objection, Your Honor.

8 THE COURT: Okay. 182 will be admitted. 62 has
9 already been admitted. 267 will be admitted. 268 will be
10 admitted. 269 will be admitted. 270 will be admitted. Any
11 objection you like to put on the record for those, Mr. Reid,
12 267 through 270?

13 MR. REID: No objection, Your Honor.

14 THE COURT: I'll note apparently 270 is 50 pages
15 long. 272.

16 MR. REID: No objection, Your Honor.

17 THE COURT: Will be admitted. 617, the Court had a
18 question on this. Let me see if I recall.

19 So 617, the power point timeline one page, so we'll
20 go ahead and mark that. Is there an objection, Mr. Reid?

21 MR. REID: Well, lacks foundation but --

22 MR. SCHUMANN: Hearsay.

23 THE COURT: Okay. Overruled. It was a demonstrative
24 exhibit. If you wanted to have it moved in, Mr. Basile, it
25 should have been in the exhibit binder. That's the only thing
26 I'll note on this one. We'll go ahead and have it admitted.
27 That's one page.

28 MR. BASILE: I have that right here.

1 THE COURT: I understand it's demonstrative of other
2 evidence timeline; however, as we'll see here in the coming
3 exhibits, there was several references to the ones I'm about
4 to list where you had two documents and then you created a
5 third document where like one was minimized, one was in the
6 background. You were asking. It was a different clerk this
7 afternoon. You were asking us, next in order. We're not
8 going to do that. So, if the exhibits are in the binder,
9 great. But we're not going to wait for printouts of this,
10 like this.

11 MR. BASILE: No problem.

12 THE COURT: Hybrid of two exhibits already in the
13 exhibit list.

14 MR. BASILE: No problem.

15 THE COURT: Okay. 178.

16 MR. BASILE: Just for my edification, Your Honor, 617
17 is not going to be admitted.

18 THE COURT: 617 will be admitted. But that's
19 ultimately where we're going to draw the line at. We're not
20 going to do this next in order thing. I mean, obviously there
21 can be exceptions but not for something like that where it's a
22 combination of two previous existing exhibits. 178.

23 MR. REID: That's fine, Your Honor.

24 THE COURT: Will be admitted. Next is 264, it was
25 not admitted yesterday. We made a note it was going to be
26 reserved until the parties could meet and confer. If there
27 was some type of stipulation. Looks like this is something
28 like several pages.

1 MR. REID: 300.

2 MR. SULLIVAN: It's the same as Exhibit Number 215.
3 The issue though is that if you look closely at 215, which is
4 the ones that have been previously admitted for whatever
5 reason when they copied it, they copied extra LOTOs, so
6 there's one the day after this. That's why we didn't seek to
7 use that one, instead we used this one. It stopped on
8 March 6th of 2017.

9 THE COURT: You never know what you're going to get
10 from a copy service. So to the parties, do you want the 300
11 pages in, and that's what we need to know?

12 MR. BASILE: Yes.

13 THE COURT: Do you need additional time to meet and
14 confer on this, Mr. Reid.

15 MR. REID: They're saying they want all 300 pages
16 because Mr. Lane is relying on it to some extent. I'm just
17 cherry picking. I've got two or three other places where I
18 need two or three pages.

19 THE COURT: Okay.

20 MR. REID: Six pages, excuse me, for the tags.

21 THE COURT: Court's inclination is to go ahead and
22 have the 300 pages come in since we started from the
23 beginning, not making a very clear record, jumping around on
24 the pages, but that ship has sailed; however, if you see
25 something in there, Mr. Reid, that should not be in there
26 pursuant to previous court rulings or, you know, some
27 objection you have, let me know. We can re visit it, that
28 won't be admitted at this point. We'll hold on off on 264.

1 149?

2 MR. BASILE: That's stipulated, Your Honor.

3 MR. REID: Yeah, that's fine, Your Honor.

4 THE COURT: 149 will be admitted. 363. Any
5 objection, Mr. Reid?

6 MR. REID: It's the same issue, Your Honor. It's got
7 a DGC logo placed on there by plaintiff's counsel. Mr. Lane
8 testified to that. It lacks foundation. So.

9 THE COURT: Isn't this a summary of --

10 MR. REID: But the DGC logo is applied here when it's
11 not part of the original document. It's just part of their --
12 it's demonstrative. So, that's the issue with all of these
13 red flag exhibits.

14 MR. BASILE: Your Honor, he testified that every one
15 of the ones that he looked at, that he relied on preparing
16 that, said Diamond Generating Corporation, that's all it is.
17 It's consistent with what he had done.

18 THE COURT: It's just a summary of other records. So
19 the objection for it will be noted on the record for 363, 364,
20 365, is that correct, Mr. Reid?

21 MR. REID: It would be 366, also. I don't think they
22 used that one.

23 THE COURT: I don't see any record of that being
24 introduced.

25 MR. REID: They haven't used that.

26 THE COURT: Your objection will be noted for record.
27 Overruled. 363, 364, and 365 will be admitted. Next 158.

28 MR. BASILE: Stipulated to, Your Honor.

1 THE COURT: 158 is admitted.

2 MR. REID: Yeah, that one is fine.

3 THE COURT: We have 157.

4 MR. BASILE: Same thing.

5 MR. REID: Same thing, Your Honor.

6 THE COURT: Will be admitted.

7 MR. REID: No objection. No objection.

8 THE COURT: 365 is already in. Yes, it is. Next we
9 have 358. So this exhibit, Mr. Basile, this is just -- you're
10 going to print the final copy of it, right, it's just one page
11 document.

12 MR. BASILE: It's the power point he testified to. I
13 believe I laid the foundation for that. It's been clicked
14 through and shown with him. It's the power point.

15 THE COURT: Is this a printout or actually like
16 electronic.

17 MR. BASILE: We can do it through print out.

18 MR. SULLIVAN: I believe it's copied in the exhibit
19 binder as a separate page for each of the clicks, when you go
20 through the power point.

21 THE COURT: We're not going to send back the
22 electronic --

23 MR. BASILE: No, it's in the exhibit binder.

24 THE COURT: How many pages?

25 MR. SULLIVAN: I think it's four.

26 MR. REID: We'll object. Lacks foundation,
27 Your Honor.

28 THE COURT: Okay. It will be deemed admitted. 259.

1 MR. BASILE: 359, I think or I'm sorry, 259, you're
2 right, Your Honor.

3 MR. REID: 259 was already admitted yesterday. Then
4 finally going back to 361.

5 MR. BASILE: Same foundation.

6 MR. REID: Same foundation objection, Your Honor.

7 THE COURT: Again, this is a printout of the slides,
8 this is not an electronic media to be sent back.

9 MR. BASILE: No, sir.

10 THE COURT: Okay. 181, I think we already discussed.

11 MR. SCHUMANN: Your Honor, did you overrule the
12 objection on 361.

13 THE COURT: Yes. It is noted for the record.

14 MR. REID: Thank you, Your Honor.

15 MR. SCHUMANN: Thank you.

16 THE COURT: Next we have 600.

17 MR. REID: Showing the ladder and the fuel gauge.

18 THE COURT: This is from defense showed though,
19 Mr. Basile. Admitted.

20 MR. REID: The next couple exhibits I'm reading were
21 introduced during defense's cross-examination, 67 is next.

22 It's plaintiff exhibit, Your Honor, it is admitted.

23 MR. BASILE: Stipulated to.

24 THE COURT: Admitted.

25 MR. SCHUMANN: 379.

26 MR. REID: That's the LOTO tags for the date of
27 incident that plaintiff's exhibit, it was stipulated to.

28 THE COURT: Okay. Admitted. Then finally we have,

1 489.

2 MR. REID: That's excel spreadsheet, Your Honor.

3 MR. BASILE: No objection.

4 THE COURT: So my question is this, what I counted
5 five tabs at the bottom, is it in the binder, printed out.

6 MR. BASILE: I don't know what they did.

7 THE COURT: The Court doesn't want to hear that.

8 MR. REID: The difficulty with an excel spreadsheet
9 is the comments that you see in the actual narrative, end up
10 down at the bottom page, it's impossible to line them up.

11 MR. BASILE: Your Honor, I'm going to be objecting.

12 (Pause in the proceedings.)

13 MR. REID: We'll get it worked out for you,
14 Your Honor.

15 THE COURT: I'll let you know what's in the binder.
16 Just when you had it on the screen, I just counted, I noted.

17 MR. REID: There's five tabs.

18 THE CLERK: Another binder past 380.

19 MR. SULLIVAN: Your Honor, the defense exhibits in
20 the back, they never brought them up.

21 THE COURT: Okay.

22 MR. REID: There's two banker boxes here.

23 MR. SULLIVAN: Their boxes are in the back, they
24 never brought them up.

25 THE COURT: Okay.

26 MR. BASILE: 489, I want to take care of right now,
27 if I may, Your Honor.

28 THE COURT: Okay. So 489 will be dealt with on

1 Monday.

2 MR. BASILE: Well, hold on a second, Your Honor.

3 THE COURT: Mr. Basile, it's 4:35. There's a reason
4 we -- there's a reason we stop at 3:30 so because we have time
5 to go past this, Deputy Lee grinning, he's about to make
6 overtime right now. I don't know if it's 4:15 or 4:30.

7 MR. BASILE: I don't want those exhibits leaving this
8 courtroom. 489. They introduced a whole bunch that wasn't
9 disclosed on the exhibit sheet.

10 MR. SCHUMANN: Is he saying we'd steal the exhibit.

11 MR. BASILE: I don't want them to leave the
12 courtroom.

13 THE COURT: Okay.

14 MR. REID: Your Honor, if I may, they have the excel
15 spreadsheet. It's just posturing. We provided this excel
16 spreadsheet prior to Mr. Johnson's deposition. They have it.
17 They questioned him on it. This -- it's one day.

18 MR. REID: This is ridiculous.

19 MR. SULLIVAN: That's not what they showed the
20 witness. They showed an excel spreadsheet for three other
21 dates of outlets which were not listed on the documents, which
22 were not produced at Dennis Johnson's deposition.

23 MR. BASILE: They better not be on their exhibit
24 binder, they are not on the list.

25 THE COURT: Gentlemen, again, I'm working -- the
26 Court's working off a joint exhibit list, albeit, second or
27 third one that was subsequently brought up here. If you look
28 at local rule 3401. Both sides are supposed to meet and

1 confer cited in the Reales Investment Case. The Court has not
2 considered any evidentiary sanctions. Don't take us this
3 there.

4 MR. REID: Yes, Your Honor.

5 THE COURT: We'll deal with 489 on Monday. Mr. Reid,
6 so again --

7 MR. REID: We'll get a paper printout for you,
8 Your Honor.

9 THE COURT: For more importantly for the jury.

10 MR. REID: For the jury.

11 THE COURT: So if we can have those Monday morning.
12 I believe you're still continuing with it so.

13 MR. REID: Yes.

14 THE COURT: Your cross-examination, you left off on
15 489. I think I interrupted you after this second one.

16 MR. REID: One more tab to cover, Your Honor.

17 THE COURT: Let's get that straightened away on
18 Monday morning. I don't think you're going to walk away with
19 any boxes. We'll take care of it on Monday. Okay.

20 I know this high stakes, you guys, everyone did a lot
21 of work has gone into this. So, have a nice remainder of your
22 week, please take care of yourselves. See everyone Monday
23 morning. Come in about 9:45 as same as today. Albeit, maybe
24 exhausted, we should have a court reporter for you. So, all
25 right. Anything else, we're in recess. Thank you.

26 MR. REID: Thank you, Your Honor.

27 (Proceedings adjourned.)

28 (Next Volume and Page number is Volume 8, Page 1201.)

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REPORTER'S CERTIFICATE

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DENISE COLLINS; CHRISTOPHER COLLINS,)	
)	
Plaintiffs,)	
)	
vs)	Case No. PSC1901096
)	
CPV SENTINEL ENERGY CENTER, LLC,)	
MOTT MACDONALD, LLC, GEMMA POWER)	
SYSTEMS, LLC, and DOES 1 to)	
15, Inclusive,)	
)	
Defendants.)	
)	

I, Demetria Bischoff, Certified Shorthand Reporter No. 12602, hereby certify:

On July 6, 2022, in the county of Riverside, state of California, I took in stenotype a true and correct report of the testimony given and proceedings had in the above-entitled case, pages 1005 - 1105, and that the foregoing is a true and accurate transcription of my stenotype notes and is the whole thereof.

DATED: Palm Springs, California, July 10, 2022.



Demetria Bischoff, CSR NO. 12602

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COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT - DIVISION TWO
APPEAL FROM THE SUPERIOR COURT OF RIVERSIDE COUNTY

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DENISE COLLINS and CHRISTOPHER) DCA No. E080233
COLLINS,)
)
Plaintiffs/Respondents,) Superior Court
) Case No. PSC1901096
vs.)
)
DIAMOND GENERATING CORPORATION,) Volume 8 of 19
) Pages 1201 - 1355
Defendants/Appellant.) (1356 - 1400 Blocked)
)

REPORTER'S TRANSCRIPT ON APPEAL
BEFORE THE HONORABLE MANUEL BUSTAMANTE - DEPARTMENT PS2
July 11, 2022

APPEARANCES:

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SUPERIOR COURT - STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

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DENISE COLLINS; CHRISTOPHER)	
COLLINS,)	
)	
Plaintiffs,)	
)	
vs.)	Case No. PSC1901096
)	
CPV SENTINEL ENERGY CENTER, LLC,)	
MOTT MACDONALD, LLC, GEMMA POWER)	
SYSTEMS, LLC, and DOES 1 to 15,)	
Inclusive,)	
)	
Defendants.)	
)	
)	

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE MANUEL BUSTAMANTE
July 11, 2022

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EXHIBITS

PLAINTIFF'S EXHIBITS:

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5	DOCUMENT	1234	N/A	
9	DOCUMENT	1235	N/A	
34	DOCUMENT	1254	N/A	
83	DOCUMENT	1271	1335	
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DEMETRIA BISCHOFF, CSR

1 JULY 11, 2022 - MORNING SESSION

2 BEFORE THE HONORABLE MANUEL BUSTAMANTE

3 THE COURT: Let's formally call the matter of Collins
4 versus DG Corp. All counsel are present. And that's fine,
5 you don't have to announce your appearances. All counsel are
6 present. The Collins are not here. I do see the parties here
7 for DG Corp. Good morning.

8 Couple logistical issues before we begin. First,
9 I've been informed by our courtroom assistant that juror
10 number 9, Ms. Alan, did call in, I believe this morning. She
11 tested positive for Covid. So just per CDC guidelines, just
12 with the quarantine periods and symptoms, we're going to need
13 to pick a new juror from the alternates. Any disagreement?

14 MR. REID: No, Your Honor.

15 THE COURT: We do it in the presence of counsel.
16 We'll do it in the presence of all jurors, a random draw from
17 one of our three alternates. I believe we have a couple
18 jurors requested the day off.

19 So somebody requested the day off today for, I think
20 like family issues but that's been denied.

21 MR. BASILE: Your Honor, I have one other issue.

22 THE COURT: Yes, Mr. Basile.

23 MR. BASILE: Exhibit 489, that was an Excel
24 spreadsheet.

25 THE COURT: Yes, we concluded -- let me get my notes.

26 MR. BASILE: Here's the history, how that goes. We
27 followed the court orders and prepared our exhibit binders and
28 submitted it before court began. At that time --

1 THE COURT: Let me ask this, is this exhibit
2 something that's going to be continued with this morning,
3 Mr. Sullivan.

4 MR. REID: Mr. Reid. Yes.

5 THE COURT: Mr. Reid. No problem. It's something
6 that's relevant to this morning although.

7 MR. REID: Yes, Your Honor.

8 THE COURT: Aren't we calling --

9 MR. BASILE: Gianna O'Hara.

10 THE COURT: So let's deal with it afterwards. It's
11 10:00 o'clock. I want to bring in the jurors. We're bringing
12 them in late, shows you're not punctual, that's not the case,
13 you're here.

14 MR. BASILE: That's fine, Your Honor.

15 Just so I can address that with the Court before.

16 THE COURT: Let's do Gianna O'Hara and
17 cross-examination of Mr. Lane, which would be --

18 MR. REID: Yes, Your Honor.

19 THE COURT: We'll take a quick recess, then address
20 that with the exhibits so.

21 MR. BASILE: That's perfect, Your Honor.

22 THE COURT: With Ms. O'Hara, one thing the Court was
23 contemplating, Mr. Basile, you represent, I believe I don't
24 recall the exact order. It's Mrs. Collins, then Mr. -- which
25 individual is representing the son?

26 MR. BASILE: We're both representing both of them.

27 THE COURT: You're both representing both of them.
28 Ms. O'Hara?

1 MR. BASILE: Niece of Daniel Collins.

2 THE COURT: The niece, so she's not someone that's
3 being represented here?

4 MR. BASILE: No.

5 THE COURT: Okay. So, for that, because of that,
6 then this testimony should be shorter in nature, correct?

7 MR. BASILE: Absolutely right.

8 THE COURT: I just --

9 MR. BASILE: She's the first damage witness, really
10 other than what's been testified to by them.

11 THE COURT: All right. I would do the same if the
12 tables were turned, it would be the same. I don't want to put
13 Mr. Reid and Mr. Schumann --

14 MR. REID: Schumann --

15 THE COURT: I was going to say Mr. Kim. But it's Kim
16 Schumann. Okay. I don't want to put them in the position of
17 having to object in front of a witness that probably, you
18 know, was, you know, emotional testimony, but the objection
19 would be along the lines of 352, but just keep that in mind.
20 Mr. Basile, the reason I was thinking of that is because when
21 we left off Wednesday, you stated your examination might be
22 45 minutes to an hour.

23 MR. BASILE: No.

24 THE COURT: That's a lot for a damage witness that's
25 not even a named party in the suit.

26 MR. BASILE: No, you misunderstood me or I misspoke
27 myself. It should not be more than half an hour, really.

28 THE COURT: Okay. Understood. We'll return to 489,

1 Mr. Reid.

2 MR. REID: Thank you.

3 THE COURT: Please bring in the jurors. I'll just
4 stay here.

5 (Pause in the proceedings.)

6 THE COURT: Good morning. Welcome back everyone. We
7 have all the members of the panel present except for juror
8 Number 3 and Juror Number 9. I apologize. I know it wasn't
9 9:59 when we called you in, I think we called you in at 10:02.
10 We were -- counsel was here on time this morning, and we were
11 dealing with logistical issues. We've lost one of the jurors.
12 So we'll be replacing them with an alternate; however, we'll
13 do that here in a minute. I believe juror Number 3, is on the
14 way. There was another issue. It's Monday. So we're going
15 to kindly ask if you can please step back out. We'll bring
16 you back in approximately 10:15, then we'll get started.

17 Counsel already indicated they have their witnesses
18 ready. We just need to make sure we have 12 seated jurors. I
19 hope you all had a nice weekend. We'll see you in about ten
20 minutes. Thank you.

21 (Pause in the proceedings.)

22 THE COURT: Counsel are still present. We're outside
23 the presence of the jury. Now looks like we're missing juror
24 Number 3. There is some issues. They are on their way.
25 Let's use this time then to address Exhibit 489, Mr. Basile.

26 MR. BASILE: Yes. Thank you, Your Honor.
27 Your Honor, just to bring us up to date, that was Exhibit 489
28 that contained multiple spreadsheets of the pressure gauges,

1 et cetera. For the record, Your Honor, I want to point this
2 out. We followed the Court's rules and presented the exhibit
3 binders. The Court has yet to receive the exhibit binder of
4 the defense. Now, 489, this is how that went down. 489 was
5 initially produced with just the March 6th of '17 spreadsheet.
6 That is what was listed in the description of Exhibit 489.

7 Now, around June 20th, Your Honor, an e-mail was sent
8 with additional excel sheets to our paralegal, not to us, to
9 our paralegal and to the person that was doing the exhibits on
10 June 20th. You might recall on June 20th we were being
11 barraged also with the Privett motions. At that time, again
12 the description of that exhibit did not change on June 20th.
13 Now, Mr. Lane's on the stand. He starts now being presented
14 with spreadsheets, not just from March 6 which is what is
15 described in the exhibit list, not just from March 6th, but
16 also from the 13th of February, 17th, February 20th of '17,
17 the 28th of March of '16, all of those suddenly appear now.

18 Then when we left court on Tuesday, which is why I
19 was insisting nothing leave the courtroom because their
20 exhibit binders are still back there.

21 THE COURT: Wednesday.

22 MR. BASILE: When we left court on Wednesday, we get
23 an e-mail from them and our court personnel is saying we want
24 to now substitute and put in please Bate stamp, all these
25 additional excel sheets, all those additional excel sheets
26 that our tech person to their credit says I can't be
27 substituting exhibits or anything like that. These additional
28 exhibits have been presented as a surprise now. So I went

1 back and said, where did this come out in depositions? It was
2 Dennis Johnson was deposed and Mr. Reid, I wasn't there, I had
3 to look it up and Mr. Sullivan helped me. Mr. Reid asked
4 Dennis Johnson about the spreadsheet on March 6th in that
5 deposition, briefly.

6 And I have the page and line for the Court to look
7 at, briefly referred to one other spreadsheet about a month or
8 two before, and that was it. The exhibit attached to his
9 deposition, which is Exhibit 67, was still just the March 6th,
10 '17 spreadsheet. So now he's been cross-examined, his heads
11 -- it wasn't rebuttal testimony or impeachment testimony.
12 Because they didn't present it, as the court order said. We
13 have been, once again, like with the Privett stuff, ambushed
14 with exhibits that were not listed, exhibits when they were
15 switched, the description was never changed. It just said
16 March 6th, that was it. I'm submitting that to the Court.
17 I'm going let the Court hear the other side and we'll decide
18 what to do with it.

19 THE COURT: Thank you.

20 Mr. Reid.

21 MR. REID: Yes, Your Honor. So he's correct, the
22 exhibit was originally introduced in Mr. Johnson's deposition.
23 I can also quote page and line and testimony where I mentioned
24 several different dates inside those five spreadsheets I
25 mentioned, there were five spreadsheets.

26 THE COURT: What were the dates of those
27 spreadsheets?

28 MR. REID: I apologize, Your Honor. Mr. Basile

1 mentioned them. It's February 6th, 2017, February 13th, 2017;
2 February 20, 2017.

3 THE COURT: February 6, 2017. Okay.

4 MR. REID: February 13th, 2017; February 20, 2017.

5 The date of the incident, March 6th, 2017, and then one from
6 the year before on March 28, 2016.

7 THE COURT: Do you want to use all of them?

8 MR. REID: Yes, Your Honor.

9 THE COURT: All right. You indicated these were
10 referenced before in the deposition?

11 MR. REID: Yes, they were. And in addition, Your
12 Honor, Mr. Basile is not being truthful about Mr. Sullivan
13 being copied on this spreadsheet on June 20th. Excuse me.
14 Monday, June 20th, was our first day. You asked us to meet
15 and confer as part of the meet and confer process, I noticed
16 that correct excel sheet was not included in the exhibit
17 binder. We immediately, on the 21st, e-mailed it to Erica
18 their assistant. Mr. Sullivan was copied on the e-mail. I
19 have the e-mail. The next day we said to their trial tech,
20 the person putting all the exhibit binders together, we sent
21 it to her and asked it be included. On Thursday, Mr. Sullivan
22 and I met and conferred for over two hours. I mentioned to
23 him we made a mistake. We were substituting the excel
24 spreadsheet. He was objecting on foundation ground. I yet to
25 see the objection other than what's being said now.

26 In addition, they subpoenaed these pressure readings
27 prior to this from DG OPS, they have them all. It's
28 disingenuous to say they are surprised at this point.

1 Addressing what happened with the transcript, the court
2 reporter, I sent her, I marked it, I can show in the
3 transcript where I referred to it and then marked it. I sent
4 it to the court reporter as five excel spreadsheets. I have
5 that e-mail also. She only included the one. I didn't
6 realize that until this came up. So they are not surprised by
7 this exhibit, shouldn't be an issue.

8 THE COURT: Mr. Sullivan.

9 MR. SULLIVAN: Yes, Your Honor. I was CC'd on the
10 e-mail that was sent to Ms. Garcia; however, there was nothing
11 in that e-mail that would have alerted me that they were
12 actually changing the content of the exhibit that I had
13 previously looked at which was a printed PDF. I just thought
14 they were going to use the excel spreadsheet that had the same
15 information on it. At no time did Mr. Reid, in our
16 conversation that we -- when we had the meet and confer, tell
17 me that the new spreadsheet that they were substituting for
18 the PDF had all those other dates of inquiry on them. If I
19 had known at that point in time, I would have objected on the
20 grounds that they didn't disclose them as part of their
21 pretrial list of exhibits that they were intending to use at
22 the time of the trial.

23 There was absolutely nothing that they ever did when
24 they tried to add this in, after the cutoff date for listing
25 all of the exhibits, okay, to alert me to the fact that this
26 new exhibit that they were putting in there was a different
27 exhibit that was going to have more information and more dates
28 of service. If we had known about that, we would have

1 objected on those grounds, plus we would have had a heads up
2 that was a potential area of cross-examination where they were
3 going to talk about our expert with, and you know, we didn't
4 have any heads up on that. Now, all of a sudden they blind
5 sided us. The Court has these rules about, you know,
6 exchanging the exhibits ahead of time for that reason. So
7 it's surprises like this that don't occur, this was something
8 that they certainly could have alerted us to, you know, in
9 these conversations which would have made a whole different
10 animal because it wouldn't have been the surprise it was when
11 Mr. Lane was testifying on Wednesday.

12 THE COURT: That's fine, Mr. Reid.

13 MR. REID: Yes, Your Honor.

14 THE COURT: You know, what's frustrating from the at
15 least from this side of the courtroom, it's very talented and
16 experienced attorneys sitting in this courtroom and yet this
17 exhibit list and the exhibits, there's a disconnect. I mean,
18 I see in awe how good both sides are here with the skill level
19 with the attorneys, yet the exhibits are not -- that last
20 point, Mr. Sullivan, it's well taken by the Court in terms of,
21 there are deadlines for exchange of documents, for this to be
22 a joint exhibit list; however, you're not -- the plaintiffs
23 aren't necessarily coming to this argument with clean hands
24 here.

25 The Court has been frustrated at times, when exhibits
26 are being referenced, I'd have to go back and look at my notes
27 but there are power point exhibits that are being, not just
28 used for demonstrative, they are being used as admitted

1 exhibits. Defense is saying they haven't seen those before.
2 There's reference to exhibits that are reserved, and turns
3 out, you know, there's actually -- they are exhibits. So,
4 there's disorganization when it comes to exhibit list, which
5 is frustrating to the Court. We have more appreciation from
6 this side of it, you're trying to make a clean record.

7 So if Mr. Sullivan, you and Mr. Basile were more in
8 compliance with the exhibits, the Court probably would be more
9 inclined to -- more receptive to this argument, but your
10 exhibits haven't necessarily been in order either. So, this
11 is something that Mr. Reid mentioned, this is something that
12 was obtained by subpoenaed. The Court is going to allow these
13 exhibits, and Mr. Reid, these dates that you provided, unless
14 Mr. Basile or Mr. Sullivan tell me there's something
15 different, but let's leave these spreadsheets to five dates
16 you mentioned.

17 MR. REID: Absolutely, Your Honor.

18 THE COURT: I can see the tabs on the bottom when you
19 were publishing to the jury, I counted five. You mentioned
20 five dates. So again, go back to this exhibit list and it
21 says 489, and it says, you know, unit maintenance, outage
22 pressure reading dated March 6th, 2017 excel spreadsheet. On
23 its face, it looks like it would be, at the very least, just
24 data from one date. Doesn't say how many pages. Some
25 attorneys have a practice of or have a practice of listing how
26 many pages a particular exhibit is going to be. I've talked
27 about that before already in this case. So this joint exhibit
28 list leaves a lot to be desired. I'll leave it at that.

1 MR. REID: Understood, Your Honor.

2 THE COURT: As I mentioned at the beginning, this is
3 a high stake case for both of you. You put a lot of work into
4 it. I don't want to interfere to the extent possible. Your
5 objection is noted for the record on 489, the Court is going
6 to be more mindful of this moving forward. Mr. Basile,
7 Mr. Sullivan, taking into consideration your case in chief,
8 make sure that your exhibits, when you turn around and mention
9 to your team member that corresponds with what we have on the
10 list. We're not just putting exhibits up. We're scrambling,
11 Mr. Reid, is going to jump up and object, understandingly,
12 doesn't correspond to the list they are operating off of.
13 Mr. Basile, anything else?

14 MR. BASILE: No. The other thing, only thing I'd
15 like to point out, Your Honor, the only exhibit that has been
16 admitted has been that timeline training, that's the only one
17 that was based on everything that was listed. The other thing
18 I was doing was pulling up slides from my opening, just to
19 make it more convenient to pull up side-by-side and click
20 through, that's all I was doing. I appreciate your concern,
21 Your Honor, with the organization of this. We were the only
22 ones that presented an exhibit binder on time here. Whether
23 it was right or not, we still have not gotten the defense
24 exhibit binder. I'm done with this. We can put on Mr. Lane.
25 They can print all those. I want to move forward with this
26 jury.

27 THE COURT: Mr. Reid.

28 MR. REID: Your Honor, there's three boxes back there

1 of joint exhibits.

2 THE COURT: The Court, I don't walk around this
3 courtroom. I come to the bench and chambers.

4 MR. REID: I understand, Your Honor. We did not
5 realize the joint exhibits prepared by plaintiff's counsels
6 had not been brought up here to the front. They have been
7 sitting back here the whole time. I approached your clerk
8 this morning about it, we'll bring them up as quick as we can.
9 We're going to do it on break. It's totally disingenuous to
10 say they don't have the exhibits or haven't been presented.
11 That's enough.

12 THE COURT: The boxes that you just referenced,
13 there's a binder, there's a copy for plaintiff's counsel.

14 MR. REID: They prepared them, Your Honor. I assume
15 they have them.

16 MR. SCHUMANN: They prepared the joint binders.

17 MR. BASILE: We prepared 489 as presented which was
18 one date of that spreadsheet, that's what's in there now,
19 period.

20 THE COURT: So during -- we're going to bring the
21 jurors in right now. During lunch break or some other break,
22 get together, someone is going to bring the remaining exhibits
23 to Ms. Youngberg who has many other things she's working on.
24 Someone is going to quietly bring the exhibit binders up here.
25 We'll have it.

26 MR. REID: Several boxes, but yes, Your Honor.

27 THE COURT: Okay. Thank you.

28 (Pause in the proceedings.)

1 THE COURT: Okay. Back on the record in Collins
2 versus DG Corp. All members of the jury is present with the
3 exception of juror Number 9. Unfortunately, juror Number 9
4 will not be able to complete the trial with us through our
5 completion date of July 29th. We'll have to substitute her.
6 So Madam clerk. I wanted to have you all present. Counsel is
7 present. So you can see the draw. It's not anything
8 particularly high tech, but whenever you're ready, Madam
9 Clerk.

10 THE CLERK: Alternate Number 3, Mr. Burke. If you
11 can please take seat number 9. Thank you, Mr. Burke.

12 We'll need to swear you in. One moment.

13 THE CLERK: Mr. Burke, please stand and raise your
14 right hand. You understand and agree that you'll well and
15 truly try the cause now pending before the Court and a true
16 verdict rendered according only to the evidence presented to
17 you and the instructions of the Court. If so, say I will.

18 MR. BURKE: I will.

19 THE CLERK: Thank you. You may be seated.

20 THE COURT: Thank you. So we're going to begin.
21 Counsel again are working great with each other with the
22 witness coordination, the hardest part of really being an
23 attorney of getting witnesses on time to a trial department.
24 Because of that, counsel agree that plaintiff's counsel can
25 call a witness out of order just because of scheduling issues.
26 We'll resume with the cross-examination of Mr. Lane, if you
27 will recall, it was a long time ago. Last Wednesday when we
28 broke, Mr. Lane was on the stand. Mr. Reid is doing

1 cross-examination, we'll return to later this morning or this
2 afternoon. Mr. Basile, please, if you like to call your next
3 witness.

4 MR. BASILE: Thank you, Your Honor Dr. Gianna O'Hara.

5 THE COURT: Ms. O'Hara, please raise your right hand.

6 THE CLERK: You do solemnly state that the evidence
7 you shall give in this matter shall be the truth, the whole
8 truth, and nothing but the truth, so help you God?

9 THE WITNESS: Yes.

10 THE CLERK: Thank you. You may be seated.

11 Ms. O'Hara, Dr. O'Hara.

12 Please state and spell your first and last name for
13 the record.

14 THE WITNESS: Gianna O'Hara, G-i-a-n-n-a, the last
15 name is O'Hara, O, apostrophe H-a-r-a.

16 THE COURT: You may proceed, Mr. Basile.

17 MR. BASILE: Thank you.

18 GIANNA O'HARA,

19 called as a witness by Plaintiff, was sworn and testified as
20 follows:

21 DIRECT EXAMINATION

22 BY MR. BASILE:

23 Q. Good morning, Dr. O'Hara. Could you tell the jury
24 what your occupation is?

25 A. I'm an internal medicine geriatrician doctor.

26 Q. Where do you work?

27 A. Pomona Valley Medical Center, Pomona, California.

28 Q. Doctor -- all right if I refer to as Gianna?

1 A. Sure.

2 Q. Now, Gianna, Exhibit 301, please. Tell the jury how
3 you know Daniel Collins?

4 A. Uncle Daniel, he's my uncle by marriage. He's my
5 aunt's husband, basically my entire life.

6 Q. You've known Daniel your entire life, and your father
7 is Denise Collins's brother?

8 A. Correct.

9 Q. Now, have you come to share some stories about who
10 Daniel is, and his relationship with both Denise and Chris,
11 his son, that's who we're going to talk about, right?

12 A. Yes, correct.

13 Q. Let's see Exhibit 314, please. And go ahead, zoom in
14 there a little, please. Who's in this picture?

15 A. That would be me, as a child, sitting on top of my
16 Uncle Daniel Collins, and my cousin Christopher, who's in --
17 the half naked baby in the corner.

18 Q. All right. Do you remember being at this house, the
19 memories back then?

20 A. Very much so. It was my grandparent's house.

21 Q. When you were young like that, what impression did
22 you have of your uncle Daniel?

23 A. He was always fun. He was always willing and wanting
24 to take us kids out. There's not very many of us. There's
25 just me and my cousin Christopher, his son, and then my
26 brother. There's only three of us. He was always wanting to
27 go out with us and do many things.

28 Q. You knew that your Uncle Daniel was in the military?

1 A. Yes.

2 Q. I want to show you Exhibit 300, please. Do you
3 remember this period of time when Christopher was about that
4 age, your Uncle Daniel was in the military?

5 A. Very much so.

6 Q. Where were they living then?

7 A. They were in living in North Park San Diego.

8 Q. Would you go visit them?

9 A. Very frequently.

10 Q. About this timeframe, what was Daniel's relationship
11 like with Chris during this timeframe, how would you describe
12 it?

13 A. As close as one can be with so many deployments, he
14 was deployed very frequently during this period of time.
15 Whenever he came home, they were thick as thieves, so to
16 speak.

17 Q. Thick as what?

18 A. Thieves so to speak, just always palling around,
19 doing things. He made the most of his time with Chris when he
20 was actually on land.

21 Q. Now, when you would see your Uncle Daniel on land
22 with Chris, did you feel that he was setting an example for
23 Chris as far as perhaps joining the military?

24 A. Very much so.

25 Q. Tell us how he was doing that?

26 A. I mean, my uncle's one of those people that was
27 very --

28 Q. Please, speak into the microphone.

1 A. Sorry.

2 Q. Take your time.

3 A. It would help if it was facing me. Sorry. My uncle
4 was one of those people or is kind of loyal to a fault, honest
5 to a fault, and really proud of serving his country. So I
6 think that's what Christopher saw when he was growing up
7 that's what I saw. I presume Christopher saw that even more
8 so.

9 Q. Okay. Let's move along to Exhibit 307. Do you know
10 about this, what's going on here?

11 MR. SCHUMANN: Calls for foundation, Your Honor.

12 THE WITNESS: Pardon.

13 Q. BY MR. BASILE: Are you familiar with this
14 photograph?

15 A. I'm assuming this was in Florida when Chris was
16 playing baseball in Florida, and my uncle went to go with him.

17 MR. SCHUMANN: Lacks foundation.

18 THE COURT: Sustained. Please rephrase counsel.

19 Q. BY MR. BASILE: Did you know about Chris's exploits
20 in baseball?

21 A. Very much so, he still plays.

22 Q. He still plays. Was Chris on a -- do you know if
23 Chris was on military team?

24 A. Yes. He's on a military team. He's been on many,
25 many other teams. He was on the military team when he was in
26 the military.

27 Q. What's shown in this picture?

28 MR. SCHUMANN: Lacks foundation.

1 THE COURT: Overruled. If you know, please don't
2 speculate. If you know. When you say I assume, don't
3 speculate.

4 Q. BY MR. BASILE: What do you see there? Describe for
5 the jury what you see?

6 A. That's my cousin and my uncle, clearly he's in his
7 military uniform for baseball, my uncle would go to many,
8 many, many of his games.

9 Q. In Florida he would go to Florida to watch him play?

10 A. Yes, he went to Florida as well, my aunt, my uncle
11 and father went to Florida to watch him play.

12 Q. Do you see his wrist band on his wrist in this
13 picture?

14 A. Yes, it was on his wrist.

15 Q. You already answer. Was that always on his wrist?

16 A. Always. Always. Always.

17 Q. Did he ever say anything about it, the reason he wore
18 it?

19 MR. SCHUMANN: Calls for ^ hearse ^ hearsay.

20 MR. BASILE: Goes to his state of mind.

21 THE COURT: I'm going back a couple. Overruled. If
22 you know.

23 THE WITNESS: It meant a lot to him because he's
24 proud of his country.

25 Q. BY MR. BASILE: Could we have Exhibit 328, please.
26 You know who these people are, of course?

27 A. Yes.

28 Q. Did Chris then follow your uncle Dan into the Navy?

1 A. He did.

2 Q. And do you know how long he served in the Navy?

3 A. Eight years.

4 Q. Eight years. And did your Uncle Dan express pride?

5 MR. SCHUMANN: Foundation. Hearsay.

6 THE COURT: Overruled.

7 THE WITNESS: Very much so.

8 Q. BY MR. BASILE: Tell us how?

9 A. He would brag about Christopher all the time. The
10 fact he was in the military. My grandfather was in the Navy.
11 Then obviously my aunt married somebody who was in the Navy.
12 My uncle and my cousin were in the Navy, very Navy proud. He
13 tried get me to go into the military several times. I said
14 no. So he just was so proud of that legacy, the Navy legacy.

15 Q. Your grandfather was in the Navy that's what I heard
16 you say?

17 A. Correct.

18 Q. Now, 286 please. You know this to be Uncle Dan and
19 Aunt Denise here, right?

20 A. Correct.

21 Q. Now, when you were in medical school, did you have an
22 opportunity to live with them?

23 A. I did.

24 Q. And where were you in your medical school when you
25 lived with them?

26 A. In medical -- it goes medical school, residency
27 onward in medical school. In my training I was doing
28 rotations in different hospitals basically to learn about

1 different specialties, see which direction you want to go.
2 And so I was doing my internal medicine rotations at Hemet
3 Valley Medical Center when I lived with them.

4 Q. How did that come about for you to live with them
5 while doing your rotation at Hemet Valley?

6 A. They offered me to live with them because I was
7 living in San Diego. At the time the drive would have been an
8 hour each way. After 12, 13, 14-hour shifts, which is brutal,
9 so my aunt and uncle offered for me to live with them during
10 my rotations there.

11 Q. Did they charge you rent or anything?

12 A. Not a penny. They actually declined my moneys every
13 single time I offered them money.

14 Q. Now, during that intern program, you had -- you and I
15 have spoke before, right? During that intern program, you
16 mentioned to me about or let's put it this way, were you
17 assigned to the emergency room during that time?

18 A. ICU, emergency room, internal wards and kind of the
19 whole hospital.

20 Q. Was this rather early on in your medical education?

21 MR. SCHUMANN: Relevance, Your Honor.

22 MR. BASILE: I'm laying foundation, Your Honor.

23 THE COURT: Overruled. Let's make it shorter,

24 Mr. Basile.

25 Q. BY MR. BASILE: Were you trying to develop a thick
26 skin during that time?

27 A. Yes. You do two years of book work and then two
28 years of actual in-person rotations. This would have been the

1 kind of first half of that time period where I'm doing
2 in-person inpatient rotation.

3 Q. When you come home be with your Uncle Daniel, would
4 you discuss with him some things you were seeing and doing?

5 A. Yes.

6 Q. Was that "yes"?

7 A. Yes.

8 Q. How did he help you through that time?

9 A. He had his own pretty traumatic experiences, I would
10 say, being in the military and seeing difficult things, having
11 not really seen a lot of difficult things myself in medicine
12 as of yet, I would come home often times really distraught,
13 seeing some of the sick people that we just could not help.
14 During my rotations, he would kind of coach me, help me
15 through it, just be there to listen to me and not judge me.

16 Q. Did you have, during that time, you observed him --
17 are you okay? Yeah. During that time, you observed your aunt
18 and uncle as a couple, right?

19 A. Yes.

20 Q. Observing them as a married couple, what did that do
21 for you, as far as marriage goes?

22 MR. SCHUMANN: Relevance, Your Honor.

23 THE COURT: Sustained. Please rephrase.

24 MR. BASILE: Okay.

25 Q. BY MR. BASILE: How would you describe their
26 marriage?

27 MR. SCHUMANN: Lacks foundation.

28 THE COURT: Okay. She's testified that she lived in

1 the residence with them.

2 MR. BASILE: Known them her whole life.

3 Q. BY MR. BASILE: How would you describe their
4 marriage?

5 THE COURT: Mr. Basile, overruled.

6 MR. BASILE: Thank you, Your Honor.

7 THE WITNESS: Loving, the most loving relationship I
8 actually ever knew.

9 Q. BY MR. BASILE: Why do you say that?

10 A. Everybody in my family is divorced besides them. My
11 parents have been divorced. My grandparents are divorced. My
12 step parents were divorced. I never saw a deep rooted
13 relationship like theirs, just very strong growing up, they
14 were the ultimate example of that.

15 Q. Thank you. Exhibit 318, please. Can you tell us
16 what this is?

17 A. It's a sign that my aunt has in her house.

18 Q. And do you know who gave that to her?

19 A. My Uncle Daniel.

20 Q. Do you know when he gave it to her?

21 A. I do not.

22 Q. Okay. Does she still have it hanging in her house?

23 A. She does, in her kitchen.

24 Q. Okay. 384, did you see your Uncle Daniel give advice
25 or counsel to Christopher?

26 A. Always.

27 Q. Did you see him also give advice and counsel to your
28 aunt Denise?

1 A. Always.

2 Q. Just, I'm almost done here. Can you give us an
3 example of advice and counsel he gave to Christopher, just one
4 example.

5 A. Anywhere from his career choices to his girlfriend
6 choices, to just how to drive, taught him how to drive,
7 everything. Even though he wasn't present as much, he was
8 always advising him.

9 Q. How about with Denise?

10 A. Whether it be teaching her how to do, financially to
11 be financially independent because they were together from
12 early 20s to just how to be stronger, she was a really strong
13 woman on her own, but she's definitely better being with him.

14 Q. Have you seen a change in Chris since he lost his
15 dad?

16 A. Yes.

17 Q. Tell us about that?

18 A. My cousin is a wonderful, light hearted, happy
19 person, and he still is, but there's a very big hole and
20 sadness and depression that he went through with losing his
21 dad.

22 Q. Do you still see some of that in Chris?

23 A. Yeah. He definitely works through it, you know, he
24 goes to counseling. He takes medicine, but he definitely
25 still is deeply effected by it.

26 MR. SCHUMANN: Objection. 352. Motion to strike.

27 THE COURT: Overruled.

28 Q. BY MR. BASILE: Exhibit 338, please. That's you in

1 the upper right-hand corner in the back row?

2 A. Yes.

3 Q. Okay. And what is this picture of?

4 A. This is our extended family. So my grandfather is
5 two people away from me, the older gentleman. On the right is
6 his wife who is my step grandmother, once again divorced, and
7 her grandkids on the side of her with my uncle in the center.

8 Q. Now, this wasn't your Uncle Daniel's birthday or
9 anything, was it?

10 A. I do not believe so.

11 Q. How does he end up in the center of this extended
12 family, if you know?

13 A. I would say naturally he gravitates that way. There
14 was -- there was no particular person specific event, that was
15 just our family getting together.

16 Q. So many people are experiencing that loss?

17 THE WITNESS: Very much so.

18 MR. SCHUMANN: Relevance, Your Honor, 352.

19 MR. BASILE: Nothing further.

20 THE COURT: Sustained on speculation. The last
21 answer will be stricken.

22 MR. BASILE: If it's speculative, I'll lay a little
23 more foundation, Your Honor.

24 Q. BY MR. BASILE: You know all these people, right?

25 A. Yes.

26 Q. You've observed over the many years that your Uncle
27 Daniel was alive, their relationships with him?

28 A. Yes.

1 MR. SCHUMANN: Relevance, Your Honor, their
2 relationships.

3 THE COURT: Sustained.

4 Q. BY MR. BASILE: Did -- that's Christopher right
5 behind there, right?

6 A. Behind my uncle, yes.

7 Q. So did this family unit, Denise, Aunt Denise, Uncle
8 Dan and Christopher, did you observe them enjoying society
9 together, over the time you knew them?

10 A. Always.

11 MR. BASILE: Thank you. Nothing further.

12 THE COURT: Mr. Reid or Mr. Schumann?

13 MR. SCHUMANN: No questions, Your Honor. Thank you
14 very much.

15 THE COURT: Thank you, Doctor.

16 THE WITNESS: Thank you.

17 THE COURT: Mr. Basile, no subject to recall?

18 MR. BASILE: Pardon me.

19 THE COURT: Not subject to recall?

20 MR. BASILE: No. May I have one second, Your Honor,
21 very quick. Thank you, Your Honor. We're fine. No recall.

22 THE COURT: Okay. Unless I'm mistaken, we're going
23 to resume the cross-examination of Mr. Lane. Mr. Reid?

24 MR. REID: That's my understanding, Your Honor.

25 THE COURT: Okay. Recall Mr. Lane then.

26 MR. BASILE: He's in the hall.

27 THE COURT: Thank you. When we concluded on
28 Wednesday, the Court interrupted at 4:00 o'clock, you had

1 Exhibit 489. I believe the first slide is still being
2 published to the jury.

3 MR. REID: Thank you, Your Honor.

4 THE COURT: Mr. Lane, you're still under oath.

5 THE WITNESS: Yes, sir.

6 THE COURT: Okay. Mr. Reid, when you're ready.

7 MR. REID: Thank you, Your Honor.

8 CHRISTOPHER LANE,
9 previously called as a witness under Evidence Code 776, by
10 Plaintiff, was sworn and testified as follows:

11 CROSS-EXAMINATION RESUMED

12 BY MR. REID:

13 Q. Good morning, Mr. Lane. How are you this morning?

14 A. I'm fine. Thank you.

15 Q. Between now and last Wednesday, have you reviewed any
16 additional materials?

17 A. I have, yes, sir.

18 Q. What have you reviewed?

19 A. Principally the data from the pressure data.

20 Q. Anything else?

21 A. Well, the related LOTOs just looking at if there were
22 anything that I hadn't recalled, that related to each set of
23 data.

24 Q. Did you have any specific observations about any
25 LOTOs that we discussed?

26 A. I did, yes, sir.

27 Q. And what were those?

28 A. Well, we talked about the ones prior to 2017 or after

1 2017, there's a significant difference.

2 Q. Which ever order you like to do it in.

3 A. Prior to 2017, it appeared that you were making a
4 point when the pressure went down together that that was
5 something useful, and the problem with that is the LOTO before
6 2017 made that impossible, if you follow the LOTO, the LOTO
7 sequence. After 2017, indeed, when the pressure goes down
8 together, that's important, and intended by the LOTO. The
9 part that is ambiguous is that when you have that vented
10 pressure, there's no way of knowing whether the valve that has
11 been closed as ISO 2, whether it's upper valve or lower valve,
12 because all the pressure is already out.

13 Q. And you're referring to subsequent to January of 2017
14 or the first LOTO of 2017, correct?

15 A. That's correct. I think it was the first or the
16 second LOTO in 2017, but yes.

17 Q. So just so you and I are clear, there was a LOTO that
18 was done on January 28th, 2017. There's no data, at least in
19 the pressure log regarding that particular date, so it would
20 have been February 6th of 2017 you're referring to, correct?

21 A. I have to look, but I think that's correct.

22 Q. Any other additions to your testimony that you want
23 to make from last week?

24 A. Well, what I noticed, what I observed and kept
25 looking at very carefully with the data primarily from 2016,
26 but also 2017, is that there are a lot of variations indicated
27 in how the valves and system was manipulated.

28 In 2016, I could see that the data only supports the

1 LOTO having possibly been followed, sequence followed properly
2 two out of eight times. So I think as Mr. Johnson said, I see
3 that everybody seems to have their own way of doing business.

4 Q. Okay. Have you had any discussions with Mr. Basile
5 or Mr. Sullivan since last Wednesday?

6 A. I spoke with Mr. Sullivan, yes.

7 Q. What was discussed?

8 A. Well, we just discussed what I just mentioned. I was
9 explaining to him what I seen in the data that was, I think he
10 was not fully aware of the significance.

11 Q. Okay. Thank you. And again, just to refresh, make
12 sure we're talking about the same things. When I say DG Corp.
13 you understand I'm referring to Diamond Generating
14 corporation?

15 A. I do, sir.

16 Q. When I say OPS, I'm referring to DGC OPS, LLC?

17 A. I do.

18 Q. It's your understanding that DG Corp. and OPS are two
19 separate companies?

20 A. I have limited understanding of that as what really
21 means to be a wholly owned subsidiary.

22 Q. You testified you reviewed approximately 45,000 pages
23 of documents produced in this case; is that correct?

24 A. I think review would be a generous word. I filtered
25 through them to see which documents appear to have relevance
26 to my work.

27 Q. Mr. Basile referred to those documents as defendant's
28 documents, correct?

1 MR. BASILE: Lack of foundation. If he knows.

2 THE WITNESS: I don't recall what they were referring
3 to --

4 THE COURT: One moment, Mr. Lane.

5 MR. BASILE: I'll withdraw the objection. We can
6 move on, Your Honor.

7 THE COURT: Overruled.

8 You may answer, Mr. Lane.

9 THE WITNESS: I don't recall him characterizing the
10 data in anyway.

11 MR. REID: Thank you.

12 Q. BY MR. REID: Do you know what a Bate stamp is?

13 A. I do, sir.

14 Q. What is the purpose of a Bate stamp?

15 A. To organize a data base so you can locate documents
16 more efficiently.

17 Q. When an entity produces documents and Bate stamps
18 those, does that Bate stamp identify the entity that produced
19 the documents?

20 A. That's my understanding, yes, sir.

21 Q. In the documents 45,000 pages that you skimmed
22 through, did you know if any of those documents have a DGC OPS
23 Bate stamps?

24 A. I don't recall looking at the Bate stamps at all. I
25 wasn't categorizing things by Bate stamps. My data base was
26 not indexed by Bate stamps. I didn't pay any attention to
27 Bate stamps.

28 Q. Can I have Exhibit 5. I believe it's been admitted.

1 Do you recognize this document, sir?

2 A. I do, yes, sir.

3 Q. All right. If you can scroll to the bottom of the
4 first page. You see Bate stamp there?

5 A. I do.

6 Q. All right. And we're referring to DGC OPS?

7 A. Yes, I see that.

8 Q. That would be -- it would be your understanding that
9 this document was produced by DGC OPS?

10 A. That's my limited understanding of how that works,
11 yes, sir.

12 Q. Exhibit 9, please. And you can just scroll down to
13 the bottom, again. You see the same DGC OPS Bate stamp?

14 A. I do, yes, sir.

15 Q. And again, to your understanding, this is a document
16 that would have been produced by DGC OPS, correct?

17 A. That's correct.

18 Q. I have a couple more, but I think we can skip those.
19 Are you aware that approximately 41,000 pages of documents in
20 this case were produced in response to subpoenas from GEMMA
21 Power Systems LLC to DGC OPS?

22 MR. BASILE: Objection. Relevancy and 352, also,
23 Your Honor.

24 THE COURT: Overruled.

25 THE WITNESS: I have no idea.

26 Q. BY MR. REID: Thank you. In your -- what you
27 described as cursory review, is that fair or limited review of
28 the 45,000 pages of documents that were provided to you by

1 plaintiff's counsel, did you find --

2 A. I refer to use the word filter.

3 Q. Filter. Fine. I can use your -- let me rephrase it.
4 In your filtered review of 45,000 pages of documents provided
5 to you by plaintiff's, did you find --

6 THE REPORTER: Please slow down.

7 Q. BY MR. REID: Did you find any document which shows
8 that DG Corp. had any part of ensuring OPS complied with the
9 regulations issued by CAL OSHA?

10 MR. BASILE: Objection.

11 THE COURT: Overruled.

12 MR. REID: In your --

13 THE COURT: Let him answer. Sorry.

14 THE WITNESS: I may have. I'm trying to think.

15 There was a document about confined space by Mr. Forsyth, I
16 thought he was with DGC. It was sent to Cardenas to be
17 implemented at the plant. That's the only one I remember
18 specifically. That might fit that category.

19 Q. BY MR. REID: Is that a document involving CAL OSHA
20 regulations?

21 A. I don't recall if it called that out specifically or
22 not. It was about an incident that related to plant safety.

23 Q. In your filter review of 45,000 pages of the
24 document, did you find any document that found DG Corp. had
25 any part in ensuring that OPS complied with the regulations
26 issued by the California Public Utilities Commission.

27 MR. BASILE: Objection. Relevancy. 352. Beyond the
28 scope.

1 THE COURT: Waiting for that last part.

2 Can you please rephrase the question.

3 MR. REID: Sure. And, Your Honor, I don't know if it
4 would help, we have Mr. Lane's deposition testimony
5 identifying the categories that he was going to be talking
6 about. I can show that, if we're going to continue to get
7 objections.

8 THE COURT: It's more wording, just rephrase the last
9 question.

10 MR. REID: Thank you, Your Honor.

11 Q. BY MR. REID: Do you know if DG Corp. had any part in
12 making sure that OPS complied with the regulations issued by
13 California Public Utilities Commission?

14 A. I don't recall any.

15 Q. Are you aware of any document that demonstrates that
16 DG Corp. had any part in ensuring that OPS complied with the
17 regulations issued by the California Energy Commission.

18 A. Not that I recall.

19 Q. And we touched on that just a moment ago. Any
20 documents that you're aware of that show that DG Corp. had any
21 part in making sure that OPS conducted training of its
22 employees?

23 A. Subsequent to the incident, I recall a document that
24 listed a whole series of --

25 MR. REID: Objection, Your Honor. Calls for evidence
26 that subsequent remedial measures, I can limit the question to
27 before the incident.

28 MR. BASILE: He asked, he should be allowed to

1 answer, Your Honor.

2 THE COURT: Rephrase your question, Mr. Reid.

3 MR. REID: Thank you, Your Honor.

4 Q. BY MR. REID: Prior to the March 6th, 2017 incident,
5 do you have any evidence that DG Corp. had any part in making
6 sure that OPS conducted training of his employees?

7 A. I don't recall any specific document.

8 Q. Prior to the incident, do you have any -- in your
9 filtered review of the documents, did you find any contract
10 whereby another company was hired or agreed to assume OPS role
11 in keeping Mr. Collins safe?

12 A. I'm sorry. Could you ask that again, please.

13 Q. Sure. Prior to the incident, did you find anything
14 in your filtered review of the 45,000 pages of documents, that
15 was a contract whereby another entity was hired or agreed to
16 assume OPS role as an employer to keep Mr. Collins safe?

17 A. No, but in that, I didn't -- I didn't review any
18 contracts.

19 Q. You were not given any contracts related to this case
20 by the plaintiff's counsel?

21 A. I was provided an operations and maintenance
22 contract, as I recall. I did not review that with any
23 significance. I just glanced at it.

24 Q. Who was that operations and maintenance -- strike
25 that. Let me ask again. Who were the parties to that
26 operations and maintenance agreement that you reviewed?

27 A. I don't recall specifically. I'd be saying what I
28 think it should be, but I don't know.

1 Q. If I said the contract was between Sentinel and OPS,
2 would that refresh your recollection?

3 A. Not particularly, no.

4 Q. Same question regarding contracts, except just want
5 to, prior to the incident, did you see any contracts whereby
6 another entity was hired or agreed to assume OPS's
7 responsibilities to keep all the employees at the plant safe?

8 A. No, sir.

9 Q. Prior to the incident, did you see any contract
10 whereby another company was hired or agreed to assume OPS's
11 role as an employer to train Mr. Collins?

12 A. Only that I know they used online training services,
13 if that qualifies.

14 Q. And do you know who arranged those online training
15 services for employees?

16 A. I do not.

17 Q. Okay. In your filtered review of the documents, did
18 you find any contract by another company hired or agreed to
19 assume OPS's role as employer to train all the employees at
20 the plant with the exception of online training that you've
21 already discussed?

22 A. No, sir.

23 Q. In your review, filter review of those documents, did
24 you find any contract whereby another company was hired or
25 agreed to assume OPS's role as the employer to label equipment
26 or provide warning signs?

27 A. Not specifically, no, sir.

28 Q. In that filter review of the documents, did you find

1 any document that showed DG -- excuse me. Showed DG Corp. had
2 any part in ensuring OPS conducted proper training at the
3 plant?

4 A. I thought you asked that, but the answer is no, I do
5 not. I did not.

6 Q. All right. Thank you. And then same question
7 regarding Lock Out/Tag Out policy training regarding Lock
8 Out/Tag Out, policies and procedures used at the plant --

9 A. Ask the whole question.

10 Q. Sure. Let me ask it again. In your filter review of
11 those 45,000 pages of documents provided to you by plaintiff's
12 counsel, did you find any document which shows that DG Corp.
13 had any part in ensuring that OPS conducted training of OPS
14 employees on Lock Out/Tag Out policy and procedures to use at
15 the plant?

16 A. Well, I'm going to mention the one subsequent to the
17 incident.

18 MR. REID: Again, I'll object on the bases of
19 subsequent remedial measures, Your Honor.

20 Q. BY MR. REID: So if you'll limit your answer to prior
21 to the incident?

22 A. Then no, no, sir, not that I recall.

23 Q. Prior to the incident, in your filtered review of the
24 45,000 pages of documents provided, did you find any document
25 that shows DG Corp. conducted any training of OPS employees on
26 the Lock Out/Tag Out sheets being used at the plant from 2014
27 to 2016?

28 A. No, sir.

1 Q. Same question for 2017?

2 A. No, sir.

3 Q. And just let me ask the full question. I apologize.
4 Just trying to make a record here, Your Honor. I apologize.

5 In your review of those 45,000 pages of documents
6 prior to the incident that were provided to you by plaintiff,
7 did you find any document which shows that DG Corp. conducted
8 any training of OPS employees on Lock Out/Tag Out sheets which
9 were being used in 2017?

10 A. No, sir.

11 Q. Thank you for your patience, Mr. Lane. I appreciate.
12 It?

13 A. You're welcome.

14 Q. Prior to the incident, in your review of those 45,000
15 pages of documents, provided to you by plaintiffs, did you
16 find any document which shows that DG Corp. had any part in
17 ensuring OPS made sure that the Lock Out/Tag Out that was
18 being used, Lock Out/Tag Out sheet which was being used, date
19 of the incident, was done correctly and in order?

20 A. No, sir.

21 Q. In your filter review of 45,000 pages of documents
22 that were provided to you by plaintiffs, did you find any
23 document that showed DG Corp. supervised the outage on the
24 date of the incident?

25 A. No, sir.

26 Q. In your review of those 45,000 pages of documents
27 prior to the incident or excuse me. Yeah. Prior to the
28 incident from 2014 up until the date of the incident, did you

1 find any document which showed that DG Corp. supervised any of
2 the outages?

3 A. No, sir.

4 Q. In your review of those 45,000 pages of documents,
5 last one of these, I promise. Did you find any document which
6 shows that during any of Tom Walker's performance reviews,
7 anyone from DG Corp. conducted an audit of any of the LOTO
8 sheets at the plant?

9 A. Before, no. No, sir.

10 Q. We looked at a number of demonstratives that you
11 provided. One, so you had a sheet of the LOTOs, installer,
12 verifier, done correctly, you know, done in order, that type
13 of thing, do you remember those charts we're talking about,
14 then the red checks?

15 A. Yes, sir, I do.

16 Q. Okay. So in those 45,000 pages of documents -- I
17 lied. There's one more. Did you find any document which
18 showed DG Corp. had any part in ensuring that OPS made sure
19 the Lock Out/Tag Out sheets were done correctly and in order
20 for any of those previous LOTOs?

21 A. No, sir.

22 Q. Is it your opinion that to the extent there were red
23 flags on the LOTO sheets, those were the result of failures on
24 the part of OPS Tom Walker and Jason King?

25 MR. BASILE: Objection. Compound. Lack of
26 foundation. Calls for speculation.

27 THE COURT: The inquiry as to his expert opinion
28 regarding review of the documents, sustained as to compound.

1 Q. BY MR. REID: Is it your opinion to the extent there
2 were red flags in any of those demonstratives, were those the
3 results of failures on the part of OPS?

4 A. Well, they were failures. I did not assign blame to
5 any particular one or group of them. They were definitely
6 failures due to various requirements.

7 Q. Is it your opinion that to the extent there were red
8 flags in your demonstratives regarding the LOTO sheets, were
9 those the result of the failures on the part of Tom Walker?

10 A. I didn't ever think about any particular individual
11 as being responsible for all of those because each of those
12 red flags is the result of failure to comply with one of
13 possibly three or four requirements. And so, I didn't take
14 that kind of angle on figuring out who was responsible for
15 each of those.

16 Q. I'll ask the same question as to Mr. King. Is it
17 your opinion and the answer may be the same, is it your
18 opinion to the extent there were red flags in the LOTO sheet
19 on your demonstrative that -- were those results of failures
20 on the part of Jason King?

21 A. Similarly he was certainly a key player. I wasn't
22 definitive who was responsible for each of those red flags.

23 Q. Is it your opinion that DG Corp. was responsible for
24 those red flags?

25 A. I think the -- to the extent that the Lock Out/Tag
26 Out system was such a horrendous mess and had been for at
27 least five years, that it's a top to bottom -- it was a top to
28 bottom problem.

1 Q. You testified just a few minutes ago that no one from
2 DG Corp. audited or to your knowledge audited those LOTO
3 sheets; is that correct?

4 A. Prior to the incident?

5 Q. Prior to the incident.

6 A. I never saw a document that showed that.

7 Q. Whether you're attempting to attribute some
8 responsibility to DG Corp. for these red check marks on your
9 demonstrative, what's your basis for that, if they never
10 reviewed the LOTO sheets?

11 A. That the entire program was my Australian friends
12 called a dog's breakfast. It was a mess. There was problems
13 everywhere. I just think that -- I think like a Navy man, I
14 think that it goes all the way form the top to bottom when
15 something is that deficient.

16 Q. Well, you've testified that DG Corp. wasn't
17 responsible for training. You've testified that DG Corp. was
18 not auditing documents to your knowledge, what specifically do
19 you believe DG Corp. did that resulted in those red checks?

20 MR. BASILE: Your Honor, I have to object. It's
21 compound, misstates the evidence, the last part of the
22 question. I'd be glad to have him answer.

23 THE COURT: Sustained on the compound part.

24 MR. BASILE: Thank you.

25 THE COURT: I'm sorry, Mr. Reid. If you want to
26 rephrase that question, when we come back.

27 MR. REID: Yes, Your Honor.

28 THE COURT: We're going to take a brief recess here.

1 Okay. It is 11:05. Please return at 11:15. Thank you.
2 Again, please do not discuss the facts of the case or any
3 parties involved with anyone or each other or anyone else.
4 Thank you.

5 (Brief Recess.)

6 THE COURT: So we're back on the matter of Collins
7 versus DG Corporation. We're in the middle of
8 cross-examination of Mr. Lane. All members of the jury are
9 present. Mr. Reid, I believe you're in the process of
10 rephrasing your last question, whenever you're ready.

11 MR. REID: I'll withdraw the question. That's fine,
12 Your Honor. Exhibit 176, please. And I believe this has
13 already been admitted, Your Honor.

14 Q. BY MR. REID: Mr. Lane, do you recognize this
15 document?

16 A. I do, yes, sir.

17 Q. And can you describe this document for me?

18 A. It's like a tag out procedure.

19 Q. This is like a procedure that was used on the date of
20 the incident; is that correct?

21 A. That's correct.

22 Q. And if you'll look at the highlight upper left,
23 that's DG Operations LLC logo; is that correct?

24 A. That's correct.

25 Q. The title of the document is Sentinel Energy Project
26 Lock Out/Tag Out procedure, correct?

27 A. Yes, sir.

28 Q. And by that description, would you say that this was

1 a DGC OPS document?

2 A. That's on the letterhead, yes, sir.

3 Q. And if we can scroll down a little bit on that first
4 page. Bottom right corner, and again, that's the Bate stamp
5 for DGC OPS which indicates they produced the document,
6 correct?

7 A. That's my understanding, yes, sir.

8 Q. That title and the DGC operations logo does that
9 appear on the first 26 pages of this document, if you know?

10 A. I didn't pay any attention. I believe it does, but I
11 didn't -- I didn't count them.

12 Q. All right. He's scrolling through it for you. You
13 see the logo and the title on each page?

14 A. I do, yes, sir.

15 Q. Okay. So that's the first 26 pages of the document.
16 Each one of those pages has DGC Operations LLC logo and
17 Sentinel Energy project Lock Out/Tag Out procedure, correct?

18 A. Yes, sir.

19 Q. I know we went through it fairly quickly. Did you
20 see the DGC or DG Corp. logo on any of those 26 pages?

21 A. No, sir.

22 Q. Let's go to page 27. All right. So this is one of
23 the attachments to that 26 page like procedure. And you'll
24 know that the Diamond Generating corporation logo appears in
25 the upper left corner, correct?

26 A. Yes, sir.

27 Q. And the Sentinel Energy LLC title or whatever we want
28 to call that, that name is on the document?

1 A. Yes, sir.

2 Q. Would that indicate to you that this was a document
3 that was intended for use for Sentinel Energy facility?

4 A. Yes, sir.

5 Q. Do you know if this is the template that was used for
6 all of the Lock Out/Tag Out sheets we've looked at from
7 various dates prior to and up to the incident?

8 A. I believe it is, yes, sir.

9 Q. Okay. Is there -- scroll down, please. Is there --
10 is there anything on this blank template that indicates what
11 steps the LOTO procedures were supposed to be done in or what
12 order they were supposed to be done in, excuse me?

13 A. This is -- no, this is a blank form.

14 Q. And there's nothing on here about valves or tags or
15 anything else; is that correct?

16 A. That's correct.

17 Q. Okay. And do you know when the Sentinel Energy
18 Center opened for commercial operations?

19 A. In 2013, I believe.

20 Q. August 2013 ring a bell for you?

21 A. No, not particularly, no, sir, just 2013.

22 Q. I'll indicate that's when the plant started
23 commercial operations.

24 A. Yes, sir.

25 Q. Can you go back a page for me, please. Can you zoom
26 in on there. Yeah. Written by and the date.

27 A. I see that.

28 Q. Okay. And this procedure was written by Jason King;

1 is that correct?

2 A. I understand it was a collaborative effort between
3 Mr. Walker and Mr. King.

4 Q. Tom Walker the plant manager at OPS and Jason King
5 the operations and maintenance manager at OPS, correct?

6 A. Mr. Walker came -- with my understanding, Mr. Walker
7 came with his approach from -- he was hired by DGC to come and
8 be the plant manager. That Jason King had a version of Lock
9 Out/Tag Out, from his experience that they somehow merged
10 those together and agreed to this procedure.

11 Q. And this procedure is dated April 17th, 2013,
12 correct?

13 A. Yes, it is.

14 Q. Which would indicate that this procedure was in place
15 prior to the plant opening, correct?

16 A. That's correct.

17 Q. Okay. Do you have any -- I apologize. We're going
18 back to the documents. In your filtered review of 45,000
19 pages of documents that were provided to you by plaintiff's
20 counsel, for things prior to the incident, did you find any
21 document which showed that DG Corp. reviewed or approved this
22 procedure?

23 A. I know if he -- the reviewed safety. I don't know
24 that they reviewed this exact procedure. It would be logical
25 that this would be part of the review of safety.

26 Q. Okay. But you have no idea, you're speculating; is
27 that correct?

28 A. Let's call it an educated guess. It's such an

1 important part of safety, but yes.

2 Q. But yes, you'd be speculating?

3 A. I have to say it's -- I'll call it an educated guess
4 because it's such an important part of safety, it would be
5 surprising to me that they would overlook this as part of the
6 review of safety.

7 Q. And it's your opinion that DG Corp. was reviewing
8 safety at this plant; is that correct?

9 A. Yes, sir, that is my understanding.

10 Q. What's your basis for that?

11 A. It was part of the performance reviews of Mr. Walker.
12 They reviewed safety as part of that. And they had a bonus
13 program in place, that I don't know how far that went, but I
14 know that it included -- specifically included safety as a
15 criteria for performance for bonuses and performance reviews
16 grading, so to that extent, yes, sir, I do see that
17 involvement.

18 Q. Has there been any deposition testimony of the
19 depositions that you were provided which indicated that a
20 specific person reviewed this policy?

21 A. A specific person?

22 Q. Any specific person.

23 A. Well --

24 Q. Other than Mr. King and Mr. Walker?

25 A. That, I don't know, sir.

26 Q. Okay. Page 11, please. And this is the definition
27 of a qualified employee?

28 A. That's correct.

1 Q. And it's part of there responsibility of a qualified
2 employee to eliminate any system liquid pressure or
3 temperature prior to LOTO issuance; is that correct?

4 A. I'd like to read the words exactly to see what it
5 says. I -- yes, I agree with that.

6 Q. Okay. Do you know what LOTO issuance means?

7 A. I do. In my business on this system, it's pretty
8 confusing.

9 Q. Okay. Do you know if there was any notes for the
10 daily log the day of the incident regarding the LOTO being
11 issued?

12 A. I believe there were some notes that indicated the
13 status of activities as they went on.

14 Q. And the LOTO being issued is an indication that it's
15 been completed; is that correct?

16 A. In this system, who knows. Who knows. I've seen --
17 it's such -- it's such a mess of when that LOTO is authorized
18 to be hung, that when each of the steps is supposed to be --
19 as we have talked about, that the installer comes back, it
20 gets turned over to, he meets with the authorized individual.
21 It gets turned over to the verifier. The verifier goes out,
22 comes back in, gets turned over to the -- normally the work
23 supervisor he goes out and does -- he or she goes out and does
24 the final check, and since none of that was working very well,
25 I don't know what it means to be initiated in this system.

26 Q. Issued, I'm sorry.

27 A. Issued, initiated, you name it. The form doesn't
28 support that process. The form is so ambiguous, you can't

1 tell who's doing what to whom.

2 Q. Okay. So to summarize what you just said, I
3 apologize. You don't know if the LOTO was issued that
4 morning; is that fair?

5 A. I don't. I said in their system, I don't know what
6 issue really means.

7 Q. Page 12, please. We're going to highlight the
8 caution box. At any time during a LOTO a reaccumulation of
9 stored energy presents itself, the work supervisor
10 is to immediately remove all workers from the LOTO work area,
11 notify the qualified employees, authorize user and the plant
12 manager and OM manager in the systems with liquid pressure or
13 temperature above the limits defined in this procedure, reduce
14 of two valve isolation shall be used whenever possible a
15 qualified employee shall also ensure that the equipment is
16 returned to safe operating status in a none hazardous
17 condition prior to granting a release of the Lock Out/Tag Out.

18 With that paragraph in mind, on the morning of the
19 incident, were there a number of indications that there was
20 stored energy still in the filter system?

21 A. There were a number.

22 Q. More than one?

23 A. There was, yes. There was, in the control system
24 data acquisition system, there was -- there were readings
25 that, if they had been looked at, would have given an
26 indication and then the gauge on the pressure vessel itself,
27 the filter vessel.

28 Q. Isn't it also true there were at least two unusual

1 releases of natural gas as part of the process?

2 A. It depends on your view of the LOTO, definitely one.

3 Q. Mr. King was aware of that?

4 A. Well, I'm not Mr. King. I believe he was. There was
5 indication that he became aware of that.

6 Q. It was testimony in fact that he spoke with Daniel
7 Collins about the unusual release of pressure, correct?

8 A. That's correct.

9 Q. At that point with Mr. King being aware that there
10 was still potentially energy in the system, should he have
11 stoppled the procedure and removed all the employees from the
12 LOTO?

13 A. Of course, with this requirement, yes.

14 Q. Okay. Do you know if he did?

15 A. My understanding is he did not. Just as there was no
16 effective verifier, there was no third party check and there
17 was, you name it.

18 Q. Okay. Just briefly for that that installer verifier,
19 work supervisor, the installer should have been the first line
20 of defense, correct?

21 A. Correct.

22 Q. The verifier would have been the second line of
23 defense?

24 A. That's correct.

25 Q. And the work supervisor would have been the third
26 line of defense, correct?

27 A. That's correct.

28 Q. All three of those people on the date of the incident

1 didn't do their job, correct?

2 A. That's correct.

3 Q. All right. Page 12. Responsibilities. So same
4 page. Just -- yeah. Thank you. Under this LOTO procedure,
5 5.0 responsibilities, A, the plant manager is responsible for
6 the administration of the Lock Out/Tag Out program; is that a
7 correct statement as you understand it?

8 A. It is, yes, sir.

9 Q. Okay. And so Tom Walker should have been responsible
10 for administering this entire procedure; is that correct?

11 A. Yes, overseeing it, yes, sir.

12 Q. Okay. And making sure that people were trained on
13 this procedure?

14 A. I would agree.

15 Q. Making sure?

16 A. Training is a major part of that, yes, sir.

17 Q. Make sure that people were trained on any changes to
18 the LOTO process, correct?

19 A. Yes, that's one of the requirements of the SMP-3
20 procedure.

21 Q. Okay. Page 13, please, section 5B, plant manager is
22 responsible for a monthly review audit of the current and
23 previously issued LOTOs in the Lock Out/Tag Out program. That
24 was Mr. Walker's responsibility, correct?

25 A. As plant manager, yes.

26 Q. And I'm not seeing off the top of my head Mr. Walker
27 was also responsible for conducting a yearly review of the
28 LOTOs, correct?

1 A. He was responsible for monthly, that he can delegate
2 and he was responsible for annually, that he was not allowed
3 to delegate.

4 Q. And in other words, for those reviews, would be
5 audit, correct?

6 A. That's correct.

7 Q. Mr. Walker was responsible for the monthly audits and
8 yearly audits and he could delegate the monthly audits?

9 A. Yes, sir, that's correct.

10 Q. Okay. Do you believe that Mr. Walker fulfilled his
11 responsibility to conduct monthly audits of the LOTO
12 procedures prior to the incident?

13 A. Well, I'll say no, not because there weren't monthly
14 audits. Because they were so deficiently done that they were
15 largely meaningless.

16 Q. Okay. It was also Mr. Walker's responsibility to
17 conduct yearly audits, correct?

18 A. That's correct.

19 Q. Is it your opinion that he failed in that
20 responsibility?

21 A. That is my understanding that he did not do the
22 annual audit.

23 Q. Okay. I'd like you to look at Exhibit 34, which is
24 the root cause analysis, which I believe has already been
25 admitted. Are you familiar with this document, sir?

26 A. Yes, sir.

27 Q. Is this one of the documents you were provided by
28 plaintiff's counsel?

1 A. Yes, sir.

2 Q. And you reviewed this document?

3 A. I did.

4 Q. Did you conduct a filter review or did you review it
5 in detail?

6 A. I studied it.

7 Q. So a detailed review?

8 A. Yes, sir.

9 Q. First page, up in the right corner, you see DGC
10 Operations LLC, Sentinel Energy Center?

11 A. Yes, sir, I see that.

12 Q. Would that be an indication to you that this was a
13 DGC OPS document?

14 A. Yes, it does.

15 Q. And what does the term root cause analysis mean?

16 A. That's where you try to find out what started it,
17 what was the actual spark that lit the flame, if you will.
18 Where did thing goes wrong that caused this accident, this
19 incident to have occurred.

20 Q. And this root cause analysis was prepared as a result
21 of an employee fatality on March 6th, 2017, due to unexpected
22 release of hazardous energy; is that correct?

23 A. That's correct.

24 Q. This document dated April 12th, 2017, which is about
25 a month after the incident occurred, correct?

26 A. That's correct.

27 Q. Okay. Do you generally agree with the conclusions in
28 this report?

1 A. I agree with the recommendations. I cannot quite get
2 myself to agree with his explanation of exactly what happened
3 by what was done by Mr. Collins, but I certainly agree with
4 what the end results was of his recommendation.

5 Q. Who conducted this investigation?

6 A. Mr. Ben Stanley.

7 Q. And what do you know about Mr. Stanley?

8 A. That he was a plant manager as I believe at the I wan
9 to say Inland --

10 Q. Valley energy center?

11 A. Valley energy plant, that's correct, which was
12 another plant in the region.

13 Q. And I don't mean to correct you, but Valley Energy
14 Center is in New York; is that your recollection?

15 A. That's where he was when he was deposed. I thought
16 earlier he had been at a different plant and he was then in
17 New York when he came out for this. I may be wrong on that.

18 Q. That's fine. Do you know who assisted him in this
19 investigation?

20 A. No.

21 Q. Page 2. Investigation team was led by Ben Stanley,
22 DGC Operations plant manager at the Valley Energy Center.
23 Mr. Stanley was assisted in the investigation by several DGC
24 Operations management employees. Is that your understanding
25 of the investigation team?

26 A. As it's stated, yes, sir.

27 Q. Do you -- are you aware of any evidence, documentary
28 or testimonial that indicated that anyone from DG Corp.

1 participated in this investigation?

2 A. I'm not aware of any.

3 Q. Page 3, technical troubles will be the end of us.

4 All right. Personnel involved in the incident. Several
5 employees were involved in the immediate incident, Dan
6 Collins, gas turbine technician; Mike Delaney, gas turbine
7 technician, Albert Palalay, P-a-l-a-l-a-y, site maintenance
8 mechanic, Robert ward, gas turbine technician and Jason King,
9 O and M manager. Is it your understanding the O and M manager
10 stands for operations and maintenance?

11 A. Yes.

12 Q. Other employees were interviewed but these employees
13 were not involved but did provide information and observations
14 to the investigation. Are you aware of anyone else that was
15 involved in the incident on the date of March 6th, 2017?

16 A. I don't know who the operations technician was, who
17 was the -- who was in control, in the control room at that
18 time. I would think he would have been, maybe he fits in the
19 category of other interviewed, same that -- for Ju Kim, he was
20 close to being involved, but he was -- he would fit in that
21 category, I believe.

22 Q. So Ernest Jones was the gas turbine technician who
23 was operating the plant that day, do you remember that?

24 A. That sounds right, yes, sir.

25 Q. And Ju Kim was the IC and E technician that day,
26 correct?

27 A. That's yes, instrumentation and controls the
28 electronics, yes, sir.

1 Q. Neither one of them was directly involved in the
2 actual LOTO that was done that day, correct?

3 A. Weren't involved or should have been involved and
4 weren't. I think Mr. Jones and the control room operator
5 should have been involved in the LOTO.

6 Q. Okay. But he's not listed here in the report,
7 correct?

8 A. He's not.

9 Q. Page 5, please. All right. Causal factors and
10 supporting comments. Causal factors are equipment, frontline
11 performance, gaps that lead to the incident or made the
12 consequences of the incident more severe. The first bolded
13 and underlined section there is the existing LOTO procedure
14 was not followed. Do you agree with that conclusion?

15 A. The sequence was not followed, yes, sir.

16 Q. Highlighting page 20, section 6. Installer shall
17 install the LOTO in the order components are listed on the
18 Lock Out/Tag Out sheet. From interviews with employees it
19 appears it's the installer, Collins, did not properly follow
20 the steps to isolate the equipment in the order listed on the
21 equipment Lock Out/Tag Out sheet. Employees indicated that
22 the isolation procedure had been previously used in order,
23 safely and effectively. Do you agree with that paragraph?

24 A. I do. But I can't -- I can't overlook the history of
25 Mr. Collins and all the others in 2015, in particular where
26 only two out of eight times did anybody follow the sequence.
27 I think that following the sequence was apparently not
28 engrained in their training program.

1 Q. But specifically, for this incident, on March 6th,
2 2017, you agree that that paragraph describes what occurred
3 and one of the causes of the incident?

4 A. I do, yes, sir.

5 Q. Next paragraph. LOTO validation check as defined on
6 page 5, section D was not performed by someone different than
7 the person posting and locking equipment. In fact, the
8 verification and isolation was being performed at the same
9 time and by multiple employees as a result of verification was
10 performed improperly. Do you agree with that paragraph?

11 A. Generally, I do. There's some specifics of where
12 Mr. Palalay was and where Mr. Delaney was when and exactly
13 what they were doing and when they were doing it and who was
14 there each time. I don't think that the documents or the
15 testimony makes it completely clear.

16 Q. Okay. So would you agree that when you're dealing
17 with multiple observers to the same event, you're going to end
18 up with different versions?

19 A. Yes, I do. It's one of the various problems that
20 this system had.

21 Q. Okay. So going back up to page 20, employees
22 indicated that the isolation procedure had previously been
23 used in order and safely and effectively that's an indication
24 that multiple people were interviewed, correct?

25 A. That's what it indicates, yes, sir.

26 Q. Okay. And with that multiple People telling the
27 story, you're going to end up with some sort of combination of
28 what they all said, correct?

1 MR. BASILE: Objection. Foundation. Calls for
2 speculation.

3 THE COURT: Overruled.

4 THE WITNESS: Yes. I mean, yes.

5 Q. BY MR. REID: Heading, page 16, section 2D at no time
6 shall LOTO work be performed with a -- while a component is
7 under high pressure or high temperature according to the DCS
8 data screen, the vessel in question was pressurized at over
9 700 PSI. Do you agree with that conclusion?

10 A. I have to agree with that one, yes.

11 Q. Page 16, section 2F states, before the issuance of a
12 LOTO, systems and components shall be drained, deactivated and
13 depressurized before work begins. Two valve isolation of the
14 work area shall be used whenever possible. Vessel was not
15 properly drained and vented and, furthermore, it was only
16 double blocked and bled on the inland side. It was noted
17 during the investigation that the bypass line to the filter
18 was only single block protection, and needed to be corrected.
19 Do you agree with that paragraph?

20 A. Well, gosh, here's where we get in the problem of
21 what is issuance mean? It's not defined in a way, it's not
22 applied in a way that's consistent. In the industry, you --
23 the work supervisor approves the issuance of the LOTO to be
24 hung, and it authorizes the work. When the LOTO is complete,
25 and it's a very -- it's a very discreet controlled system that
26 that this one didn't have. Signatures on the LOTO sheet, you
27 -- I couldn't come in as an expert and look at the sheet and
28 tell you where you were. That's part of -- major part of the

1 problem of this system. It was not functional. So I can
2 agree with the wording, knowing what it was intended to mean
3 but what did it mean to the people, they were confused.

4 Q. So hypothetically, if the issuance of the LOTO
5 occurred when the LOTO box and the LOTO sheet having been
6 completed and brought into the control room, that's reflected
7 in the daily log, would that further help your understanding
8 of what issuance means in this case or at least what it was
9 being used as at the plant?

10 A. Well, that was my point. It's -- I know what it
11 supposed to mean. It's not how it was being used, in my
12 opinion, that's not how it was used in the plant. People
13 didn't know when the LOTO was complete with any definitive
14 except when maybe somebody put out the log sheet. That system
15 was not definite in each step, so you understood it.

16 Q. Next heading, page 21, section 16. States work
17 supervisor shall walk out the LOTO prior to the acceptance to
18 verify all danger tags during the proper location and position
19 and to verify the system is drained, depressurized,
20 deactivated and also verified components de-energized for the
21 LOTO. No such action took place as evidenced by review of the
22 tags and LOTO forms and through interviews. Do you agree with
23 that paragraph?

24 A. I do, yes.

25 Q. Next section, page 8, section R defines the LOTO
26 verifier as any qualified employee who verifies a Lock Out/Tag
27 Out has been installed correctly. The verifier shall walk the
28 Lockout/Tagout and verify all components have been properly

1 isolated, tagged, drained, depressurized and/or deactivated.
2 The verifier shall initial all Lockout tags installed and also
3 sign the Lockout/Tagout sheet to acknowledge they're
4 accomplished tasks. Both Palalay and Delaney were involved
5 with verifying the LOTO performed by Collins but neither
6 performed the verification correctly, would you agree with
7 that statement?

8 A. Well, the intent, but no one was qualified at this
9 time. The verifiers in particular were not, just hadn't had
10 the proper training as documented. They both, there were
11 two -- let's put it this way, Mr. Delaney, who participated in
12 this LOTO and should have, and Mr. Palalay who participated in
13 this LOTO and should have, both have admitted freely that they
14 had no idea how the system worked. They were not qualified.
15 They should have never been involved in this LOTO.

16 Q. So just the last sentence then, setting aside the
17 qualifications, both Palalay and Delaney were involved with
18 verifying the LOTO performed by Collins but neither performed
19 the verification correctly. Do you agree with that statement?

20 A. That is -- you can't miss facts, that's true. You
21 got to ask why, but that's true.

22 Q. Page eight. If you go down.

23 A. Eight was above, you skipped.

24 Q. I'm looking for something specific. I lost it here.
25 I apologize. Highlight that last paragraph for me. Yep, I
26 think. It is also important to note that the Collins, the
27 Collins -- excuse me. It's important to note that Collins was
28 identified as the safety contact for the facility. As

1 included in the site safety orientation video. As a result
2 they model their behavior both positive and less desirable
3 based on his behavior. Care should be taken that the onsite
4 organization safety culture promotes care and thoroughness in
5 following procedures and recording events that will be
6 important to maintain functional procedures and safety. Are
7 you aware that Mr. Collins was the designated safety contact
8 for the facility?

9 A. I was, yes, sir.

10 Q. Would you agree that as the designated safety
11 contact, he'd be the person that any contractors who came onto
12 the site would be referred to regarding safety at the plant?

13 A. I would -- that's logical, yes.

14 Q. Based on Mr. Collins being designated as the safety
15 contact, would you expect -- would you be -- excuse me. Let
16 me just strike the question. I apologize. Would you agree
17 that Mr. Collins, being the designated safety contact, would
18 indicate that he had a level of experience and training such
19 that he was qualified to assume that role?

20 MR. BASILE: Objection as it's vague as to safety
21 role of the LOTO or role of the overall safety. It's vague.

22 THE COURT: Couple of questions ago, there was the --
23 it was in charge of safety. Overruled.

24 THE WITNESS: It's not clear whether this was just a
25 -- I don't want to say public relations, that's not the right
26 word. Whether he was a coordinator or whether he was involved
27 and responsible for giving technical direction to people like
28 contractors. It's not clear at all what that means to me.

1 Q. Are you aware of the safety orientation video for the
2 site?

3 A. Only there was one. I have not seen it.

4 Q. Is it your understanding that that safety orientation
5 video was shown to contractors before they came onto the site
6 and was doing work?

7 A. I can only assume, that's logical, but I don't know.

8 Q. Have you actually reviewed that safety orientation
9 video?

10 A. I just seen -- I have not seen that video.

11 MR. REID: Your Honor, I've got probably another
12 45 minutes now would be a good time to break.

13 THE COURT: You have five more minutes.

14 MR. REID: All right.

15 Q. BY MR. REID: Exhibit 349, please. And just to kind
16 of orient ourselves to the testimony. We stopped on last week
17 on Wednesday, this is a photograph of the filter skid for Unit
18 5 at the plant, correct?

19 A. I don't know that this is Number 5, but they are all
20 the same, doesn't really matter.

21 Q. Okay. And the three large red handles we see, and I
22 pointed them out last week, I'll get the laser pointer for
23 that one. That one and that one, so the top one is the
24 isolation valve on the outlet side of the fuel filter skid,
25 correct?

26 A. Correct.

27 Q. And the next one down which is on the left side of
28 the inlet is the fuel -- first fuel filter isolation valve for

1 the inlet side, correct?

2 A. That's correct.

3 Q. Then the bottom one is the second isolation valve for
4 the fuel filter side on the inlet side?

5 A. No, sir. It has been the upper valve and lower
6 valve, all the data was -- let's put it this way. Prior to
7 2017, if you used the lower valve, the lower right hand corner
8 valve, if you use that as ISO 2, you could never depressurize
9 the filter vessel, you could never inspect the filter. It had
10 to be the upper to work. Or you had to cheat the system some
11 other way, but that LOTO sequence prohibited that from being
12 ISO 2.

13 Q. All right. We talked about the pressure sensor, and
14 I understand that's your opinion, and we're going to go into
15 that in detail. I just want to lay a little bit more
16 foundation here, little more orientation for where we were
17 last Wednesday. We talked about the pressure sensors at the
18 fuel filter skid?

19 A. Yes, sir.

20 Q. That pressure sensor provides reading in the control
21 room; is that correct?

22 A. That's correct.

23 Q. Exhibit 602, please. It's a photo of the fuel filter
24 skid from a different angle.

25 MR. REID: Permission to publish, Your Honor?

26 THE COURT: Yes.

27 Q. BY MR. REID: All right. And right about in here,
28 let's see where I'm pointing. You may have to look over your

1 shoulder. I apologize. So, right in here, can we enlarge
2 that any more. Okay. So this right here, little blue is that
3 the pressure transducer that provides that pressure reading
4 into the control room?

5 A. I believe so. I get that it's orientation in the
6 system from featuring the drawings, better from this
7 photograph.

8 Q. Okay. 605, different angle.

9 MR. REID: Permission to publish, Your Honor?

10 THE COURT: Yes.

11 Q. BY MR. REID: If we can enlarge this area over here
12 again. I don't have a great picture. That's generally the
13 area where that pressure transducer is?

14 A. I believe so. What is important, it's outboard of
15 that upper valve, it's not the filter side of that valve.
16 It's towards the turbine, that's important when you interpret
17 the data.

18 Q. And there was another pressure sensor similar to this
19 one in the turbine panel, correct?

20 A. This pressure sensor, whether they're similar or not,
21 I don't know. This one is scope and supply from the
22 construction company, the other is scope and supply from
23 General Electric Company.

24 Q. Two sensors perhaps doing the same thing, providing a
25 pressure reading in the control room?

26 A. That's correct.

27 Q. Let's go back to 602, please. Little farther in the
28 right, this area. That picture of a block valve that we

1 talked about that closes automatically?

2 A. Yeah. The dark thing in foreground is the actuator,
3 it's powered by air. That operates the valves that are inside
4 that pipe.

5 Q. This right here and it's got like a little red, green
6 dome on top of it, see where I'm pointing?

7 A. I do, yes, sir. I'm familiar with those valves.

8 Q. That red indicates that the valve is closed, correct?

9 A. Depending on which orientation it is. Yeah, those
10 indicators are -- there's a couple kinds of, but if it's
11 oriented in a certain way, it tells you whether it's opened or
12 closed.

13 Q. At some point during this LOTO procedure, that valve
14 got closed when the power went down to this portion of the
15 system, correct?

16 A. That's correct.

17 Q. And there was another one similar to this closer to
18 the turbine package that opened, allowing pressure between
19 those two valves to vent, correct?

20 A. That's correct.

21 Q. Okay.

22 THE COURT: Okay. Mr. Reid.

23 MR. REID: Thank you, Your Honor.

24 THE COURT: Thank you. We'll resume with
25 cross-examination at 1:30. Members of the jury, please have a
26 nice lunch. We'll see you at 1:29. Thank you. Please don't
27 discuss the facts of the case or any party involved with each
28 other or anyone else.

1 (Outside the presence of the jury.)

2 THE COURT: Counsel, we're outside the presence of
3 the jury. I'll see everyone back at about 1:20.

4 MR. REID: Thank you, Your Honor.

5 MR. BASILE: Thank you, Your Honor.

6 THE COURT: Have a nice lunch. Sorry, Mr. Basile,
7 just, I'm sorry, just for planning purposes, so.

8 MR. BASILE: No kidding.

9 THE COURT: I'm sorry.

10 MR. BASILE: No kidding. Let's get planning.

11 THE COURT: So, Mr. Basile, so, Mr. Reid, looks like
12 he probably has another 40 minutes left.

13 MR. BASILE: Can we confirm that? Can we confirm
14 that it's been going along just 40 minutes or an hour.

15 MR. REID: Could be an hour.

16 MR. BASILE: There we go.

17 MR. REID: Depends on his answers. I can't control
18 those.

19 THE COURT: Each of you are entitled to their own
20 strategy. But for planning purposes that's why I asked you
21 come in. I'm late for my lunch now as you are. We finished
22 with Gianna O'Hara. There's cross-examination of Lane. Is
23 the plan to resume the cross-examination of Forsyth?

24 MR. REID: That's our plan, sir, he'll be here at
25 1:30.

26 MR. BASILE: What else can I do?

27 THE COURT: Well, no, I'm asking you. You're
28 currently in your case. I'm giving difference to you. If

1 Mr. Forsyth, you have your witness here. So your plan is to
2 continue with cross-examination, Mr. Basile, that's agreeable.

3 MR. BASILE: Absolutely, whatever. I just want to
4 move it along, this case.

5 THE COURT: You have Caprino next?

6 MR. BASILE: No, we won't get to him. The way this
7 is going, no.

8 MR. SCHUMANN: That's not -- is he the one who has
9 Covid.

10 MR. BASILE: I already advised them Caprino is not
11 coming, he tested positive for Covid.

12 MR. REID: Mr. Palalay will be here also.

13 THE COURT: Okay. Well, I'm not making things up.
14 I'm just reading my notes from when I last saw the lovely
15 attorneys on Wednesday at 4:15 or whenever we got out of here.
16 This is the order that was presented to the Court. I'm just
17 checking it. This is the first I'm hearing about Caprino, you
18 know, I'm not surprised with Covid right now, we have to allow
19 for something like that. So the plan is not to proceed with
20 Caprino, correct?

21 MR. BASILE: I told them and they are bringing
22 Palalay instead. We'll have lots for the afternoon,
23 Your Honor.

24 THE COURT: If everyone works it out amongst each
25 other then you don't have to bring it to the Court. That's
26 the only reason I was inquiring.

27 MR. REID: We got an e-mail on Saturday. We
28 responded at that time.

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MR. BASILE: Thank you, Your Honor. Enjoy your lunch.

THE COURT: You as well. Thank you.
(Lunch recess.)

1 JULY 11, 2022 - AFTERNOON SESSION

2 THE COURT: Recalling the matter of Collins versus DG
3 Corporation. All members of the jury are present. We left
4 off with the cross-examination of Mr. Lane.

5 Mr. Reid, whenever you're ready.

6 MR. REID: Thank you, Your Honor.

7 THE COURT: All right. Thank you.

8 Q. BY MR. REID: Good afternoon, Mr. Lane?

9 A. Yes, sir. Thank you.

10 Q. How are you doing this afternoon?

11 A. Good.

12 Q. Okay.

13 MR. REID: Can I have Exhibit 83, please.

14 Your Honor, I believe this is stipulated as to authenticity
15 and admissibility.

16 Q. BY MR. REID: Mr. Lane, have you ever seen this
17 document before?

18 A. Not that I recall, no, sir.

19 Q. Okay. I'm going to represent to you that it's the
20 Sentinel Energy Center equipment plant log for the date of the
21 incident 3-6-2017, do you see that?

22 A. I do. Yes, sir.

23 Q. Okay. And the day shift gas turbine technician was
24 E. Jones, Mr. Ernest Jones?

25 A. There we go, yes.

26 Q. Sorry. Got it.

27 A. Yes.

28 Q. Can you scroll down to page 3, please. And can you

1 highlight 7:16 and enlarge. All right. Prior to the lunch
2 break, we were discussing the issuance of LOTO, do you
3 remember that conversation?

4 A. I do.

5 Q. And this is the reference in the daily log that I was
6 referring to?

7 A. Yes, sir.

8 Q. All right. So 7:16 a.m. the LOTO was issued,
9 whatever that means, correct?

10 A. Yes, sir.

11 Q. All right. Can I have Exhibit 479, the March 6th
12 tab. I got the wrong one. I apologize. I'm looking for the
13 spreadsheet, that's 489?

14 THE COURT: 489.

15 MR. REID: Thank you, Your Honor:

16 Q. BY MR. REID: 489, please. All right. So the date
17 of the incident, if you can scroll down to approximately
18 7:10 a.m. and enlarge that area. Down a little farther.
19 Counsel. A little farther right there. 7:10 a.m., and as we
20 discussed this is when the power was shut off to the gas
21 filter package and there was a venting between those two-block
22 valves that shut.

23 A. Yes, sir. One shuts; one opens.

24 Q. One shuts and one opens. The one that shuts is
25 closer to the filter assembly. The other one opens and vents
26 that line between the filter assembly and package isolation
27 manual, correct?

28 A. That's correct.

1 Q. The LOTO is issued at 7:15, and no one is supposed to
2 be working on anything on the system prior to that LOTO being
3 issued; is that correct?

4 A. If we use issued, meaning been approved for action on
5 work, that's correct.

6 Q. Okay. So based on the timing, there's -- someone
7 told Mr. Kim it was okay to work on the system prior to the
8 LOTO being issued, correct?

9 MR. BASILE: Objection. Calls for speculation
10 hearsay. Relevancy.

11 THE COURT: Sustained.

12 Q. BY MR. REID: Do you know if Mr. Kim was told that he
13 could work on the system and take the power down at this point
14 in time at 7:10?

15 A. I've seen testimony that relates to that, that he was
16 told at some time around here that the LOTO was complete,
17 that's in some testimony.

18 Q. And who told him the LOTO was complete, if you know?

19 A. Well, now we're getting third hand, but the testimony
20 said that Mr. Collins told Mr. Kim that the LOTO was complete
21 but, yeah, that was -- he told him something about the LOTO.
22 I don't know what he said exactly.

23 Q. Okay. As we noted, Mr. Jones was the control room
24 operator that day, correct?

25 A. Correct.

26 Q. Did you review his deposition testimony?

27 A. I did yes, sir.

28 Q. Do you recall him testifying that it was good

1 engineering practice to check the gauges before working on the
2 high pressure system?

3 A. Amongst other things, he was very critical of the
4 system, yes, sir.

5 MR. REID: Okay. And move to strike after amongst
6 other things.

7 THE COURT: Overruled.

8 Q. BY MR. REID: Do you also recall him testifying "In
9 my experience, I always check the gauge when I was performing
10 the LOTO"?

11 A. I believe I did. I believe that appeared in his
12 testimony.

13 Q. Do you recall him testifying that in his experience
14 everyone that performed that LOTO always checked the gauge?

15 MR. BASILE: Objection. Calls for hearsay.

16 MR. REID: Based on his review of the transcript,
17 Your Honor.

18 THE COURT: Overruled.

19 THE WITNESS: I don't recall the exact language.
20 Maybe if we wanted to see that, we can go look at the
21 transcript.

22 Q. BY MR. REID: That's fine. All right. Exhibit 358,
23 please. First slide. And this is a power point presentation
24 that was prepared by you, correct?

25 A. I helped with this, yes, sir.

26 Q. Okay. And this is a representation of what you
27 believe was the procedure and the way the LOTO steps were
28 followed prior to January 2017?

1 A. That it necessarily was this, yes, sir.

2 Q. And prior to January of 2017, do you agree -- 2017,
3 do you agree that the LOTO sheets, the purpose for them was to
4 completely depressurize the system?

5 A. No, sir. I don't know that at all. I would hope it
6 would, but I do not know that at all, no, sir.

7 Q. Okay. Well, this is more generally speaking type of
8 question. I'll get into the details of your opinions shortly.
9 What I'm asking is the general purpose of a LOTO, in this case
10 the LOTO for the fuel filter assembly was to make sure that
11 the system was completely depressurized, correct?

12 A. No, sir, that LOTO was nowhere close to doing that,
13 if it was intended that we would hope -- as an engineer, I
14 would hope it was intended to do that, it was not closed.

15 Q. I'm not asking about a particular LOTO sheet. I'm
16 asking in general, prior to January of 2017, was the LOTO
17 procedure at least intended to depressurize that system?

18 A. I would hope it would be, but I do not know that.

19 Q. Okay. So you can't read people's intentions,
20 correct?

21 A. No. Also I have to take issue as Mr. Johnson did,
22 the LOTO -- the LOTO sheet is not a procedure. Unfortunately,
23 it acts like a procedure in many ways, but it is not intended
24 to be a procedure. It's intended to be a verification of
25 de-energization of the system to assure people can work
26 safely.

27 Q. Thank you for that correction. Let me ask it a
28 different way. So the SMP-3 procedure, prior to 2016 -- we

1 know that was written in early 2013, all the way up until
2 January of 2017, the purpose of that procedure, SMP-3
3 document, was to make sure the system was completely
4 depressurized, correct?

5 A. Not necessarily, sir. This, as you say, this system
6 was defective. It was a mess. A normal LOTO is very specific
7 about the boundary of work, and it would be completely
8 acceptable to establish a boundary of work that only included
9 the filter. If in these LOTOs there was no differentiation of
10 what could be worked on, what couldn't be worked on, what the
11 boundaries were, it's just not a good LOTO.

12 Q. You testified on Wednesday that this procedure was
13 adequate referring to the SMP-3, correct?

14 A. That I testified to what.

15 Q. You testified on Wednesday that the SMP-3 procedure
16 was adequate to the purpose?

17 A. It is, but it's not -- it's not the end of
18 everything. It's a general procedure to do it, a specific
19 LOTO you have to do more.

20 Q. Would you say that the people working on these
21 systems specifically fuel filter assembly and that LOTO would
22 you believe that it was their intent to completely
23 depressurize this system?

24 MR. BASILE: Objection. That calls for speculation,
25 Your Honor, lack of foundation, what someone else is thinking.

26 THE COURT: Sustained. Please rephrase.

27 MR. REID: Thank you, Your Honor.

28 Q. BY MR. REID: Based on the deposition testimony that

1 you reviewed and, you know, Jason King, Tom Walker, Albert
2 Palalay, Mr. Delaney, Mr. Ward, Mr. Jones, did they all
3 believe that the purpose of this LOTO procedure was to
4 depressurize that system?

5 A. No, sir, I don't agree. They always were talking
6 about, in context of depressurizing the gas filter. I don't
7 recall anyone mentioning ever the rest of the balance of the
8 system, except that the turbine was also part of the process
9 part to be de-energized but the system in between was never
10 mentioned by anyone as I recall as it relates to your
11 question.

12 Q. Okay. And excuse me if I'm being redundant. This
13 depicts what you believe this power point presentation, five
14 slides, depicts what you believe were the steps in the LOTO in
15 2016; is that correct?

16 A. Well, this is the starting point, yes, sir.

17 Q. Okay. And again, it's five slides. We're going to
18 go through them all. All right. Can I show or excuse me,
19 Exhibit 264, pages 234 to 235. I believe this exhibit has
20 been admitted, Your Honor. Can we enlarge the top portion of
21 that LOTO sheet. Yeah. There we go. This is the equipment
22 Lockout/Tagout sheet for March 28th of 2016, correct?

23 A. Yes, sir.

24 Q. Okay. And going back to the full -- is this an
25 example of what we can refer to as the old way?

26 A. Yes, sir.

27 Q. And this LOTO sheet is an example of what you're
28 trying to show the power point presentation, correct?

1 A. As it relates to the filter, yes, sir. It doesn't
2 show the turbine.

3 Q. Yeah, I understand. But it shows the line to the
4 turbine, correct?

5 A. It does, yes, sir.

6 Q. Okay. Would you highlight on the second page of the
7 LOTO sheet steps 14 through 21. And this is Exhibit 264, page
8 235. So isolation valve Number 1 is the first isolation valve
9 on the inlet side of the system, correct?

10 A. Yes, sir.

11 Q. Isolation valve Number 2, you believe to be the
12 isolation valve on the outlet side of system, correct?

13 A. I believe that's necessary, yes, sir.

14 Q. When those two valves are closed -- show page two of
15 the power point presentation, please. You can collapse the
16 highlighting for the moment. And it shows isolation valve
17 Number 1 being closed, correct?

18 A. Yes, sir.

19 Q. And step number 14 in the LOTO, corresponds to that,
20 correct?

21 A. Yes, sir.

22 Q. Page 3, please. So that second, yeah, if you
23 highlight that area. For the isolation valve Number 2, what's
24 labeled isolation valve Number 2, bring up a little larger, if
25 you can. Yeah. This is what you believe to be isolation
26 valve Number 2 on the outlet side, step 15 of LOTO shows that
27 being closed?

28 A. That's correct, for the old LOTO, system yes, sir.

1 Q. At this point in time, the fuel gas in the filter
2 portion of the system is isolated from the rest of the system,
3 correct?

4 A. Yes, sir.

5 Q. At this point you show the first vent valve being
6 open, correct?

7 A. Yes, sir.

8 Q. Can you highlight those steps in the LOTO again,
9 please. There we go. If you can push that around. Can we
10 enlarge the highlighted step in the LOTO again. Perfect. All
11 right. So that first vent valve is step number 17, correct?

12 A. Yes. I have to say there's ambiguity with which vent
13 valve is which one is 1, which one is 2 for the vent valves,
14 doesn't matter.

15 Q. For purposes of our discussion, it doesn't matter?

16 A. I agree with that, except that it's -- except they
17 are not labeled like the other valves.

18 Q. I understand. Thank you. Step 17, step 18 reflects
19 those two vent valves being open. Next page in the power
20 point, please. Page number 5. So with those two vent valves
21 open, the fuel in the filter assembly should be vented down to
22 zero, and you still got gas going to the turbine panel,
23 correct?

24 A. Trapped in that line, yes, sir.

25 Q. Trapped in that line. Okay. Would this venting show
26 up on the power point slides that we've shown with the
27 depressurizing?

28 A. No, sir.

1 Q. Okay. Why not?

2 A. Because the pressure transducer just on this diagram
3 just to the left of what is labeled ISO valve 2, it's outboard
4 of the filter work zone.

5 Q. Okay. Then step 19, the highlighted steps. That's
6 the closing of the package manual fuel isolation valve,
7 correct?

8 A. That's correct.

9 Q. Okay. And step number -- and that package fuel
10 manual isolation valve is in the outlet side of the line going
11 to the package, and it separates when you close that one,
12 you're isolating the turbine package from this line that
13 you're showing still has pressure, correct?

14 A. That's correct. It's right at the boundary of the
15 package itself. So it's supplied by the turbine manufacturer.

16 Q. Okay. So when we open maintenance valve Number 20,
17 and maintenance valve Number 21, we would expect to see a drop
18 in pressure on the sensors in the control room, correct?

19 A. On the turbine system or as it's read on the control,
20 yes, sir.

21 Q. Okay. So following this, by your interpretation of
22 how this LOTO was applied, when we see the pressure drop in
23 the system, it should only be dropping for the turbine panel,
24 correct?

25 A. No, sir, you misstate me. I said that's the way it
26 would be if they followed the LOTO. They didn't follow the
27 LOTO very often, twice, out of eight is what I believe from my
28 review of the data in 2016.

1 Q. But you're representing that this is what occurred in
2 2016, are you not?

3 A. No, sir, I'm not. I'm telling you --

4 Q. What does this represent, if it doesn't represent
5 what has occurred in 2016?

6 MR. BASILE: Your Honor, may he be allowed to finish
7 his answer before the next question.

8 MR. REID: I apologize, Mr. Lane.

9 THE WITNESS: This is the only way it works out all,
10 if you use the other valve as ISO 2, not only do you not
11 depressurize that pipe that we have gas trapped in, you trap
12 gas in the filter assembly, too. When you go to open the
13 filter, it's pressurized, this is the only way it works in the
14 old LOTO system, if you follow the LOTO.

15 Q. BY MR. REID: Okay. You're saying they didn't follow
16 the LOTO?

17 A. Not regularly, no, sir. By my -- once again, I said
18 by my estimation, they followed it possibly twice out of
19 eight. The other data indicates they did not follow the LOTO
20 in sequence.

21 Q. Do you know if they followed the LOTO on March 28th
22 of 2016?

23 A. I'd have to look on that, look at the trace what that
24 is, if the pressure went down together, then they did not
25 follow the LOTO.

26 Q. Perhaps I'm confused then. This is supposed to be a
27 representation of the LOTO procedure as it was written in
28 March of 2016?

1 A. As it needed to be useful at all if they followed the
2 LOTO correctly, it had to be this valve.

3 Q. Can I have 489, please, March 28, 2016.

4 Yeah, that tab. Scroll down for me.

5 All right. So what are we seeing here? We're seeing
6 the pressure at the filter assembly on the left-hand side,
7 pressure at the turbine panel on the right-hand side, correct?

8 A. That's correct.

9 Q. And would you agree that both of those pressures come
10 down equally at the same time?

11 A. Yes, sir.

12 Q. Is there any other evidence and feel free to scroll
13 up and down, is there any other evidence of venting on that
14 system from the beginning, all the way down to the end?

15 THE COURT: Excuse me, Mr. Reid. Unless Mr. Lane,
16 you know.

17 MR. REID: Sure. Let me stop it then.

18 THE COURT: If you're going to ask him to view it,
19 then give him the opportunity to, please.

20 MR. REID: All right.

21 THE WITNESS: Okay. Under the old LOTO system, this
22 is absolutely impossible to do. You can't do it if you follow
23 the LOTO. The reason is because regardless of whether you
24 close ISO 2 is the upper valve or lower valve, you have now
25 separated the systems. They can't be vented together. The
26 turbine is the only other vent path. In the turbine room it
27 doesn't get vented. If you follow the LOTO, the vents don't
28 open. They call them maintenance valves. They are vents,

1 maintenance valves do not get open until the package isolation
2 valve is closed. This is completely impossible under -- if
3 you follow that LOTO. It could be done separately, it could
4 be done by skipping steps, but it can't be done by following
5 the LOTO.

6 Q. BY MR. REID: All right. Going back to the power
7 point presentation, please. So correct me if I'm wrong, what
8 I'm understanding is that you based your power point
9 presentation off a LOTO sheet that you don't believe was
10 followed; is that correct?

11 A. What I did was I identified the valve that had to be
12 isolation valve Number 2, and in order for the LOTO to ever
13 work. And then, it still would allow gas to be trapped
14 between ISO valve 2 and the turbine package, isolation valve.
15 Irrespective of whether it was this valve or that valve, the
16 difference is with this ISO valve 2, you can get into the
17 filter.

18 Q. Okay. Based on the fact that both of the pressures
19 dropped evenly, what do you believe occurred on this date?

20 A. Most likely it could be vented at the turbine or
21 here. This would be the logical place. They overrode the
22 LOTO sequence and left ISO valve 2 open before they shut --
23 before they did anything else, before they shut the manual
24 isolation to the panel, they used the vent to vent the entire
25 system.

26 Q. Okay. Given what you've just said, that they
27 overrode the LOTO, and left isolation valve Number 2 open,
28 isn't that effectively what they did in January 2017 up to the

1 date of the incident, that isolation valve was left open?

2 A. That's the -- that's the principal difference between
3 the old system and the new system, is that isolation valve
4 Number 2 remains open until the end. So you can vent the
5 entire system before you isolate the turbine, before you
6 isolate in between piping.

7 Q. And aren't you saying in effect that they knew that
8 that valve, whatever you call it on the outlet side, had to be
9 left open to vent the entire system. Who is "they"?

10 A. Any of the operators.

11 Q. Any operators who work on this system?

12 A. No, definitely not. Mr. Delaney testified he has no
13 idea how the system works. Mr. Palalay said something to the
14 same effect. Mr. Collins did -- showed he was very confused
15 as he was living in a world where he used ISO 2 for one
16 purpose and now using it for another purpose. None of these
17 people had been trained on that.

18 Q. Okay. Would you agree that Dennis Johnson, given his
19 history at the plant starting there in 2012 up until the
20 present, as the acting plant manager, is an experienced person
21 regarding this system?

22 A. I don't know. He was an instrumentation technician
23 before he became plant manager. I would be speculating what
24 his level of knowledge was of this system in particular until
25 he became involved in this.

26 Q. And if Mr. Johnson comes in and testifies during the
27 defendant's case in chief and says that that outlet valve on
28 the -- or that isolation valve on the outlet side of the

1 system was never identified as an isolation valve Number 2,
2 would you question that testimony?

3 A. Absolutely.

4 MR. BASILE: Objection. That's -- go ahead.

5 THE WITNESS: I'm sorry.

6 MR. BASILE: Go ahead.

7 THE COURT: Objection is withdrawn?

8 MR. BASILE: Yeah. Sure.

9 THE WITNESS: Absolutely. Because the old -- I don't
10 know how many types I have to say this, the old LOTO would not
11 work at all for anything useful except venting the turbine
12 panel, which it still would do, if your isolation valve Number
13 2 or lower valve, you would never vent the gas from the
14 filter. You would never have had access to the filter. They
15 would never been able to do that job prior to 2017.

16 Q. BY MR. REID: Okay. Okay. Yet all LOTOs from
17 February of 2014 up until the date of the January 1st --
18 January 17th, the LOTO, with exception to the near miss, were
19 all vented properly without incident; is that correct?

20 A. Prior to 2017.

21 Q. Yes.

22 A. Well, there was one near miss, and we don't -- I
23 don't know where it might have been caught between the
24 installer, the verifier and someone else that when they did
25 the LOTO, if they did it per the sequence, that it wasn't
26 safe. Then they did some remedial action to correct that, but
27 I can just tell you, I can't identify where the system cannot
28 be vented if you use ISO -- lower ISO valve as Number 2, in

1 the old LOTO system.

2 Q. That assumes they weren't doing something else to
3 depressurize the system, correct, as it's shown by pressure
4 sensor readings for March 28, 2016?

5 A. There's various combinations of how the system is
6 depressurized in that data, which, again, with Mr. Johnson's
7 words, people were doing their own thing. They had different
8 ways of doing it.

9 Q. All right. Assuming for a moment that the power
10 point presentation is correct. And we go through the steps in
11 the LOTO, down to the maintenance valve package number 21.
12 That would have vented the gas from the system, correct?

13 A. That would have vented the gas from the turbine area
14 down stream of the manual isolation valve or package isolation
15 valve.

16 Q. We would have seen that pressure drop as it's shown
17 in the data?

18 A. That's correct.

19 Q. Does that not presuppose, if they were doing the LOTO
20 as you've shown in your power point presentation, there would
21 always be two ventings of gas for every LOTO from 2014 through
22 the end of 2016?

23 A. Yes.

24 Q. Going back to just the LOTO, if we could. Can you
25 enlarge the top portion, please. Are there any steps in this
26 portion of LOTO which would have vented the pressure between
27 isolation valve Number 2 on the outlet side and the manual
28 package isolation valve?

1 A. No, sir.

2 Q. Go down to the lower part of the page, please. In
3 this portion of the LOTO, steps 12, is that through 24, make
4 sure we get all of it. Yeah. Is there anything in this
5 portion of the LOTO that vents that pipe from the isolation
6 valve on the outlet side of the filter to the manual package
7 isolation valve?

8 A. No, sir, regardless of which valves you use for
9 isolation Number 2, it does not vent that intermediate piping
10 system.

11 Q. Going back to your power point presentation, if we
12 could. Bouncing my tech around here. 358, there we go.
13 Having pressure trapped in that line that we just discussed,
14 is that a dangerous condition?

15 A. I'm not comfortable with it. If you notice on the
16 LOTO sheet, the only work they designated on this LOTO was for
17 horoscoping the turbine, the depressurization of the turbine
18 part of the system, makes that a safe operation, they do not
19 mention this filter, but it's become known that this filter
20 was always part of the scope of work, it would be a dangerous
21 situation if there was something in between that was going to
22 be worked on, yes, sir.

23 Q. In fact, there's still 900 PSI pressure in this line,
24 that's not at all in itself a dangerous condition?

25 A. Yes, sir.

26 Q. So it's your testimony that the LOTOs done prior to
27 January of 2017, all ended up with gas trapped in the system?

28 A. If they did the LOTO per the LOTO sequence, yes, sir,

1 that's absolutely true.

2 Q. You testified on Wednesday, let's go back to 489,
3 please. If you show the March 6th, scroll down for me. Right
4 there, enlarge that for me. There's the times. There we go.
5 All right. So when we looked at this before you testified,
6 that this was not -- we're not -- so this is the wrong tab, I
7 apologize. We want the red one. There we go. Scroll down
8 for me or up, take it back. Running this trial tech, he's a
9 good guy. I'm running him in circles. All right. This is
10 the first venting that occurred on the morning of the
11 incident, correct?

12 A. I believe that's true.

13 Q. And you believe that this venting process was not
14 abnormally short?

15 A. I don't recall having testified to that. And one way
16 or the other.

17 Q. Do you believe this was responsible for this
18 particular venting?

19 MR. BASILE: Objection.

20 THE WITNESS: Mr. Collins as the installer.

21 Q. BY MR. REID: You believe he opened the vent valves?

22 A. I have testimony that says that Mr. Delaney opened
23 the vent valve.

24 Q. So there's also testimony that Mr. Palalay opened the
25 vent valves and then went and got ear plugs, closed them and
26 went and got ear plugs?

27 A. I just know more recently he's backed away from being
28 there during the venting at all. So I don't know.

1 Q. So you believe it was Mr. Collins who did venting,
2 correct?

3 A. I just said Mr. Delaney testified that he did, that
4 he operated the vent valves.

5 Q. Okay. So, Mr. Delaney, he had been the one operating
6 these vent valves as he described, and the pressure went all
7 the way to zero based on the sound he heard; is that correct,
8 for this particular portion of the venting?

9 A. I don't see how that could be.

10 Q. Okay. So if it wasn't Mr. Delaney, I believe you
11 testified it was Mr. Collins or that's your belief because he
12 initialed the installer, correct?

13 A. No, sir. What I said was that it was his
14 responsibility as the installer, I don't know, and Mr. Delaney
15 volunteered that he operated the valves. I take those both at
16 face value.

17 Q. Are you aware that Mr. Delaney testified that when he
18 opened the vent valves, it was 30 to 45 seconds of venting?

19 A. No, I don't recall that.

20 Q. Okay. Let's go to -- well, strike that. Venting
21 here takes approximately six minutes, correct?

22 A. Yes.

23 Q. And did you -- forgive me again. I don't want to put
24 words in your mouth, did you testify that you believed that
25 this was only venting the filter assembly?

26 A. No, I didn't say that.

27 Q. Okay. Then I misunderstood. I apologize. All
28 right. So if we can go to February 6th, 2017. And this is

1 the venting from 900 PSI, to a little less than zero, so
2 that's probably a glitch in the gauge, would you agree?

3 A. Yeah, gauges aren't that accurate.

4 Q. Okay. So this venting from 637 to 647 took
5 approximately ten minutes to complete the vent in the system;
6 is that correct?

7 A. Yes, sir.

8 Q. And on March 6th, we only had approximately six
9 minutes of venting, correct?

10 A. You have to be -- you can't draw a conclusion from
11 that data because as you have mentioned, on Wednesday, even I
12 said it was improper. You can throttle with a ball valve. If
13 you have the vent and you start opening it all the way, it has
14 to be opened all the way in order to install the locking
15 mechanism. If you throttle, you only partially open the
16 second vent valve, then you can make this last as long as you
17 want. The only thing you can't do is make it go any faster
18 than being wide open.

19 Q. Okay. If we can look at February 13, third one over.
20 There we go. Scroll down to the highlighted portion. There
21 we go. So this is another instance where the system pressure
22 was almost 900 PSI, and it was vented to zero, or what the
23 gauges read is zero, correct?

24 A. Yes. Yes, sir.

25 Q. And this went from 6:59 to 7:14, approximately
26 15 minutes?

27 A. Yes, sir.

28 Q. Isn't that three times venting that we saw on

1 March 6th?

2 A. I just said it's three times longer, true, but you --
3 true, but you can't draw a definitive conclusion on exactly
4 the position of the valve during venting, only when the
5 venting and tags are hung with the locks, that they are gully
6 opened.

7 Q. Looking at this document from 6:59, we were
8 approximately 880 PSI and if we go down six minutes to 7:05,
9 we're still at 875, we have one more minute. We're down to
10 753. So approximately the same pressure dropped that we saw
11 on March 6th, correct, in approximately the same timeframe?

12 A. Well, if you notice when you go from 6:59 to 7:05,
13 you haven't gone anywhere. That tells me they are venting it
14 with it very severely throttled so that time doesn't mean
15 anything.

16 Q. Okay. So next tab over, scroll down. If you can
17 enlarge that for me. We are part 4:17 a.m. at 100 pounds less
18 normal operating pressure, 817, and it takes nine minutes to
19 drop to zero; is that correct?

20 A. Yes, sir.

21 Q. Okay. And then, March 28th, 2016. I think we showed
22 this one just to be sure. Again, we're going from 6:40 to
23 6:59, 19 minutes to reduce the pressure to zero?

24 A. I'm going to say the same thing again. You can
25 extend this by throttling on the valve, when you throttle on
26 the valves, you damage it. So someone like me comes around
27 and says don't do that, because it cuts the valve and then it
28 doesn't seat when you go back to close it. So that's what can

1 happen. This just shows me that they took a longer time to
2 initially vent and the reason you do that an operator is
3 because it's amazingly noisy. If you throttle a valve, it's
4 not as noisy.

5 Q. Okay. Do you recall testimony by a number of
6 witnesses that that first venting on the date of the incident
7 was abnormally short?

8 A. I do recall something to that effect, yes, sir.

9 Q. Okay. And based on what we're looking at here, isn't
10 that correct, that was an abnormally short venting, six
11 minutes closest to that was nine, then we were at 19?

12 A. I told you I cannot draw definitive conclusions on
13 that beyond the point that the fastest event ever happened, is
14 the fastest vent to likely happen because the valves are
15 hundred percent open.

16 Q. My point being that people there on the date of the
17 incident, perceived this first venting to be an abnormally
18 short venting, correct?

19 A. I don't recall it with specific enough to know that
20 that's exactly what they intended, but I do recall something
21 about that, that it was a short vent.

22 Q. Do you recall Mr. King's testimony as the O and M
23 manager and the person supervising the LOTO for that day, he
24 felt that first venting was abnormally short?

25 A. I do recall to that effect, yes, sir, but he also
26 talks about the other short venting.

27 Q. So again, Mr. King, seeing there was an abnormally
28 short venting, should have been on notice something was wrong,

1 correct?

2 A. If that's what he perceived that would be a basis for
3 a question, I believe that that was a question that he was
4 asking people about it.

5 Q. And who was he asking about it, specifically?

6 A. Well, I know specifically he spoke to Mr. Collins
7 that reported as rather contentious discussion by Mr. Palalay.
8 I don't know if he spoke to anyone else like Mr. Ward who was
9 out there.

10 Q. Isn't it true, based on Mr. King's testimony, that
11 Daniel assured him the LOTO had been hung correctly and the
12 system was depressurized?

13 A. I don't remember that at all. I remember he was on
14 top of the problem, but not anywhere near as specific as you
15 stated it.

16 Q. About what time did that conversation occur, if you
17 know, based on the testimony?

18 A. I don't recall. I don't recall. I just recall it
19 was in the timeframe of the control system being shutdown and
20 that venting associated with those emergency valves.

21 Q. So if theoretically, hypothetically as we've also
22 discussed Mr. Johnson comes in here and testifies that was
23 never identified as isolation valve Number 2, that outlet
24 isolation valve and Mr. Ward comes in here and testifies to
25 the same thing, and Mr. King comes in here and testifies to
26 the same thing, would that at that point in time, shake your
27 faith in the power point presentation you prepared and
28 presented to the jury?

1 A. No, sir.

2 MR. BASILE: Objection.

3 THE COURT: One moment.

4 MR. BASILE: Objection. Argumentative. Compound.
5 Incomplete hypothetical. Calls for hearsay. Speculation.

6 THE COURT: I think the variables for the
7 hypothetical were presented. Mr. Lane, do you need that
8 repeated for you? There were several variables in there.

9 THE WITNESS: No, sir. I got it. I was prepared for
10 this.

11 THE COURT: Are you prepared to answer then?

12 THE WITNESS: I am, sir.

13 THE COURT: You may proceed. Overruled.

14 MR. BASILE: Thank you. That's fine.

15 THE WITNESS: No. It just confirms that there's a
16 tremendous amount of confusion on how the LOTO was supposed to
17 work and identification of the valve because as I have said
18 repeatedly, prior to 2017, the LOTO did not work at all,
19 unless it was ISO valve, was the upper valve you could not
20 vent the filter.

21 Q. BY MR. REID: Exhibit 361, that's been admitted.
22 It's plaintiff's power point for 2017. Do you -- is this the
23 power point presentation you assisted in the preparation of
24 it?

25 A. Yes, sir.

26 Q. All right. And at the top on the outlet, you're
27 referring to that as old valve two. Yeah. Can you highlight
28 it. Yeah, that's fine. You see that old ISO valve 2?

1 A. Yes, sir.

2 Q. All right. And in 2017, that was isolation valve
3 Number 3, correct?

4 A. Isolation valve Number 2, Number 3.

5 Q. 2017, sir?

6 A. I don't believe they never used that term isolation
7 valve Number 3, to my knowledge.

8 Q. Okay. All right. Is this power point presentation
9 meant to depict what occurred on the date of the incident?

10 A. It's in and out. It tells you two things. In the
11 old system, why it's impossible to use the new valve, the one
12 on the bottom, to get anything done is of any use, and it
13 shows what -- how ISO, the new ISO valve 2 was used at least
14 on the day that Mr. Collins -- the incident, because there we
15 have physical photographs that show that it was tagged as ISO
16 valve 2.

17 Q. Okay. So my question again, is this meant to
18 represent what occurred on the date of the incident?

19 A. On the date of the incident, yes, sir.

20 Q. Okay. All right. So next in order or not next in
21 order. I apologize, Your Honor. If you can go to slide 2 in
22 the presentation. So you show isolation valve Number 1 being
23 closed, correct, tag Number 3?

24 A. Yes, sir.

25 Q. And next slide, so you show vent valve Number 1, tag
26 number 4 being opened?

27 A. Yes, sir.

28 Q. And next slide. You show vent valve Number 2 being

1 opened and the venting process beginning, correct?

2 A. Yes, sir.

3 Q. This slide shows isolation valve Number 2 is still
4 open at this point in time; is that accurate?

5 A. Well, that brings up a point, yes, it must be in
6 order to depressurize the system, contrary to proper practice,
7 not just best practice, ISO 2 should have been on the LOTO as
8 being confirmed open, otherwise you don't depressurize the
9 system.

10 Q. Okay. I'm getting confused. I apologize. I'll ask
11 you to clarify for me. Is this meant to show what occurred
12 for the LOTOs that were January, the three in February and not
13 the date of the incident?

14 A. It can show any of those. If you go through the
15 sequence of the valves. I guess I don't understand your
16 question.

17 Q. Okay. Let's go to note -- I apologize. I would like
18 to see Exhibit 589, please. And if you can put the power
19 point 361 next to it. If you would highlight steps Number
20 three through, I believe it's six. Go ahead. All right.

21 So looking at your power point presentation, the
22 first slide we showed what you're labelling, the old valve
23 which in step three is -- I take it back. Strike that. So,
24 step number three shows isolation valve Number 1 being closed,
25 correct?

26 A. Correct.

27 Q. And that would be slide Number 2, I believe, right?

28 A. Yes, sir.

1 Q. Then you show final filter vent valve Number 1 being
2 opened?

3 A. Yes, sir.

4 Q. And then final filter vent valve Number 2 being
5 opened?

6 A. On the next slide, we don't see it, but yes, sir.

7 Q. Can you go to slide three, four. There we go. All
8 right. So at this point in time, you're showing what's listed
9 on the LOTO, but not necessarily what occurred on the date of
10 the incident, correct?

11 A. I believe that this is what occurred on the day of
12 the incident to some extent. But I don't know absolutely why
13 the venting stopped.

14 Q. Okay. So you testified earlier that you agree with
15 the fact that step number 14, if you can highlight that for
16 me, it's on the next page of the LOTO sheet. All right. Step
17 number 14, isolation valve number -- final fuel filter Number
18 2. So that's one, that's the second valve on the inlet side,
19 correct?

20 A. On the day of the incident, the only way we know that
21 is because the photograph shows that's the one that was
22 eventually locked and tagged. The interesting thing about
23 this LOTO, all the 2017 LOTOs is you vent the system with both
24 of those isolation valves open and thereafter, you don't know
25 which one was closed because data will look exactly the same
26 unless you were there and see photographs, you don't know, you
27 could have easily closed the old valve because all the gas is
28 gone.

1 Q. So, what you're saying is when Mr. Collins initialed
2 that vent valve and locked and tagged that valve, he thought
3 he was doing Number 3 or old vent valve Number 2?

4 MR. BASILE: Objection. That calls for speculation,
5 someone else's state of mind, Your Honor.

6 MR. REID: That's the evidence we have. I apologize,
7 Your Honor.

8 THE COURT: One moment. Couple variables.
9 Sustained.

10 MR. REID: Okay.

11 Q. BY MR. REID: All right. Going back, looking at the
12 slide as it is isolation vent valve Number 1 is closed, the
13 two vent valves are open?

14 A. Yes, sir.

15 Q. And you're showing isolation valve Number 2, which
16 was tagged as that opened, correct?

17 A. Well, it is supposed to be opened during the venting
18 of the system per the LOTO, if the LOTO is followed.

19 Q. You testified that that valve was closed out of
20 order, correct?

21 A. I believe that valve was closed out of order.

22 Q. Okay. Out of order, just in general or prior to the
23 vent valves being opened?

24 MR. BASILE: Objection. Lack of foundation. Calls
25 for speculation.

26 THE WITNESS: I don't know.

27 THE COURT: I'm sorry. Overruled. You may answer.

28 THE WITNESS: I don't know because you see we, if you

1 put your mind -- if you put yourself in the position of how an
2 operator used to use the old vent valve Number 2 in order to
3 safely vent the filter, and he's confused, it's hard to say
4 what happened.

5 Q. BY MR. REID: And again, going back to Mr. Delaney's
6 testimony, he testified that he did not see isolation valve
7 Number 2 closed, do you remember all that testimony?

8 A. No. I remember him saying he didn't have an idea how
9 this whole system worked.

10 Q. You do not recall him saying, "I did not close that
11 valve"?

12 A. I do remember that he said he did not close the valve
13 because he did not close any of the isolation valves. He
14 closed -- he opened vents is what my recall of his testimony.

15 Q. And looking at line Number 14 in that LOTO, do you
16 recall Mr. Delaney testifying that the initials that are there
17 are not his on the verifier?

18 A. I remember, I recall that there was some question
19 about initials between himself and Mr. Palalay.

20 Q. Do you recall Mr. Palalay saying those were not his
21 initials?

22 A. I do.

23 Q. Do you recall Mr. Palalay testifying that he did not
24 see isolation valve Number 2 closed?

25 A. I don't recall that because Mr. Palalay was so
26 confused about things, I discounted what he said when he said
27 something with that specificity.

28 Q. Given the configuration as is, in that slide, number

1 4, had Mr. Delaney waited until the sound stopped, would the
2 system have been completely depressurized?

3 A. If the lines had been done per the LOTO and the old
4 isolation valve Number 2 for some odd reason didn't close
5 because it's not on the LOTO sheet when it should be, then the
6 answer is yes.

7 Q. So my question to you, again is, does this power
8 point presentation represent what occurred on the date of the
9 incident? I believe you answered yes.

10 A. I don't believe I did. I said it could. But we
11 don't know. We don't know that he shut isolation valve Number
12 2 early, if someone closed the vents early. We just don't
13 know. We just know that the LOTO was not followed properly by
14 the collections of the individuals involved.

15 Q. Can I have Exhibit 379, please. Yeah. If you can
16 enlarge that. Mr. Lane, do you recognize these tags as the
17 LOTO tags that were hung on the system on the date of the
18 incident?

19 A. I do, yes, sir.

20 Q. And tag Number 3, is that final filter vent valve, or
21 the isolation valve -- excuse me. Number 3 that shows Daniel
22 Collins as installer and Albert Palalay as verifier?

23 A. I agree to that, yes, sir.

24 Q. Would it surprise you that Mr. Palalay has testified
25 that he was the one who installed that or in other words
26 manipulated the valve and placed the lock and the tag or at
27 least manipulated the tag at Mr. Collins' instructions?

28 A. Honestly, nothing surprises me at this point.

1 Q. Tag number 4, this is for that final vent valve
2 Number 1, that was shown on your power point presentation,
3 correct?

4 A. Yes, sir.

5 Q. And shows it was installed by Dan Collins which means
6 he would have manipulated the valve, and verified by Mike
7 Delaney, correct?

8 A. It should have been manipulated, the valve and should
9 have been verified by Michael Delaney although he wasn't --
10 Delaney wasn't really designated on this LOTO that I
11 understand from the get go, he sort of happened onto it.

12 Q. So do you know who filled out this LOTO tag?

13 A. I don't know. No, I wasn't there, no.

14 Q. Was it Mr. Collins responsibility to fill out this
15 LOTO tag as the installer?

16 A. It was his responsibility to fill out the part
17 installed by, yes.

18 Q. Okay. And that's in spite of the fact Mr. Delaney
19 said he manipulated the valve and actually did the
20 installation, correct?

21 A. Yeah, I don't know the circumstances of that.

22 Q. Okay. And the initials verified by that was by
23 Mr. Delaney, correct, and he testified those are his initials?

24 A. I believe that's true, correct.

25 Q. Number 5, please. And this is the final filter vent
26 valve Number 2. Again, Mr. Delaney has testified that he's
27 the one that manipulated this valve, even though it shows
28 installed by Mr. Collins, correct?

1 A. Correct.

2 Q. And Mr. Delaney also verified that those are his
3 initials here, correct?

4 A. That's my understanding, yes, sir.

5 Q. Okay. If we can go down to tag number 14, please.
6 And this is the isolation valve Number 2 tag, correct?

7 A. Yes, sir.

8 Q. It's the one you referred to that was on the second
9 isolation valve on the inlet side, correct?

10 A. Correct.

11 Q. And this shows that it was installed by -- in other
12 words, closed by Mr. Collins, correct?

13 A. That's what it shows, yes, sir.

14 Q. And do you recall testimony by Mr. Delaney that those
15 verifications initials are not his?

16 A. I do, yes, sir.

17 Q. And do you recall testimony by Mr. Palalay that those
18 initials are not his?

19 A. I believe so, yes.

20 Q. Do you recall Mr. Palalay indicating that there were
21 times when Mr. Collins falsified the initials on various tags?

22 A. There was some mention of that. I take that with a
23 grain of salt, I don't know.

24 Q. Okay. And the times 6:36, Mr. Delaney has testified
25 that he didn't put that time on there, is that your
26 understanding?

27 A. And he shouldn't. That's not his responsibility. I
28 notice how early that time is in the sequence.

1 Q. Okay. And Mr. Palalay has testified that he did not
2 put that time on there; is that your recollection?

3 A. That's my recollection, yes, sir.

4 Q. Does that leave us with the conclusion that Dan
5 Collins put that time on there?

6 MR. BASILE: Objection. Calls for speculation. Lack
7 of foundation.

8 THE COURT: Overruled.

9 THE WITNESS: I don't know who, that's logical, but I
10 don't know.

11 Q. BY MR. REID: So 6:36, is that during the time that
12 we saw that initial venting 6:32 to 6:38?

13 A. I don't even know if that says 6:36. To me the way
14 they write, it could be 6:30 could be 6:36.

15 Q. Well, assuming it's 6:30, that would have been before
16 that initial venting, correct?

17 A. Yes. But if you look -- if you look at time, there's
18 been testimony about how unreliable these times are. There
19 are a lot of tags in the system that are all to the extent,
20 they have time, they have the time that the LOTO is the same
21 time that the initiator or supervisor initials them up above
22 and they are all the same time, I don't think much of that
23 time system. They didn't use it properly.

24 Q. So if we can look at the next tag Number 15. Yeah.
25 The time is illegible on this one. I apologize can we look at
26 Exhibit 37, please. Can you zoom in on the time, bottom right
27 corner. Can you tell what time that is, sir?

28 A. No, I'd be guessing. I'm not -- I can't read it

1 quite --

2 Q. Okay. Appears to me to be 6:40, would you agree with
3 that?

4 A. I would say that's a possibility, yes.

5 Q. Again, this is a tag that was next in order after
6 that isolation valve was closed, correct?

7 A. That's if -- if you follow the LOTO, yes, sir.

8 Q. Okay. And this is verified by Mr. Palalay, correct?

9 A. That's his initials as I understand them.

10 Q. And if we assume for the moment that Mr. Palalay is
11 testifying accurately, that he began venting the system at
12 approximately 6:32. He stopped at 6:38 to go get ear plugs
13 and went into the control room, is it possible, given that
14 timeline, that he was with Mr. Collins and verified this step?

15 A. That would be speculation because he is since said he
16 wasn't there during the venting at all. He was very clear
17 about that.

18 Q. And you would agree that Mr. Palalay has told several
19 versions of what occurred that morning, correct?

20 A. I've heard there's two, yes, sir.

21 Q. I had one more question on your power point, number
22 4, that would be 361. Yeah. We need to go to slide four.
23 This is four. Okay. Assuming this is what occurred on the
24 morning of the incident in the system, had been vented down,
25 there would have been no subsequent unusual gas ventings,
26 correct?

27 A. Could you be more specific.

28 Q. Sure. So, assuming that Mr. Delaney opened these

1 valves, waited until the venting stopped, there would have not
2 been any other unusual ventings that morning, correct?

3 A. Usual or unusual, there wouldn't have been any more
4 because all the pressure was gone out of the system under that
5 scenario.

6 Q. So we know this can't have occurred on the date of
7 the incident because we know there were several different
8 unusual ventings, correct?

9 A. That's true.

10 Q. So just to recap, Mr. Collins employer OPS had
11 opportunity to keep him safe, correct?

12 A. Well, along with, I think the parent company they
13 were involved in the process.

14 MR. REID: And that lacks foundation. Calls for
15 speculation, Your Honor. Move to strike.

16 THE COURT: Overruled.

17 MR. BASILE: Excuse me, Your Honor. Was that
18 overruled? I didn't hear you through the mask.

19 THE COURT: Overruled.

20 MR. BASILE: Thank you.

21 THE WITNESS: I spent my lunch revisiting
22 Mr. Walker's deposition and was not previously aware that the
23 exhibit at the point to which Diamond --

24 MR. REID: There's no question pending.

25 THE COURT: Thank you, Mr. Lane, we'll strike that
26 answer about revisiting Mr. Walker's deposition. Sorry. I
27 answered Mr. Basile, then I thought maybe I missed the
28 question. I went back and Mr. Reid, you were letting, so no

1 question pending. We'll strike that last answer beginning, "I
2 spent my lunch revisiting."

3 Mr. Reid, you may continue.

4 Q. BY MR. REID: And as you testified earlier,
5 Mr. Collins' employer OPS had the responsibility to keep all
6 the employees at the plant safe, correct?

7 A. Yes.

8 Q. And Mr. Collins' employer OPS had responsibility to
9 train Mr. Collins, correct?

10 A. Yes.

11 Q. That would have included the responsibility to train
12 him on any changes to the LOTO, correct?

13 A. Yes.

14 Q. And Mr. Collins' employer OPS had responsibility to
15 train all of their employees on the LOTOs, correct?

16 A. All who would be involved in LOTOs, yes.

17 Q. And that would also include training on any changes,
18 correct?

19 A. Yes.

20 Q. And OPS also had the responsibility to properly label
21 the equipment, correct?

22 A. I think we've talked about that, that there are
23 various parties involved, there's not necessarily one party
24 responsible for labeling.

25 Q. But at least OPS shared that responsibility, correct?

26 A. I would agree with that.

27 Q. OPS had the responsibility to post warnings on
28 equipment for their employees, correct?

1 earlier, there's a difference between a LOTO and an energy
2 procedure and isolation procedure. The procedures that are
3 the LOTOs being used are being used in this timeframe were all
4 hybrid of that. You have to have an energy control procedure
5 valve lineups and then you have LOTO to assure safety
6 isolation, safety and de-energized systems.

7 Q. There was no separate energy control procedure, was
8 there?

9 A. There was not.

10 Q. Now, in all the photos that you looked at, this skid
11 before this happened, were any of those valves properly
12 labeled?

13 A. Not to my knowledge. Any valves, none of these were
14 -- I never saw any valves that were labeled.

15 Q. 358, please. Now, before this incident happened, you
16 -- if I understood what you were telling Mr. Reid, the system
17 that was being used and was to close ISO valve 1, right, right
18 here?

19 A. Yes, sir.

20 Q. And then close ISO valve 2, which is at the top,
21 right?

22 A. Yes, sir.

23 Q. Then open these two vents, correct?

24 A. Correct.

25 Q. And then that would drain the system, right?

26 A. That would drain this portion of the system
27 associated with the filter, yes, sir.

28 Q. In all of the stuff he has gone over, did I

1 understand you correctly that it had to be done this way up
2 until 2017 or else we would have had lots of explosions?

3 A. 100 percent, it had to be done this way.

4 Q. 258, please. I want to show you what is side-by-side
5 exhibits of the fuel filter skid before the explosion and
6 after the explosion. Do you see that in front of you, sir?

7 A. I do, sir.

8 Q. If we could enlarge just the right side, James. If
9 we could. This is where I'm indicating here to the top of
10 fuel filter skid, right?

11 A. Yes, sir.

12 Q. That's where the explosion, the lid blew off, killing
13 Daniel, right?

14 A. Yes, sir.

15 Q. Now, this -- what I'm pointing at in the outlet side
16 of the tank, is what was the old ISO valve 2; is that correct?

17 A. Yes, sir.

18 Q. Down here was the new ISO valve 2, correct?

19 A. Yes, sir.

20 Q. And none of them were clearly labeled; isn't that
21 true?

22 A. That's correct.

23 Q. Now, could we just zoom in on the area, the lower
24 right ISO valve 2. Is this the -- that I'm pointing at right
25 above the valve, was that one of those LOTO tags like this I'm
26 holding?

27 A. Yes, sir.

28 Q. Okay. And that's shows that's what was closed that

1 day, right?

2 A. That's what tagged out, yes, sir.

3 Q. Okay. Go back up. There were no tags on any of
4 these other ones though, right?

5 A. ISO valve 1 has a tag.

6 Q. I'm sorry. Down here.

7 A. Upper valve does not have a tag.

8 Q. That's halfway closed or halfway open, isn't it?

9 A. Take your pick, yes, sir.

10 Q. Could that indicate to you that someone was confused
11 about which valve to throw that day?

12 MR. REID: Calls for speculation.

13 THE COURT: Sustained.

14 MR. BASILE: I'll withdraw and move on, Your Honor.

15 Q. BY MR. BASILE: Mr. Reid asked you about some of
16 those red flags in your exhibit, right?

17 A. Yes, sir.

18 Q. Exhibit 5 beside Exhibit 366, please. And you had
19 testified way back when he first started your
20 cross-examination that when he asked you if Mr. Collins was
21 qualified that day, you said it was splitting hairs, do you
22 remember that?

23 A. Yes, sir.

24 Q. Looking back now at, this is Exhibit 5, beside
25 Exhibit 366. You've prepared the one on the right, correct?

26 A. Yes, sir.

27 Q. And you went through that, each one of these LOTO
28 sheets to determine if there was a single installer, single

1 verifier, times on tags, qualified installer, qualified
2 verifier, we went through that?

3 A. Yes, sir.

4 Q. You did that, you found these red flags, right?

5 A. Yes, sir.

6 Q. And under "qualified installer" for the date this
7 happened, you have a red flag, correct?

8 A. That's correct.

9 Q. And one of the people I think listed as an installer
10 on there, on the tags and things that day was Daniel Collins,
11 right?

12 A. Yes, sir.

13 Q. Tell the jury why do you believe he was not qualified
14 to be an installer that day?

15 A. On that day, he was not qualified for that LOTO.

16 Q. Could you tell the jury why?

17 A. Because it had changed and -- for two reasons,
18 really. The one reason that he was not current based on
19 annual renewal training. The training that he had online was
20 literally a few minutes and very dubious, much more important
21 he was not trained on the change. The change is a big thing.
22 He nor anyone else that I could find was ever trained on the
23 change to this LOTO.

24 Q. And on all of the LOTO sheets, Mr. Reid had talked
25 about Diamond Generating OPS on that, on all LOTOs, you did
26 your review, it said Diamond Generating Corporation isn't;
27 that true?

28 A. That's correct, all of them.

1 Q. Based on your review of the materials in this case,
2 Mr. Walker -- who hired Tom Walker, the plant manager, at this
3 Sentinel Energy Center?

4 A. Yes, it was Diamond Generating Corporation hired
5 Mr. Walker.

6 Q. And who provided the plant manager with the job
7 description he was to do?

8 A. Diamond Generating Corporation.

9 Q. Did this job description provided, did Diamond
10 Generating Corporation include him in implementing safety at
11 the plant?

12 A. Yes, sir, it was part of his review.

13 Q. Who provided the safety policies to be used at
14 Sentinel Energy Facility?

15 A. Diamond Generating Corporation.

16 Q. Who did the performance reviews of Mr. Walker?

17 A. Diamond Generating.

18 Q. And did those performance reviews include his
19 performance area of plant safety?

20 A. Yes, sir, specifically included that.

21 Q. And who was reviewing changes in safety procedures in
22 2016 and 2017 at the Sentinel Energy Facility?

23 A. According to Mr. Johnson, all procedures were sent to
24 Mr. Forsyth for review.

25 Q. Did you review an agenda of a quarterly meeting dated
26 January 27th, 2017?

27 A. I forget if it was the 27th but, yes, sir, January of
28 2017, yes, sir.

1 Q. In that agenda review, who was discussing changes in
2 safety policies?

3 A. Diamond Generating Corporation executives.

4 MR. BASILE: Nothing further.

5 THE COURT: Recross on the redirect?

6 MR. REID: Yes, Your Honor.

7 RECROSS-EXAMINATION

8 BY MR. REID:

9 Q. Exhibit 193, please. Exhibit 193, please. You
10 reviewed this job description, Mr. Lane, I'll represent to you
11 it was a job description for Mr. Walker?

12 A. For Mr. Walker's deposition exhibits?

13 Q. Yes.

14 A. Yes, sir.

15 Q. Scroll back to the top, please. This was a job
16 description for a position at DGC Operations; is that correct?

17 A. Yes, sir.

18 Q. Mr. Walker, to your knowledge, was DGC Operations
19 employee from the time he started at the Sentinel Energy
20 Center plant up to the date of the incident, correct?

21 A. Yes, sir.

22 Q. And you mentioned Diamond Generating Corporation
23 executives were basically having a meeting about safety in
24 January of 2017, correct?

25 A. With Mr. Walker, yes, sir.

26 Q. With Mr. Walker, and other plant managers, correct?

27 A. I believe so, yes, sir.

28 Q. Do you know who the specific person was who was

1 conducting that meeting?

2 A. Conducting, I saw names participating. I don't know
3 who was conducting it, but Mr. Bo Buchynsky was there. The
4 president of Diamond Generating Corporation. I believe Bo
5 Buchynsky was COO and CEO was Mr. Kromer.

6 Q. Did you review Paul Shepard's deposition testimony?

7 A. No, sir. I saw him mentioned in Mr. Walker's, but I
8 did not read Mr. Shepard's deposition.

9 MR. REID: That's all I have, Your Honor.

10 THE COURT: Thank you.

11 MR. BASILE: Nothing further we are satisfied.

12 THE COURT: Briefly, the Court has some inquiry on
13 one particular area.

14 EXAMINATION

15 BY THE COURT:

16 Q. Mr. Lane, you mentioned earlier that probably the
17 middle of the afternoon, you were discussing there's a ball
18 valve involved?

19 A. Yes, sir. Yes, sir. Many of these valves are ball
20 valves in construction.

21 Q. I believe there was this time to do with your
22 testimony on cross-examination by Mr. Reid, you were talking
23 about how that was a factor you were considering in the time
24 of the release of pressure, can you further explain?

25 A. Yes, sir. A ball valve is a --

26 Q. That's what I was going to explain or ask you to
27 explain?

28 A. A ball valve is based on a ball. Okay. The ball is

1 ported through, generally, with just a straight hole or
2 something similar to the straight hole through the ball. The
3 ball is either oriented with the line with the pipe, so the
4 flow goes through it, or 90 degrees, no flow goes through it.
5 The valve is different than other valves that are made to
6 throttle, basically called a flow valve. Flow valve are made
7 to throttle. Just like your faucet at home, you can put it on
8 low, medium, high, whatever you want. That's a throttling
9 involve some home valves have ball valves, it goes one way or
10 another, it's all or nothing. All of these valves have ball
11 valves, that we've been talking about. That does not mean you
12 cannot throttle with a ball valve. People do. They
13 shouldn't. Because what happens with high energy systems.
14 Low energies systems no problem. The high energy systems, the
15 velocity of the gas going through that valve literally goes
16 through the speed of sound. The gas that goes through that
17 valve where it has a small passage, that high pressure causes
18 that gas to go through at the speed of sound, and it acts like
19 a cutting torch. It cuts the metal and cuts the seat, so you
20 can throttle with it, then later on you might be fine for the
21 first few times you do it, later on when you close it, it
22 doesn't seat because the seat and the ball have been cut.
23 It's called being wire cut or wire drawn. Is that good.

24 Q. Yeah. Thank you, Mr. Lane.

25 A. Thank you, sir.

26 Q. You mentioned that in the context of the times, what
27 if anything did you take into consideration with that?

28 A. You can't draw conclusions as to time beyond really,

1 really fast implies the valves were wide open. If you can
2 establish that, then you can measure everything else after
3 that, and say that in those longer times, that somebody was
4 throttling the valve. Not supposed to do it, but people do
5 it, and so if it takes longer, it's because they are
6 throttling.

7 THE COURT: Based on the Court's questions regarding
8 clarification on that particular topic, any additional
9 questions?

10 MR. BASILE: No questions. Thank you, Your Honor.

11 THE COURT: Mr. Reid.

12 MR. REID: No questions, Your Honor.

13 THE COURT: Okay. Subject to recall, Mr. Reid,
14 Mr. Basile?

15 MR. BASILE: No.

16 MR. REID: No.

17 THE COURT: Okay. Thank you, Mr. Lane. You're
18 excused.

19 THE WITNESS: Thank you, sir.

20 THE COURT: Members of the jury, we're about five
21 minutes before our requested time. But we'll go early.
22 There's something I did want to mention, I wrote myself a note
23 on this last Wednesday. I know we went until 4:00 o'clock. I
24 think I asked at the time if there was any objection going
25 back to 3:30, remember we had the court reporter shortage. So
26 we were short. We went past. I should have mentioned that we
27 made commitment to be here at certain hours to maximize our
28 time, but to also break at 3:30. If you have a doctor's

1 appointment or dentist appointment, they don't care where you
2 are if you're not there at 4:00 o'clock, you know you're
3 missing your appointment. So I should have said something, if
4 at any point we ask, can you go a couple more minutes or
5 something of that nature, you have an appointment, just raise
6 your hand. There will be no inquiry. I'm not going to ask
7 why you can't stay an extra 15. If you tell me we can't go a
8 minute past of 3:30ish, then, we will -- I know that doesn't
9 make sense, but there won't be any additional questions.
10 We'll break for the day so you can make whatever appointment
11 that is. We're not going to sit here and examine you here,
12 maybe you can reschedule, you made a commitment to us and
13 we'll make a commitment to you regarding time. Thank you.
14 Please couple back at 3:10.

15 (Outside the presence of the jury.)

16 THE COURT: We're now outside the presence of the
17 jury. The jury stepped out into the hall. Counsel are
18 present. Yes.

19 MR. BASILE: Your Honor, for scheduling purposes, may
20 I inquire as to how long they'll be with Mr. Forsyth.

21 MR. REID: I estimated 45 minutes to an hour. That's
22 what it's going to take.

23 THE COURT: I did want to bring that up, actually.
24 Let me go here. I have the page just in order for us to be
25 able to stay on schedule. With Mr. Lane, you did go over
26 about another 25 minutes or so. Mr. Reid, it's not
27 particularly egregious, you estimated two and half hours of
28 cross-examination. If we start piling those up, we're going

1 to start losing days, this would be Mr. Forsyth you estimated
2 an hour and a half and this looks like we started back on last
3 Tuesday.

4 MR. REID: Yeah. But we didn't have an opportunity
5 to question him at that time, Your Honor.

6 THE COURT: My notes reflect we never started with
7 Mr. Forsyth.

8 MR. REID: That's correct, Your Honor.

9 THE COURT: You still have a full hour and a half.
10 This is the timetable that both parties submitted.

11 MR. BASILE: So. Okay. Yeah. So we're going to
12 have half an hour today.

13 THE COURT: Probably has about -- probably at least
14 30 minutes. I'm not going to cut you off at 3:30 if there's
15 another question you know, let's finish at 3:31 today.
16 Apparently, we did have one of the jurors mention this morning
17 that they needed to reschedule something because we went late
18 last Wednesday. That's why I had to bring that up.

19 MR. REID: Thank you, Your Honor.

20 MR. BASILE: Thank you.

21 THE COURT: We're in recess.

22 (Brief Recess.)

23 THE COURT: Recalling the matter of Collins versus DG
24 Corp. We're back on the record. All members of the jury are
25 present. Mr. Basile, so the Court's notes indicate that looks
26 like last Tuesday there was the direct examination under --
27 was it cross-examination -- the direct examination of
28 Mr. Forsyth, then they were going to start the

1 cross-examination of him; however, we called things out of
2 order. We're going to resume that now.

3 MR. BASILE: Yes, sir.

4 THE COURT: Can you recall Mr. Forsyth, and he
5 testified in plaintiff's case in chief.

6 Mr. Reid or Mr. Schumann?

7 MR. REID: Myself, Your Honor.

8 THE COURT: Welcome back, Mr. Forsyth.

9 THE WITNESS: Thank you.

10 THE COURT: I'll remind you you're still under oath
11 when you were sworn in last week for direct examination.
12 There's some additional questions here now by defense in the
13 matter.

14 THE WITNESS: Yes, Your Honor.

15 THE COURT: Okay. Thank you.

16 You may proceed, Mr. Reid.

17 WAYNE FORSYTH,

18 called as a witness by Plaintiff, was previously sworn and
19 testified as follows:

20 CROSS-EXAMINATION

21 BY MR. REID:

22 Q. Good afternoon, Mr. Forsyth.

23 A. Hello.

24 Q. Who was your employer at the time of this incident
25 we're here for?

26 A. DGC.

27 Q. Okay. We're referring to them as DG Corp., just so
28 you're aware.

1 A. Okay.

2 Q. What was your title at the time of this incident?

3 A. I believe it was EHS manager. Sorry.

4 THE COURT: Mr. Forsyth and Mr. Reid, please speak up
5 a little louder. I know it's late in the afternoon, just so
6 your voice will carry.

7 THE WITNESS: Yes.

8 THE COURT: Great. Thank you.

9 Q. BY MR. REID: EHS stands for Environmental Health and
10 Safety, correct?

11 A. Yes.

12 Q. Plaintiff's counsel, during his direct examination,
13 mentioned three other power plants that are owned by Diamond
14 Generating, DG Corp., correct?

15 A. Yes.

16 Q. That was Indigo plant, the Larkspur plant and
17 Mariposa plant?

18 A. Yes.

19 Q. What is the main difference between those power
20 plants and Sentinel with regard to DG Corp.?

21 A. Those three power plants are owned and operated a
22 hundred percent where the Sentinel plant is partial ownership.

23 Q. Why is that significant?

24 A. Because if you have partial ownership, you don't have
25 -- you have to go through a board and get everything done, you
26 don't have the direction that you want to just give right off
27 the batt, you have to go through the other owners.

28 Q. Okay. And what is significant about the fact that

1 the three power plants -- Strike that. Let me ask it a
2 different way. You were essentially working with four
3 different power plants, correct, Indigo, Larkspur, Mariposa
4 and Sentinel?

5 A. Yes.

6 Q. Because Sentinel is not wholly owned by DG Corp.,
7 that changes your responsibilities, correct?

8 A. Yes.

9 Q. So does DG Corp. provide asset management to the
10 Sentinel plant?

11 A. No.

12 Q. I should qualify that as before the incident?

13 A. That's what I was assuming.

14 Q. That's what you were assuming. Okay. Does DG Corp.
15 have a separate subsidiary that provides asset management?

16 A. I believe they do now.

17 Q. Okay. Do you know if they did at the time of the
18 incident?

19 A. For Sentinel?

20 Q. Yes.

21 A. No, they did not.

22 Q. All right. We've mentioned your job responsibilities
23 are different in the three plants that are wholly owned, then
24 what you were doing on the Sentinel?

25 A. Yes.

26 Q. Did you perform audits of the LOTO sheets of those
27 other four plants?

28 A. Yes.

1 Q. Did you perform audits of the LOTO sheets at the
2 Sentinel facility prior to the incident?

3 A. No.

4 Q. Now, you originally drafted some safety policies and
5 procedures back in the 2005 timeframe, correct?

6 A. Yes.

7 Q. What plant was that for at the time?

8 A. That was for Indigo and Larkspur.

9 Q. And had those -- were those policies updated between
10 2005 and 2012 when the Sentinel facility opened?

11 A. I believe so, yes.

12 Q. Okay. And you provided copies of those policies to
13 Mr. Aaberg?

14 A. Yes.

15 Q. What was your purpose for giving him copies of those
16 policies?

17 A. My understanding was, I was asked because they were
18 required to be submitted for the Sentinel project by the VPON
19 operations and maintenance.

20 Q. That was Mr. Aaberg at the time?

21 A. Yes.

22 Q. To your knowledge, those policies and procedures you
23 gave to Mr. Aaberg, he gave to Tom Walker, correct?

24 A. I'm not sure.

25 Q. And that's fine if you don't know. Is each plant
26 different from the others?

27 A. Yes.

28 Q. Okay. And how are they different?

1 A. They have different equipment.

2 Q. So policies and procedures for Indigo and Larkspur
3 would have to be modified if they were going to be used at
4 Sentinel?

5 A. Yes.

6 Q. Do you know who conducted the modification -- strike
7 that. Do you know if those policies and procedures were
8 modified?

9 A. I don't know that.

10 Q. Okay. After you gave them to Mr. Aaberg, did you
11 review those policies and procedures at any point in time up
12 until the date of the incident?

13 A. I'm not a hundred percent, but I'm pretty sure I did
14 not.

15 Q. Okay. Exhibit 195, please. And this was a standard
16 operating procedure for DGC Operations LLC safety policy,
17 SP-6000, correct?

18 A. Yes.

19 Q. Bottom half of the document, please. This isn't
20 signed, but it's a document that you prepared, correct?

21 A. Yes.

22 Q. And the effective date on this document was 11-8 of
23 2005, correct?

24 A. Yes.

25 Q. I want to see the Bate stamp on the bottom, not the
26 trial one. Yeah, that one. And do you understand what a Bate
27 stamp is?

28 A. No.

1 Q. Okay. I'll note for the record as DGC OPS document
2 Bate stamp 39006, which is also identified as trial exhibit
3 195. Look at 196, please.

4 This is another one of those standard operating
5 procedures SP-6001, correct?

6 A. Yes.

7 Q. Scrolling down again, drafted by you, in 2005,
8 correct?

9 A. Yes.

10 Q. All right. And scrolling down a little further for
11 Bate stamp, this is DGC OPS Document 39001 for the record.
12 Can I get 6000 or excuse me. 198. And this is another
13 standard operating procedure SP-6003, correct?

14 A. Yes.

15 Q. All right. Scrolling down again, drafting by you,
16 back in 2005, and the Bates number is DGC OPS 39021, correct?

17 A. Yes.

18 Q. And you drafted these in 2005, that's at least seven
19 years before the Sentinel Facility went online, correct?

20 A. Correct.

21 Q. And these policies, were those used as templates for
22 policies used at Sentinel?

23 A. Yes.

24 Q. Exhibit 147, please. Standard operating procedure
25 for DGC Operations LLC, SP-6002 Lockout/Tagout, LOTO policy,
26 correct?

27 A. Yes.

28 Q. Again, this is a document you drafted in late 2005,

1 correct?

2 A. Yes.

3 Q. And for the record, this is DG OPS 39017, correct?

4 A. Yes.

5 Q. All right. Could you put this next to Exhibit 176.

6 And the SMP-3 Lockout/Tagout procedure for the Sentinel Energy
7 project, did you have any part in drafting that document?

8 A. No.

9 Q. At any point in time prior to this incident, did you
10 have any -- did you review this document?

11 A. I'm not a hundred percent, but I'm pretty sure the
12 answer is no.

13 Q. Okay. And is this an example of a template that you
14 drafted being used to help create a document for Sentinel?

15 A. Revision history log form was something that I had
16 had. So I'm sorry, I don't quite understand.

17 Q. Would you highlight the revision history log you're
18 talking about, the SMP-3?

19 A. Yes. I didn't do the procedure or anything but that
20 revision history log was something we created.

21 Q. Okay. So I'm not talking about the -- just the face
22 page, I apologize. Let's scroll through the entire, not that
23 one. I'm sorry SP-6002, all the way through. That's fine.
24 That's an eight page document that was created by you, and the
25 revision history, could you focus in on that one for me, just
26 now the table, I'm sorry. Yep. There we go. That shows the
27 initial procedure and that's the revision history for this
28 document, correct?

1 A. Yes.

2 Q. This says 6003, scroll back up. I apologies.
3 There's the 6003, this is the one we want. Specifically, for
4 SP-6002, the last time you revised it at least according to
5 this revision history was December 2005, correct?

6 A. Yes.

7 Q. Okay. So that's how many pages? That's the last
8 page, that's number four. Looks like it's a four-page
9 document, correct, when you first created?

10 A. Yes.

11 Q. Let me go back to 176, please. Scroll to the last
12 page for me. Highlight the trial exhibit Bate stamp on the
13 bottom. No. Other one. Very center of the bottom of the
14 page, the trial one. No. I'm sorry. Right here. There we
15 go. Trial Exhibit 176, that's a 35-page document, correct?

16 A. Yes.

17 Q. Just based on the number of pages, that's a very
18 different document than what you created in 2005, correct?

19 A. Yes.

20 Q. To your knowledge the SMP-3, one on the right was
21 that drafted by Jason King and Tom Walker?

22 A. I'm not sure.

23 Q. Okay. Do you know who the asset manager for Sentinel
24 was at the time of this incident?

25 A. Yes.

26 Q. Who was that?

27 A. Mark McDaniels.

28 Q. Had he been the asset manager from when the asset

1 management agreement was signed until the date of the
2 incident?

3 A. Yes.

4 Q. Okay. Do you know if asset manager Mark McDaniels
5 was responsible for reviewing any of these safety procedures
6 and policies?

7 A. I believe he was, based on the asset management
8 agreement.

9 Q. And you don't know for sure that he reviewed them,
10 all you know is that based on the asset management agreement
11 he was supposed to review them, correct?

12 A. Correct.

13 Q. The operation maintenance agreement, Mr. McDaniels
14 was also the owner's rep; is that correct?

15 A. Yes.

16 Q. And under the operations and maintenance agreement,
17 he was also responsible for reviewing these policies and
18 procedures on behalf of the owners, correct?

19 A. Yes.

20 Q. Exhibit 481, Your Honor. And I don't know whether
21 they stipulated to the admissibility of this one or not?

22 MR. BASILE: We're objecting, lack of foundation,
23 Your Honor.

24 THE COURT: How many pages is this document?

25 MR. REID: It's a large document, Your Honor. It's
26 close to a hundred, I would guess with the attachments.

27 THE COURT: Okay. Well, we'll deal with that in a
28 couple minutes. Please don't publish it. Do you have any

1 other questions, you can.

2 MR. REID: Yes. Absolutely.

3 THE COURT: Another two minutes, please.

4 MR. REID: Sure.

5 Q. BY MR. REID: Your understanding, do you know when
6 the operations and maintenance agreement was signed?

7 A. Not exactly, no.

8 Q. If I said to you it was in 2011, May, does that ring
9 a bell for you?

10 A. Yes.

11 Q. Do you know if the asset management agreement was
12 signed the same day?

13 A. No.

14 Q. Do you know who the parties to the asset management
15 agreement were?

16 A. I believe it would be the CPV and ownership group.

17 Q. If I told you it was CPV Sentinel LLC, and Sentinel
18 Management LLC, would that ring a bell for you as far as the
19 asset management agreement?

20 A. It wouldn't ring a bell. I wasn't involved in --

21 Q. You weren't involved in negotiating any of the
22 contracts for this project, correct?

23 A. Correct.

24 Q. Do you know if under the asset management agreement
25 it was the responsibility of the asset manager to supervise
26 and manage the operator, which would have been OPS?

27 MR. BASILE: Lack of foundation, Your Honor.

28 THE COURT: Overruled. If you know, Mr. Forsyth.

1 THE WITNESS: I think it says in the contract
2 something about O and M does the day-to-day but asset manager
3 does overall.

4 MR. REID: Thank you.

5 THE COURT: We can conclude it here, Mr. Reid.

6 MR. REID: That's fine, Your Honor.

7 THE COURT: Mr. Forsyth, we're going to ask you to
8 please come back tomorrow morning, if you can be here about
9 ten minutes to 10:00, we'll pick up with your
10 cross-examination at 10:00 a.m.

11 THE WITNESS: Okay.

12 THE COURT: Thank you.

13 MR. REID: Thank you, Mr. Forsyth.

14 THE COURT: Members of the jury, we're going to
15 conclude for the day. It's 3:30. We'll see everyone back
16 tomorrow at 9:59 a.m. Thank you. Please do not discuss the
17 facts of the case or any parties involved. We still have
18 quite a bit to go. Thank you. Have a good evening.

19 (Outside the presence of the jury.)

20 THE COURT: Okay. We're outside the presence of the
21 jury. Counsel are still present. You're 15 minutes into your
22 cross-examination, Mr. Reid, just so --

23 MR. REID: Thank you, Your Honor.

24 THE COURT: Just for your notes, we're going to go
25 over the exhibits here in a moment. Let me see, we left off
26 on 481. We'll come back to that here in a second. Okay.

27 So let's deal with the housekeeping first. Then I
28 guess there's a couple things we need to address. Okay.

1 These are the new exhibits I have for today. They're a little
2 out of order, just because this is the order they were called
3 in. We have 314. I'm going to read these, then you can let
4 me know which ones, if any, you have an objection to,
5 Mr. Reid. These are all through the first witness,
6 Dr. O'Hara, who testified as a lay witness, no expert opinion.
7 314, 300, 307, 328, 286, 318, 284, and 338. If you take a
8 moment to review those, let me know if there's any objection.

9 MR. REID: Yeah. At this point, Your Honor, those
10 are all photographs of Mr. Collins, his family members,
11 various other things that are damage type exhibits. We don't
12 have any specific objections other than it's going to become
13 cumulative, which we've already objected to already.

14 THE COURT: I do note that, and at some point this is
15 going to be cumulative, Mr. Basile, just so -- just so for the
16 record I'm counting -- are some of these photographs or some
17 of these actual physical items?

18 MR. BASILE: Those are all photographs.

19 THE COURT: These are all photographs?

20 MR. REID: Yes, Your Honor.

21 THE COURT: Some of them say photo. They are [reface
22 with photos, other say teddy bear, Christopher T-ball bat.

23 MR. BASILE: There's a story behind that, but whether
24 we come to it, this will be a photograph of it. It will be a
25 photograph of the T-ball bat.

26 THE COURT: Let me rephrase this, then these are --
27 are there any real physical items here?

28 MR. BASILE: No.

1 THE COURT: Okay. Then going back to my original,
2 just note for the record, there's 1, 2, 3, 4 -- well, there is
3 one, there's an audiotape. So that's not a photograph, right?

4 MR. BASILE: Oh, you're looking -- I thought you were
5 discussing the ones we introduced and identified today.

6 There is going to be an audiotape, one videotape,
7 Your Honor, that we will be offering.

8 THE COURT: I'm not just talking about today. I'm
9 talking about this exhibit list. So I'm assuming some of
10 these things I can gather that are strictly related to the
11 damages component of the case. So I'm going to count here,
12 again, it says Daniel's jacket with patches, that's a
13 photograph.

14 MR. BASILE: Your Honor, I had that jacket
15 physically, I was going to bring in, I had a pillow made out
16 of his Jeans, that was going to be brought in. I had the
17 actual T-ball bat, we were going to bring in. I had them in
18 the back of my car along with some suits at the Courtyard by
19 Marriott. The second day of trial, someone broke into my car
20 stole all of them, stole all my suits. I made a tip to mens
21 warehouse. So, that's why they were physical items, but then
22 they were in a blue ben with a label on top that said Daniel
23 Collins's personal items, including a wedding album, cards,
24 notes, all kinds of personal items of Ms. Collins, stolen from
25 my car. I filed a police report. So that's why they are
26 saying in there physical items but fortunately, we
27 photographed them, too, so I'll just be introducing
28 photographs.

1 THE COURT: All right. First, I'm very sorry to hear
2 about that. You know, an invasion of your privacy. I'm sorry
3 that happened, especially during a stressful time like this,
4 during the middle of trial. Yes. That happens here not just,
5 you know, other areas, so. Okay. So moving on from that,
6 your original intent 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,
7 13.

8 MR. SCHUMANN: 47.

9 THE COURT: So I'm going to stop a counting at 50.
10 I'm -- you're talking about 50 exhibits, photographs or
11 otherwise clearly appear to be related to damages component of
12 the case. I can't imagine just from prior experience, either
13 in criminal or in civil, to be able to introduce that many --
14 those many items.

15 MR. BASILE: I'm not going to. I'm not going to.

16 THE COURT: Well, you need to narrow it down and
17 discuss it with defense counsel. I'll let you know for today,
18 you've already published them. The jury already seen them.
19 Mr. Reid, I'll let you make your objections for the record if
20 you chose to today or not, but the ones introduced today, they
21 are going to be admitted.

22 MR. REID: Understood, Your Honor.

23 THE COURT: Moving forward, we're going to have to
24 use some more, you're going to have to deliberate whether you
25 want -- you're not going to get close to 50. You don't want
26 to build error in your case.

27 MR. BASILE: I'm not, Your Honor. There will be a
28 couple photographs introduced with the Goodmans, the video

1 which they've been given that will be introduced. You want me
2 to narrow it down to ten more, I'll do that, 15 more at the
3 most. That's what I'll do. They are different, Your Honor,
4 they are different scenes from his life. They are different
5 relationships that come out that shows the relationships
6 between the parties.

7 THE COURT: So 352 exists for a reason. I'm not
8 going to give you a hard number, but it's definitely closer to
9 ten than 50, I'll let you know that.

10 MR. BASILE: I agree with you, Your Honor, I agree.

11 THE COURT: Okay.

12 MR. REID: Your Honor, I would note that they've
13 already introduced some of these exhibits in the opening,
14 various places they've used more than ten at this point. So,
15 at this point, we're just going to have a standing objection
16 to these being cumulative, we'll allow the judge to exercise
17 your discretion, obviously.

18 THE COURT: I do recall those used in the power point
19 from the opening, I think for the most part, those have been
20 introduced, one of Mr. Collins gazing out to sea, the one with
21 the son, I don't recall there being 50 photographs shown in
22 opening statement.

23 MR. REID: Not yet. Well, I apologies, Your Honor.

24 THE COURT: We're not going to get there. You're
25 objecting to the ones published during Dr. O'Hara's testimony.

26 MR. REID: No. From this point going on, we're going
27 to object to cumulative to everything else.

28 THE COURT: No objection from today, all the ones,

1 let's go through them briefly 314 will be admitted. 300 will
2 be admitted. 307 will be admitted. 328 will be admitted. So
3 that's four, right, therefor related to damages. Then we go
4 to 286, another one that will be admitted. 318 will be
5 admitted. 284 will be admitted, and 338 will be admitted. So
6 that's 1, 2, 3, that's eight photographs for today. I
7 apologize, Madam Court Reporter, I shouldn't count out loud.
8 Okay. Moving on.

9 MR. BASILE: Your Honor, just let me address that for
10 a moment. If I might, there's eight photographs, that's all.
11 I may have ten more, and we're talking about 47 years of this
12 man's life in a relationship with his, this woman. I'm not
13 going to be putting 50, I promise you that, Your Honor.
14 They're going to be relevant to specific vignette to specific
15 scenes, to specific relationships, Your Honor. I'll offer
16 them and they can object as they like, but I'm not doing 50 of
17 that.

18 THE COURT: Okay. Well --

19 MR. BASILE: But with that said, it's 47 years of
20 this man's life.

21 THE COURT: If there's an objection, the Court will
22 rule on it.

23 MR. BASILE: Thank you. That's all I ask.

24 THE COURT: You've been -- we've discussed it. So.

25 MR. BASILE: Okay.

26 THE COURT: All right. Moving on. With, Mr. Lane, I
27 have the following exhibit, new exhibits that were discussed
28 this afternoon. Mr. Basile, these were during

1 cross-examination, 602, 605, 83, 489. We'll come back to 264
2 here in a moment. 589, 285 and 366. Any objections to any of
3 those?

4 MR. BASILE: No, Your Honor.

5 THE COURT: The exhibits I just read will all be
6 admitted.

7 Okay exhibits I just read will be admitted with the
8 exception of 264, which we'll talk about in a minute.

9 So 602, 605, and then we jump around. We go to 83,
10 then we go back to 489. Then we go to 589, 258 and 366.

11 THE CLERK: Thank you.

12 THE COURT: So going back to 264. 264 was referenced
13 and was published this afternoon by Mr. Reid during his
14 cross-examination of Mr. Lane. The Court had a previous note
15 this is the --

16 MR. REID: This is all the LOTO sheets, all the LOTO
17 tags, and the sign-in sheets. At this point in time,
18 Your Honor, we could take the sign-in sheets out, that will be
19 fine. We just want the LOTO sheets and the tags.

20 THE COURT: Okay. So the Court notes from last week
21 was we were going to reserve until the stipulation by the
22 parties. So what's the -- is there any stipulation,
23 Mr. Basile, are you opposed to 264 coming in?

24 MR. BASILE: No.

25 THE COURT: Okay. So 264 will be admitted. What
26 about 265, I know it wasn't discussed today but can 265 be
27 admitted as well?

28 MR. BASILE: It's repetitive of what's in 264,

1 Your Honor. I think they'll agree to that, they agree it's
2 repetitive. It's the tags, again tags are included in 265.

3 THE COURT: 264 does seem to encompass the time
4 period of 265.

5 MR. REID: I'm looking at the description real quick,
6 Your Honor. Yes.

7 MR. SULLIVAN: For whatever reason, they got copied,
8 the tags were copied in 264. So it is duplicative.

9 MR. REID: Yeah, we're fine with 265 being excluded,
10 Your Honor.

11 THE COURT: So 264 is admitted.

12 THE CLERK: Yes, Your Honor.

13 THE COURT: Thank you. Which brings us to now 481.
14 So the description here says this is an asset management
15 agreement between, looks like former parties to the case, CPV
16 Sentinel and CPV Sentinel management. Mr. Basile, the
17 objection is hearsay?

18 MR. BASILE: Hearsay, foundation, relevancy,
19 Your Honor, all of those.

20 THE COURT: The hearsay one can be overcome if proper
21 foundation has been laid. So I'm going back to, when we were
22 here discussing motions in limine, I asked about Sanchez. I
23 know it's a little different, it does ultimately go to lying
24 foundation, so Mr. Reid.

25 MR. REID: Your Honor, the asset manager Mark
26 McDaniels will be testifying in our case in chief. We can
27 reserve until that point.

28 MR. SULLIVAN: He's not listed as one of the

1 witnesses on the witness list.

2 MR. REID: Yes, he is.

3 MR. BASILE: On the witness list?

4 MR. REID: I'd be amazed if he wasn't.

5 THE COURT: I'm looking. We don't need the
6 additional comments.

7 MR. REID: I apologize, Your Honor, I'm a little hot
8 under the collar.

9 THE COURT: We'll conclude with that for today.

10 MR. REID: Thank you, Your Honor.

11 THE COURT: Okay. I'm sorry, Mr. Reid.

12 MR. REID: Mark McDaniels.

13 THE COURT: Okay. Eventually one of the --

14 MR. REID: One of defense witnesses.

15 THE COURT: He's one of the predecessors, subsequent
16 to the general managers.

17 MR. REID: No, Your Honor, Mr. McDaniels.

18 THE COURT: I'm trying to visualize the chart.

19 MR. REID: Maybe I can offer a little explanation.

20 So there are Mr. Shepard, who they referred to, is the vice

21 president of Portfolio and asset management. Portfolio

22 management has a lot to do with the financial aspects of

23 running up a company, managing the assets, in this case,

24 Sentinel Facility. There's a contract between the owner CPV

25 Sentinel and the asset management CPV Sentinel Management LLC

26 to provide an asset manager to manage DGC OPS. That's the

27 foundation for the document. It was signed the same day as

28 the O and M agreement, and Mr. McDaniels will be able to lay

1 foundation because he was part of the negotiations for the
2 agreement.

3 THE COURT: So I'm looking at the joint witness list
4 presented here. There's 35 witnesses. I don't see
5 Mr. McDaniels.

6 MR. REID: That was an oversight on our part. He
7 should have been included.

8 MR. BASILE: First the exhibits, now the witness
9 list. How many times do you have to put up with it,
10 Your Honor.

11 THE COURT: Was Mr. McDaniels deposed?

12 MR. REID: Three times, Your Honor.

13 MR. BASILE: Not by me. It was early -- excuse me,
14 Your Honor. He was deposed when this case began. As you
15 might imagine, we didn't know who owned the plant, who ran the
16 plant or anything. There was PMK depositions, I believe,
17 Mr. Sullivan did, who owns the plant, what's the make up of
18 it, all that. That's what was covered. That's where we're
19 at.

20 THE COURT: Mr. Sullivan, were you involved in that?

21 MR. SULLIVAN: Mr. McDaniels was not deposed as it
22 relates to the asset management agreement because the asset
23 management agreement was not never provided to us until after
24 his deposition.

25 THE COURT: My question --

26 THE REPORTER: Please slow down.

27 THE COURT: My question was, were you part of the
28 deposition.

1 MR. SULLIVAN: I was part of all three depositions.

2 THE COURT: So you have some knowledge of the
3 gentleman.

4 MR. SULLIVAN: I have some knowledge.

5 THE COURT: One.

6 MR. REID: I apologize, Your Honor.

7 THE COURT: Regarding the asset management agreement,
8 you did have some knowledge of its existence, it is on this
9 joint exhibit list, which at this point, from the back and
10 forth chatter, I take it plaintiffs prepared this exhibit
11 list, correct? So you copied and pasted some of the materials
12 in there, you're aware of the existence of the document.

13 MR. SULLIVAN: I'm aware of the existence of that
14 document, yes, Your Honor.

15 THE COURT: Do you have a copy of it?

16 MR. SULLIVAN: I do have a copy of it. The first
17 time we received it was when he filed some motions posing some
18 good faith determinations prior settlements, well after
19 Mr. McDaniels had ever been deposed. He was never deposed
20 relative to his obligations and duties or anything as it's
21 related to that particular document. He's already been
22 deposed three times. It didn't appear that was going to get
23 an opportunity to do that, again. And how is it that they can
24 not include that they can consider as an important witness on
25 the witness list, and then all of a sudden, expect the Court
26 to indulge the fact that they -- you have to plan your case,
27 you have to plot it out, you have to figure out how you're
28 going to get this stuff into evidence.

1 We planned our case, how we are going to address the
2 stuff, present the case, part of that did not include
3 preparing any cross-examination of Mark McDaniels, we're two
4 weeks into trial now, they never disclosed he was going to be
5 a witness. We assume they were going to get asset agreement
6 like somebody through Paul Shepard or Bow Buchynsky, now they
7 are going to surprise us with another witness, just like they
8 surprised us with all sorts of different things, since the
9 moment this case came up for trial call, now we have to
10 address if they are allowed to amend their witness list.

11 THE COURT: That's why you have local rule 3401,
12 deadlines, they are not, there's no surprises. Okay.

13 Mr. Reid, what's your time estimate for direct
14 examination on Mr. McDaniels?

15 MR. REID: Mr. McDaniels, half an hour, Your Honor.
16 It will be quick. And Your Honor, I would point out that
17 Mr. Sullivan inquired of Mr. McDaniels in the very first
18 volume of the deposition, before our office was even involved
19 in the case. And he was specifically asked who he worked for
20 and what his job was. So they're aware of who he is and what
21 he does.

22 THE COURT: Is there someone else that is on the
23 witness list that you can lay the foundation for this
24 document?

25 MR. REID: Mr. Shepard probably will be able to lay
26 foundation for it as would Dennis Johnson, Your Honor.

27 MR. SCHUMANN: Your Honor, they can have his
28 deposition any time. It's clerical error by our office.

1 MR. REID: Yep.

2 MR. SCHUMANN: To not have -- this is a witness we
3 relied on, I talked about the management agreement in opening.
4 Relied on, I talked about the management --

5 THE COURT: I understand the asset management
6 agreement is important to the defense case. The hearsay, if
7 we go down that hearsay objection, everything is hearsay. So
8 it's more as to who is going to lay foundation for it. No
9 other surprise witnesses, Mr. Reid?

10 MR. REID: No, Your Honor. That was a clerical
11 error, Your Honor.

12 THE COURT: Well, the difference between criminal and
13 civil, kind of gather myself, was that there was less
14 forgiveness for clerical errors in civil than there was in
15 criminal.

16 MR. REID: Understood, Your Honor.

17 THE COURT: But when do you plan on calling this
18 witness, Mr. McDaniels.

19 MR. REID: He'll be second or third in our case in
20 chief, Your Honor.

21 THE COURT: So there's additional time. Okay.
22 Regarding 481, Mr. Sullivan, since you were present in those
23 depositions, again, please answer the Court's inquiry. I
24 don't want to back and forth. If you do believe that
25 Mr. McDaniels is in a position to lay foundation for this
26 agreement.

27 MR. SULLIVAN: He would be, yes, Your Honor.

28 THE COURT: Thank you. I appreciate your candid

1 answer, Mr. Sullivan.

2 Okay. So Mr. Reid, seeing this is a which the that
3 isn't going to testify tomorrow, plaintiff just is finding
4 out. We'll accept that it's a clerical error, basically
5 you're using all of your life lines at this point. There will
6 be no additional surprise witnesses. I've heard a couple
7 times about the parties not being aware apparently there
8 hasn't been as much, you know, discussion with the parties.

9 I assume at this point when you leave the courtroom,
10 you don't even talk to each other, seems like everything is
11 turning out to be a surprise here. So, 481 if you present it
12 tomorrow, Mr. Reid, you can introduce it and at the end of the
13 day we'll likely admit it.

14 MR. REID: Thank you, Your Honor.

15 THE COURT: Then, Mr. McDaniels will be allowed to
16 testify. I'm going to hold you to 30 minutes of direct
17 examination. Mr. Sullivan, Mr. Basile, I'm not going -- you
18 have time to review. I'm not going to commit you to a
19 particular period of cross-examination right now, if you want
20 to review that. This is a witness that, I guess for the
21 record here, this is a witness that one would logically
22 expect, it was someone the Court even inquired of a couple
23 minutes ago. I was trying to visualize, again, the hierarchy
24 here, the charts, this isn't a witness that's for the Court,
25 as hearing about the first time, I recognize the name. I know
26 he falls somewhere along their predecessor, he came after the
27 fact. For that reason, your objection is noted for the
28 record. It will be overruled.

1 MR. REID: Thank you, Your Honor.

2 THE COURT: All right. For tomorrow, we're going to
3 continue with the cross-examination of Mr. Forsyth. When he's
4 concluded, I think we're back to a blank slate and,
5 Mr. Basile, it's your case. How would you like to proceed
6 tomorrow assuming that there's a conclusion to this
7 cross-examination?

8 MR. BASILE: It will be Bob and Beth Goodman, damage
9 witnesses, flying in from Washington.

10 THE COURT: You're having them fly in?

11 MR. BASILE: Yes. They are here today. I haven't
12 checked with Ms. Collins to see if they are here but that was
13 the schedule they are coming today. They'll testify after the
14 conclusion of Mr. Forsyth.

15 THE COURT: So .75 of an hour, that's --

16 MR. BASILE: It will be like Gianna O'Hara.

17 MR. SULLIVAN: That was for both, I think,
18 Your Honor.

19 THE COURT: So what is .75 of 60 minutes.

20 MR. BASILE: Three-quarters of an hour. 45 minutes.

21 THE COURT: Forty-five minutes. Okay. Shows my
22 experience with billable hours. Okay.

23 MR. BASILE: Plaintiff attorneys don't have those,
24 Your Honor.

25 THE COURT: No, correct, neither do government
26 employees. So .75. So 45 minutes, that's for both or each?

27 MR. BASILE: Won't be much longer for both.

28 THE COURT: Total, if you run over, 25 minutes each.

1 MR. BASILE: Yeah.

2 THE COURT: Okay. So because of that, and it's just
3 speculation on the Court's part but there may not be too much
4 cross-examination.

5 MR. REID: Probably not, Your Honor.

6 MR. SCHUMANN: No, probably not, Your Honor.

7 THE COURT: Do you have other witnesses for tomorrow?

8 MR. BASILE: We'll play Mr. Stanley's deposition.

9 THE COURT: Okay.

10 MR. BASILE: That should probably take care of the
11 day, I would think with --

12 THE COURT: So --

13 MR. BASILE: Well, the other thing, Mr. Caprino, is
14 still positive. So, he has to -- he asked if he could testify
15 by Zoom. I said, no, we'll wait and see if he gets better.

16 MR. REID: Your Honor, if I may.

17 THE COURT: Yes.

18 MR. REID: One of the Courts rules about how long
19 after someone tests positive are they able to come, is there
20 anything specific?

21 THE COURT: Currently it's within -- I'll tell you
22 now.

23 MR. REID: Thank you, Your Honor.

24 THE COURT: It's ten days from -- you're allowed to
25 return allowed, to return ten days from the conclusion of
26 symptoms.

27 MR. BASILE: Are those employees or witnesses or
28 anybody?

1 THE COURT: That's within the courtroom. So it would
2 apply to all of us, equally.

3 MR. SULLIVAN: I don't believe he's been symptomatic
4 at all. He was exposed, got a test, found out he was
5 positive. So he's waiting for a negative test.

6 THE COURT: Well, if it's -- there's no symptoms but
7 there's a positive test, a person, for us, at least, you're
8 permitted to return to work, but you must wear a mask from ten
9 days of positive test.

10 Let's discuss it ahead of time but Stanley is not
11 going to be tomorrow?

12 MR. BASILE: Caprino. Stanley is --

13 THE COURT: Okay. So the Court's inquiry on Stanley,
14 before we wrap this up here, Stanley is going to be deposition
15 video?

16 MR. BASILE: Yes.

17 THE COURT: Okay. I remember. Seems like a lifetime
18 ago. So this is Exhibit 616, and this is the one where we
19 agreed to one hour, 28 minutes, and 51 seconds redacted
20 version by plaintiffs, correct?

21 MR. BASILE: Correct.

22 THE COURT: Do we have possession of 616 now?

23 MR. BASILE: I believe you do.

24 THE CLERK: Yes, Your Honor.

25 THE COURT: Okay. Thank you. We've already had the
26 motion on this, Mr. Reid?

27 MR. REID: Yes, Your Honor.

28 THE COURT: Okay. Great.

1 MR. BASILE: I might put Mr. Palalay on the stand for
2 tomorrow afternoon. If we get to it, depends on how long
3 Mr. Forsyth is going to be.

4 THE COURT: Between Bob and Beth Goodman, I think
5 we're good for tomorrow.

6 MR. SCHUMANN: He's been here so many, many times.

7 THE COURT: Let's leave him for Wednesday morning.
8 Would that be your next witness, Mr. Basile?

9 MR. BASILE: Who?

10 THE COURT: If we conclude with Ben Stanley.

11 MR. BASILE: Yes.

12 THE COURT: You have a new witness to call Wednesday
13 morning, would that be --

14 MR. BASILE: Palalay.

15 THE COURT: Okay. Mr. Schumann, if that assists with
16 the witness, let's plan on Wednesday.

17 MR. REID: It does, Your Honor. Thank you.

18 THE COURT: Okay.

19 MR. SULLIVAN: Just a housekeeping matter. I have
20 Exhibit 617, which was the LOTO training slide to provide to
21 the clerk, so they can get it in the notebook.

22 THE COURT: One page document?

23 MR. SULLIVAN: Yes.

24 THE COURT: That was admitted last week on July 6th.
25 Do you want to hand that to Deputy Lee. Thank you, deputy.
26 Okay. Finally --

27 MR. REID: One more on the exhibits, Your Honor.

28 THE COURT: Yes.

1 MR. REID: Last Wednesday when we were discussing
2 excel spreadsheet, you asked us to provide printed out copy
3 basically -- our trial tech did some screen captures of
4 relevant data, we provided that to plaintiff's counsel. We
5 don't know what happened to it. So we were assuming that that
6 would be entered as the actual physical exhibit for the jury
7 to see. That's in plaintiff's counsel possession, I don't
8 know if they are going to have it Bate stamped and provided at
9 this point.

10 THE COURT: We're talking about 489?

11 MR. REID: Yes, Your Honor.

12 THE COURT: Couple things. When you mentioned it
13 right now, you said some relevant screen shots. So something
14 that the Court noted this morning, I recall, I think I had to
15 interject, your tech kept scrolling through, up and down, what
16 it's --

17 MR. REID: The relevant screen shots, Your Honor.

18 THE COURT: Well, you think is relevant. What was --

19 MR. REID: From our prospective, it was highlighted
20 areas of each.

21 THE COURT: But what was published to the jury, the
22 entire document with highlighted and unhighlighted portions.

23 MR. REID: We can screen shot the entire thing, if
24 it's the Court's preference. That's incorrect, Your Honor.
25 Your Honor, that's just for the one date.

26 THE COURT: Okay. So yes, so this is for the date of
27 incident. This is for the March 6th, 2017. So this is what
28 I'm referring to. There's several pages here, but we don't --

1 there's a couple highlighted portions, probably at least 50
2 lines across here, that are 50 rows.

3 MR. REID: I understand what you're saying,
4 Your Honor. We're happy to do the format for everything.

5 THE COURT: Mr. Basile, what would be your
6 preference?

7 MR. BASILE: What's the choice, Your Honor?

8 THE COURT: Are you okay? It sounds like defense's
9 489, just introducing screen shots of the highlighted
10 portions. However, what was shown to the jury was a lot of
11 back and forth, with all of the pages. Ultimately what it
12 means, I don't think the jurors will know what all this data
13 means, but to me, it seems like it's an incomplete exhibit but
14 you know the case better than the Court does.

15 MR. SULLIVAN: May I make one comment on that?

16 THE COURT: Mr. Sullivan.

17 MR. SULLIVAN: It will be quick.

18 THE COURT: Can you limit the inquiry to the exhibit.
19 We're past the --

20 MR. SULLIVAN: That's what I'm going to limit it to.
21 I noted on the exhibit up there, over the right-hand side,
22 they inserted commentary on the right-hand side. That's not
23 part of the actual exhibit itself. We would ask that any
24 exhibit that goes in, does not have the commentary that they
25 inserted into the exhibit, where they try to assert certain
26 events happened at certain points in time.

27 MR. BASILE: How about we arrive at what it is, let
28 us look at it. We'll say okay or no.

1 THE COURT: Mr. Reid.

2 MR. REID: The commentary was provided by Mr. Johnson
3 who was the person who downloaded from the pie historian to
4 the excel spread sheets. I can ask him the same questions
5 even if we redact the comments out.

6 THE COURT: What you submitted, does it have the
7 commentaries?

8 MR. REID: Yes, sir, we can redact that out.

9 THE COURT: The way you introduced this one, March
10 6th, 2017, all the rows including the unhighlighted ones, if
11 you can do the same for the other four dates without the
12 commentary. Let's do that, provide plaintiff's counsel copies
13 and then --

14 MR. REID: We'll get that done.

15 THE COURT: We'll make it part of the exhibits for
16 the jurors.

17 MR. REID: We'll get that done as quickly as
18 possible. Thank you, Your Honor.

19 THE COURT: Thank you. Okay. Then finely, I'm not
20 sure if we should put this whole story on the record. It's
21 come to the Court's attention that I mentioned this from, you
22 know, early on in the trial, this is a small courthouse.
23 Although, gentlemen of your experience, I'm sure you've tried
24 cases in all kinds of courthouses. It's not LA. This is much
25 smaller courthouse. I referenced there's restrooms
26 downstairs, it can get awkward using the restroom across the
27 hall, there are jurors there, it's a small hallway. We had a
28 previous incident where you're holding doors, ostensibly

1 being polite and whispering, making comments as parties are
2 exiting. Mr. Basile, Mr. Reid, it's the Court's understanding
3 that there were some kind of words exchanged in the hallway
4 during our 3:00 o'clock break. Mr. Reid.

5 MR. REID: Your Honor, if I may.

6 THE COURT: Briefly.

7 MR. REID: This morning when I was getting trial
8 boxes to bring them up front, Mr. Basile knocked me over. He
9 ran into me. I don't know whether it's intentional or not,
10 but given this afternoons comments. I have to wonder. I was
11 exiting the bathroom. We were in between the two doors. He
12 pulled the outer door shut and said, you don't ever want to be
13 in an F'ing room with me alone. I asked him if he was
14 threatening me. I asked if he was threatening physical
15 violence, at which point he said shut up. Your Honor, I've
16 never been treated this way in all my career. This is
17 absolutely beyond the pale, Your Honor. Yes, I raised my
18 voice, that's why it was heard out in the hallway. I was very
19 upset and very angry. I don't expect to be physically
20 assaulted in the courtroom. I don't expect to be threatened
21 with physical violence in the courtroom. That's -- I'm sorry,
22 Your Honor, that's why I'm kind of upset.

23 THE COURT: Understood. Thank you, Mr. Reid.
24 Mr. Basile. Just briefly, you're just making your record.

25 MR. BASILE: Thank you, Your Honor. I appreciate,
26 Your Honor. I assume Your Honor has been in the restroom
27 across the hallway there's a vestibule.

28 THE COURT: I'm familiar with the layout, yes.

1 MR. BASILE: As I was going in, he was coming out,
2 and I swear, I told the deputy, I swear I said, I don't ever
3 want to be alone in the room with you, Mr. Reid. That's what
4 I said. I don't ever -- for obvious reasons, us two together,
5 there's jurors right outside. I don't want to be -- it was
6 like ingest. I probably shouldn't have said it, that's what I
7 said, I don't ever want to be alone. As I walked to do my
8 business at the urinal, he screamed at me. He screamed at the
9 top of his lungs at me, are you threatening. I said quiet,
10 there's jurors outside. Be quiet, that's it.

11 So I'll say that there's one more thing, Your Honor,
12 please. When we're in recess, I go out the door. I've told
13 all my witnesses, my clients and everybody, go far down to the
14 end of the hall, away from all the jurors, away from
15 everybody. They are right here standing as close as I can to
16 Mr. Sullivan, with jurors there. So I'm just bringing that to
17 your attention, it's none of my business. I think this is
18 something that ought to be addressed. That's all I need to
19 say for the record. You're an experienced trial lawyer,
20 you've done heavy duty cases, I know, I'll submit it with
21 that, Your Honor.

22 THE COURT: You're all officers of the Court.
23 Actually, I'm a little surprised we're having this
24 conversation. That contact commentary, I probably shouldn't
25 be alone in the room. You're an officer of the court. I
26 understand, it's high pressure right now. It's high stakes.
27 I mentioned before, obviously both of you put a lot of work
28 into this case. You're both being zealous advocates for your

1 respective sides. To make commentary about, we probably can't
2 even talk, you should be able to, you know, have discussions
3 during breaks, be cordial with each other. And if you can't,
4 then don't say anything. Don't make comments, coming in or
5 out of the restroom, especially, Mr. Basile, we already had
6 last week one incident, I can't remember your name, ma'am.

7 THE WITNESS: Jane Cubos.

8 THE COURT: You ostensibly being polite, holding the
9 door for her, and you say, I can't wait to get you to the
10 stand. You made words to that effect. Up until now, you've
11 been very professional in front of the jury. You know, I
12 understand there's been incidents with exhibits, and some of
13 the witness things as I mentioned this morning. However, your
14 hands aren't clean in this either. This leaves a lot to be
15 desired. Some evidence the parties are seeking to admit but
16 use better judgment. That's all I'm going to say. If it
17 comes up again, I'm going to have to do something. What that
18 is, I guess I'm going to have to think about it further, but
19 we shouldn't be having this conversation.

20 So, please use better judgment, and this is -- you're
21 on strike two at this point, Mr. Basile. You tend to get a
22 little excited sometimes. I noticed that with objections,
23 and, you know, let the Court make it's ruling and then move
24 on. I go back, I'm sorry that, you know, on top of all this
25 stress, that you had your suits taken from you, you had
26 evidence, not evidence but, well, I guess.

27 MR. BASILE: Yes, it was.

28 THE COURT: Not evidence, you know, taken from your

1 car. It's a complete invasion of privacy. That's an awful
2 feeling. I'm very sorry to hear that.

3 MR. BASILE: James wants --

4 THE COURT: No. One moment. Again, Mr. Basile, use
5 better judgment. I'm not hearing any of this from
6 Mr. Sullivan. I've seen Mr. Sullivan get animated. It's
7 always directed towards the Court when making an argument.
8 When Mr. Sullivan, I imagine has just as much at stake here,
9 you know, being advocate for the Collins family, so.

10 MR. BASILE: All I want to say, Your Honor, you're
11 right, I'm wrong. I assure you, you can watch me, it will
12 never happen again in this trial. Mark my word for it, I'm
13 sorry.

14 THE COURT: You don't to have apologize to me,
15 please. Be more cordial with Mr. Schumann Mr. Reid. I only
16 know what I see here in court. Obviously judgments are drawn
17 from that. Was there something from.

18 MR. BASILE: Mr. Padilla is actually a witness to
19 what happened, Your Honor.

20 THE COURT: This is a strike on Mr. Basile, I'm not
21 going to go further into it. Mr. Reid, you know as I
22 mentioned, there's two restrooms over there, and if there's
23 something in terms of witnesses, you know better about jurors.
24 We don't need to have any jurors brought in here to be
25 questioned individually about, you know, they overheard
26 something with you, the witness, they overheard you.

27 MR. REID: Understood, Your Honor.

28 THE COURT: Not preaching, but discussing --

1 MR. SCHUMANN: We try to be there, down there.
2 There's no place to sit down there. We try and be down in
3 the --

4 THE COURT: The other side of the elevator or go down
5 stairs. Immediately outside the courtroom doors, that's where
6 the jurors sit.

7 MR. SCHUMANN: We'll try and find another spot closer
8 to the entrance. I don't think there's any -- I'd be
9 surprised if there was, this was intentional. Take your
10 witnesses, try to be more cautious, use your better judgment.

11 MR. REID: Yes, Your Honor.

12 THE COURT: Thank you. We'll see everyone tomorrow
13 morning. We try to open the doors up 10 to 15 minutes
14 earlier. I think we'll finish the calendar at 9:45. We'll
15 try to get you guys in here as soon as we can.

16 MR. SCHUMANN: Thank you.

17 THE COURT: Have a good evening.

18 MR. SCHUMANN: Have good evening, Your Honor.

19 (Proceedings adjourned.)

20 (Next Volume and Page number is Volume 9, Page 1401.)

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REPORTER'S CERTIFICATE

DENISE COLLINS; CHRISTOPHER COLLINS,)	
)	
Plaintiffs,)	
)	
vs	)	Case No. PSC1901096
)	
CPV SENTINEL ENERGY CENTER, LLC,)	
MOTT MACDONALD, LLC, GEMMA POWER)	
SYSTEMS, LLC, and DOES 1 to)	
15, Inclusive,)	
)	
Defendants.)	
)	

I, Demetria Bischoff, Certified Shorthand Reporter No. 12602, hereby certify:

On July 11, 2022, in the county of Riverside, state of California, I took in stenotype a true and correct report of the testimony given and proceedings had in the above-entitled case, pages 1206 - 1354, and that the foregoing is a true and accurate transcription of my stenotype notes and is the whole thereof.

DATED: Palm Springs, California, April 10, 2023.



Demetria Bischoff, CSR NO. 12602

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COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT - DIVISION TWO
APPEAL FROM THE SUPERIOR COURT OF RIVERSIDE COUNTY

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DENISE COLLINS and CHRISTOPHER) DCA No. E080233
COLLINS,)
Plaintiffs/Respondents,) Superior Court
vs.) Case No. PSC1901096
DIAMOND GENERATING CORPORATION,) Volume 9 of 19
Defendants/Appellant.) Pages 1401 - 1463
(1464 - 1600 Blocked)

REPORTER'S TRANSCRIPT ON APPEAL
BEFORE THE HONORABLE MANUEL BUSTAMANTE - DEPARTMENT PS2
July 11, 2022

APPEARANCES:

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SUPERIOR COURT - STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

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DENISE COLLINS; CHRISTOPHER)	
COLLINS,)	
)	
Plaintiffs,)	
)	
vs.)	Case No. PSC1901096
)	
CPV SENTINEL ENERGY CENTER, LLC,)	
MOTT MACDONALD, LLC, GEMMA POWER)	
SYSTEMS, LLC, and DOES 1 to 15,)	
Inclusive,)	
)	
Defendants.)	
)	
)	

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE MANUEL BUSTAMANTE
July 11, 2022

APPEARANCES:

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EXHIBITS

PLAINTIFF'S EXHIBITS:

NO.	DESCRIPTION	ID.	EVD.	RFSD.
8	PHOTOGRAPH	1461	N/A	
169	PHOTOGRAPH	1457	1458	
171	DOCUMENT	1458	1458	
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1 JULY 12, 2022 - MORNING SESSION

2 BEFORE THE HONORABLE MANUEL BUSTAMANTE

3 THE COURT: Let's formally call the matter of Collins
4 versus DG Corp. All counsel are present with the exception of
5 the Collins parties are not here today. Thank you, counsel
6 for coming in. Are we ready to proceed?

7 MR. REID: Yes, Your Honor.

8 MR. BASILE: Yes, Your Honor.

9 THE COURT: The Court reflected a little bit further
10 last night as to what occurred at the end of the day
11 yesterday. So moving forward, the Court tried to be lenient
12 in many respects, trying to put itself in the litigants shoes.
13 I've been dogmatic to the Court -- to the local rules on the
14 deadlines and everything; however, moving forward, so for
15 example, today, we're not going to have a repeat of yesterday
16 with the witnesses. If there's an objection, state it
17 clearly, and then we'll wait for the Court to make its ruling.
18 Then the witness can either answer or a new question will be
19 posed. Yesterday, there was a lot of speaking over, stepping
20 on each other, not waiting for the Court. Sometimes I have to
21 go back and make sure if I heard something correctly. So
22 let's wait for that.

23 Second, the altercation, I don't know what else to
24 call it from yesterday. I think it's plural altercations.
25 I'm not going to go through and list the rules of professional
26 conduct from the state bar right now. But you're to adhere
27 yourselves to that. Next time something happens, I'll set an
28 OSC. We'll have you come in on Friday and we will, as to why

1 sanctions should not be imposed. We really shouldn't be in
2 this position. So I'm hopeful moving forward that we can move
3 forward on the merits of the case and not all this other side
4 stuff that's occurring.

5 Deputy Lee, if we can bring in the jury.

6 MR. BASILE: Thank you, Your Honor.

7 (Pause in the proceedings.)

8 THE COURT: We're back on the record in Collins
9 versus DG Corp. Good morning.

10 THE JURY: Good morning.

11 THE COURT: All members of the jury are present.
12 We're going to resume with the cross-examination of
13 Mr. Forsyth.

14 Mr. Reid, whenever you're ready.

15 MR. REID: Thank you, Your Honor.

16 WAYNE FORSYTH,

17 called as a witness by Plaintiff, was previously sworn and
18 testified as follows:

19 CROSS-EXAMINATION RESUMED

20 BY MR. REID:

21 Q. Good morning, Mr. Forsyth.

22 A. Good morning.

23 Q. If I could have Exhibit 481, the asset management
24 agreement, please, enlarged. Thank you.

25 Mr. Forsyth, you are familiar with this asset
26 management agreement; is that correct?

27 A. Vaguely, yes.

28 Q. Okay. You weren't involved in drafting this

1 agreement or the negotiations with this agreement, correct?

2 A. Correct.

3 Q. You're generally aware of what it provides for?

4 A. Yes.

5 Q. It's dated May 26th, 2011, that was before the plant
6 opened or construction began, correct?

7 A. Before they did the commercial operations date.

8 Q. Look at page 5, please, upper highlighted text. This
9 asset management agreement dated May 26th, 2011, the effective
10 date is hereby entered into between CPV Sentinel LLC, Delaware
11 company and the project company and CPV Sentinel Management,
12 LLC, a Delaware Limited Liability Company, the asset manager
13 together with the project company, the contract company, the
14 parties and each individually a party. CPV Sentinel was the
15 owner of the project, correct?

16 A. Yes.

17 Q. And the asset management company was who Mark
18 McDaniels worked for, the asset manager for Sentinel?

19 A. Correct.

20 Q. Scroll down, please. Then where the project company
21 desires to retain the asset manager and provide --

22 THE REPORTER: Please slow down.

23 MR. REID: I'm sorry.

24 Q. BY MR. REID: Where the project company desires to
25 retain the asset manager to provide certain administrative and
26 asset management services to the company in connection with
27 the construction, management and operation of the project, and
28 the asset manager desires to accept such retention and perform

1 such asset management services, all on the terms and subject
2 to the conditions set forth in this agreement.

3 Mr. Forsyth, because there was an asset manager for
4 this project, your role at the Sentinel facilities was
5 limited, correct?

6 A. That's correct.

7 Q. Page 10, please. And the operator referred to in
8 this agreement is DGC Operations LLC, correct?

9 A. Correct.

10 Q. Okay. Page 20, paragraph 3 or paragraph C, please.
11 The asset manager shall be the designated representative for
12 the project company to the operator for the project and shall
13 oversee the operating agreement.

14 The operating agreement is being referred to in this
15 paragraph as the O and M agreement, the operations and
16 management agreement, correct?

17 A. Correct.

18 Q. Did you understand that operations and management
19 agreement to be between CPV Sentinel, the owner of the program
20 and DGC Operations?

21 A. Yes.

22 Q. Page 25, please. The asset manager will be
23 responsible to supervise and manage the operator, who will be
24 responsible for day-to-day compliance at the project site with
25 the projects environmental health and safety program and its
26 governmental approvals.

27 The environmental health and safety program that
28 included all of the policies and procedures that you provided

1 templates to Mr. Aaberg, correct?

2 A. Correct.

3 Q. Okay. And so it was the asset manager's
4 responsibility to manage the operator, DGC Operations, they
5 were required to be responsible for all of those policies and
6 procedures, correct?

7 A. Correct.

8 Q. Okay. If I could have Exhibit 414.

9 MR. REID: This is the operations and maintenance
10 agreement, Your Honor, I believe it's been stipulated to.

11 THE COURT: Yes.

12 MR. REID: Thank you, Your Honor.

13 Q. BY MR. REID: Yeah. If you just enlarge the date at
14 the bottom for me. Yep. So this agreement is also dated
15 May 26th, 2011, correct?

16 A. Correct.

17 Q. These agreements were, to your knowledge, negotiated
18 in conjunction with each agreement as far as operating the
19 Sentinel facility, correct?

20 A. Correct.

21 Q. And page 6, please. At that first paragraph,
22 operations and maintenance agreement, the agreement dated as
23 of May 26th, 2011, effective date, by and among CPV SENTINEL
24 LLC, the operator and that just confirms what you said?

25 A. Correct.

26 Q. Page 12, please. O and M manuals means
27 administrative procedure manual, operating and maintenance
28 activities and procedures and schedules, plant assessments,

1 system descriptions and Lockout/Tagout procedures,
2 housekeeping, loss prevention, security, training, safety,
3 water chemistry and environmental manuals and compliance,
4 together with the documents and schedules prescribed in the
5 manuals?

6 The operations and maintenance agreement covered all
7 of those subjects, correct?

8 A. Yes.

9 Q. It was the operator DGC's OPS responsibility to keep
10 all of those policies and procedures up to date, correct?

11 A. Correct.

12 Q. It was also the operators responsibility to provide
13 for training at the plant, correct?

14 A. Correct.

15 Q. Its also their responsibility to provide
16 Lockout/Tagout procedures, and the steps in the LOTOs,
17 correct?

18 A. Correct.

19 Q. Page 15, please. This is Article 3, responsibilities
20 of the operator, and page 22, this is section 3.14 of the
21 responsibilities of the operator. Beginning with the second
22 line, "Operator will review the existing O and M manuals for
23 owner and make recommendations if needed on O and M manuals
24 modifications as soon as practical after the takeover date.
25 The operator will maintain, update and update the O and M
26 manuals required throughout the term and maintain a complete
27 set of drawings at the facility."

28 Then this is all subject to the owner, which would

1 have been CPV Sentinel and review and approval, correct?

2 A. Correct.

3 Q. And inside the parenthesis including the EH and S
4 program materials, that would have included all of the
5 policies and procedures that we've discussed?

6 A. Correct.

7 Q. Did you ever conduct any training in person at the
8 plant?

9 A. I think I did NERC training but no EH and S training.

10 Q. Exhibit 204, please. And this is a record of
11 training and you were the instructor Wayne Forsyth and subject
12 covered, if you can review that quickly.

13 A. Yes, that's correct.

14 Q. And that's the training you conducted at the plant,
15 correct?

16 A. Correct.

17 Q. The date here 1-16 and 1-25 and other evidence has
18 indicated that this occurred in 2013; is that correct, so
19 January of 2013?

20 A. Correct.

21 Q. So prior to the plant opening you conducted NERC
22 training at the plant, correct?

23 A. Correct.

24 Q. What does N E R C stand for?

25 A. Northern American Electrical Liability Corporation.

26 Q. To your knowledge, is this the only training that you
27 ever conducted at the Sentinel facility prior to the incident?

28 A. I believe so. I don't recall any other training.

1 Q. Okay. Does NERC training include anything regarding
2 Lockout/Tagout procedures?

3 A. No.

4 Q. After the plant opened in approximately August of
5 2013, for commercial operations, did the asset manager Mark
6 McDaniels hire an outside contractor to conduct NERC training
7 at the facility?

8 A. Yes.

9 Q. At some point in time, did you have a disagreement
10 involving Mark McDaniels and Tom Walker?

11 A. Tom Walker.

12 Q. And Mark McDaniels was present for the disagreement;
13 is that correct?

14 A. Yes.

15 Q. After that disagreement, did Tom Walker and Mark
16 McDaniels restrict your access to the plant?

17 A. I didn't know who it was. I just knew that my access
18 was restricted.

19 Q. Referring to the Lockout/Tagout procedure that was in
20 use on March 6th, 2017, the day Mr. Collins was killed. Have
21 you reviewed that particular LOTO sheet prior to the incident?

22 A. No.

23 Q. All right. For you to do a review of that LOTO sheet
24 and to ensure that the steps in the LOTO sheet would properly
25 reduce the pressure inside the system, what would you have to
26 have had in your possession?

27 A. I would have had to have the P and ID, which is the
28 drawing, I also would have had to have training to become a

1 qualified person at the site. Every facility has different
2 valving and electrical, that kind of determines how you
3 isolate equipment. So you would have to have all of that
4 training to be qualified to know that.

5 Q. Would you have also had the copy of the
6 Lockout/Tagout sheet?

7 A. Yes.

8 Q. And would you also have had to have access to the
9 fuel filter skid?

10 A. Yes.

11 Q. And at any point in time prior to the incident, did
12 you have a PI and D diagram?

13 A. No.

14 Q. Did you have a copy of the LOTO sheet?

15 A. No.

16 Q. Were you granted access to the facility to review the
17 LOTO sheet?

18 A. No.

19 Q. And then finally, were you trained to become a
20 qualified employee at the Sentinel facility prior to this
21 incident?

22 A. No.

23 Q. Throughout the period of time from before the plant
24 opened until the date of Mr. Collins's unfortunate incident
25 when he was killed, did you occasionally recommend training
26 topics to people at Sentinel?

27 A. Yes.

28 Q. Did you have any ability to require them to conduct

1 training on those topics?

2 A. I had no ability to enforce the training.

3 MR. REID: Okay. That's all the questions I have,
4 Your Honor.

5 THE COURT: Thank you, Mr. Reid.

6 Mr. Basile.

7 MR. BASILE: Yes. Thank you, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. BASILE:

10 Q. Mr. Forsyth, Diamond Generating Operations is a
11 wholly owned subsidiary of Diamond Generating Corporation;
12 isn't that true?

13 MR. REID: Calls for speculation.

14 THE COURT: Overruled.

15 THE WITNESS: I believe so, yes.

16 Q. BY MR. BASILE: And you believe safety should start
17 at the top; isn't that true?

18 A. Yes.

19 Q. Now -- and you also believe that corporations that
20 are in the business of producing and selling electricity
21 should pay as much attention to safety as they do production?

22 A. Yes.

23 Q. All right. Now, deputy, can I have the -- you talked
24 about some of those other plants where Diamond Generating
25 Corporation was the asset manager, correct, do you remember
26 that?

27 A. Yes.

28 Q. I want to talk to you a little bit about that. Those

1 plants were Larkspur, Indigo and Mariposa, right?

2 A. Yes.

3 Q. And Diamond Generating Corporation had a 100 percent
4 financial interest in those three plants; isn't that true?

5 A. Yes.

6 Q. And at those plants, Diamond Generating Corporation
7 hired the manager?

8 A. Yes.

9 Q. Their manager at those plants were to report to
10 executives at Diamond Generating Corporation; isn't that true?

11 A. They were to report to the VP of O and M, yes.

12 Q. That would be at Diamond Generating Corporation
13 executive, the VP of O and M?

14 A. Yes.

15 Q. They would -- Diamond Generating Corporation at these
16 plants would provide a job description to the manager they
17 were hiring there; isn't that true?

18 MR. REID: Calls for speculation.

19 THE COURT: Overruled. If you know.

20 MR. REID: Yes.

21 Q. BY MR. BASILE: That job description for the manager
22 of these plants would cover his implementation of safety at
23 the plant; isn't that true?

24 A. Yes.

25 Q. They also, Diamond Generating Corporation would
26 provide safety policies to be used at these plants; isn't that
27 true?

28 A. Yes.

1 Q. They would have quarterly meetings at Diamond
2 Generating Corporation head quarters in Los Angeles of the
3 managers of these plants; isn't that true?

4 A. They would do them frequently, but I don't think they
5 did them every single quarter.

6 Q. But frequently?

7 A. Frequently.

8 Q. They would be at the corporate head quarters downtown
9 LA?

10 A. Yes.

11 Q. Now, Diamond Generating Corporation and these
12 facilities would occasionally update the safety procedures of
13 these facilities; isn't that true?

14 A. Yes.

15 Q. The manager at these facilities would communicate
16 with Diamond Generating corporate asset manager; isn't that
17 true?

18 A. Yes.

19 Q. They would also do audits of the LOTO systems at
20 these plants; isn't that true?

21 A. Yes.

22 Q. In fact, you, yourself, had done audits of the LOTO
23 systems at these plants; isn't that true?

24 A. Yes.

25 Q. When you're doing an audit, you would review the LOTO
26 sheets, right?

27 A. Yes.

28 Q. If you would find there was more than one installer

1 on a sheet, that would be a problem, right?

2 A. I would question why.

3 Q. Right. And to question why, you would go back to the
4 management or the workers, somebody, to get an answer to that
5 question, right?

6 A. I would go to the plant manager.

7 Q. Right. If you saw there was more than one verifier,
8 you would say, what's going on here and go to the plant
9 manager, right?

10 A. For clarification, yes.

11 Q. Now, if you saw a series of these red flags, over say
12 10 or 12 LOTO sheets, that would be pretty serious situation,
13 wouldn't it?

14 A. It would depend on the circumstances why they had
15 multiple people.

16 Q. Right. If the circumstances were involving a high
17 pressure fuel filter skid, and you saw multiple LOTO sheets,
18 where there's different initials, different people being
19 followed, no times on the tags, that would be a big problem,
20 wouldn't it?

21 A. Yes.

22 Q. Now, let's talk about the Sentinel Energy Center for
23 a moment. Sentinel Energy Center, let's says this, that whole
24 circle there, who this is, who has interest in the Sentinel
25 Energy Center, follow me?

26 A. Yes.

27 Q. Now, at the Sentinel Energy Center, Diamond
28 Generating Corporation had a 50 percent financial interest in

1 that plant; isn't that true?

2 A. Yes.

3 Q. And there were two other investment groups; isn't
4 that true?

5 A. Yes.

6 Q. And each of those investment groups ad a 25 percent
7 interest; isn't that true?

8 A. Yes.

9 Q. Now, this Mark McDaniels, he represented these two 25
10 percent investment groups; isn't that true?

11 MR. REID: Lacks foundation.

12 THE COURT: Overruled. If he knows.

13 THE WITNESS: My understanding as the asset manager,
14 he represented a hundred percent of the project.

15 Q. BY MR. BASILE: Okay. Is it your testimony that Paul
16 Sheppard was not the asset manager at Sentinel Energy
17 facility.

18 A. Yes.

19 Q. Okay. Could we have 386, I believe. 368, please.
20 Could you zoom in on Mr. Sheppard. Now Paul Sheppard was the
21 vice president of portfolio and asset management in 2014 to
22 2019, do you agree with that?

23 A. Yes.

24 Q. He was the corporate executive at Diamond Generating
25 Corporation; isn't that true.

26 A. Yes.

27 Q. Now, Paul Sheppard was asset manager at Sentinel
28 Energy Center facility; isn't that true?

1 A. No.

2 Q. And it's important for the manager of the Sentinel
3 Energy Center to communicate with the asset manager; isn't
4 that true?

5 A. Could you repeat that.

6 Q. Well, it's important for the manager of the Sentinel
7 Energy Center to communicate with the asset manager as you
8 call it, right?

9 A. Correct.

10 MR. BASILE: Your Honor, I'd like to play from
11 Mr. Walker's deposition, page 102, 19, I'm sorry.

12 MR. REID: Lacks foundation, Your Honor, relevance.
13 There's no question pending.

14 MR. BASILE: I'm sorry. I'd like to play from 116,
15 lines 11 through 20 of Mr. Walker's deposition, Your Honor.

16 THE COURT: Okay. The line of questioning currently
17 is that asset manager communicating with the plant manager, so
18 Tom Walker is the --

19 MR. BASILE: Plant manager.

20 THE COURT: Relevance.

21 MR. BASILE: Yes, his communication.

22 THE COURT: Okay. But Mr. Forsyth is on the stand.

23 MR. BASILE: Right. He is, and this is -- I want to
24 question him about this. It's opposite to what he just said,
25 Your Honor.

26 THE COURT: Didn't he agree with you?

27 MR. BASILE: He disagreed.

28 THE COURT: "Well, it's important for the manager of

1 the Sentinel Energy Center to communicate with the asset
2 manager as you call it, right?"

3 "Correct."

4 MR. BASILE: The question before that. I'll ask it
5 again, Your Honor.

6 THE COURT: He's in agreement with you. Then you
7 asked to play Mr. Walker's testimony. The only disagreement
8 was from Mr. Forsyth when you asked him, "Now, Paul Sheppard
9 was the asset manager at Sentinel Energy Center facility;
10 isn't that true?" And the witness answered, "No." And then
11 you went on. I wasn't sure if you heard that.

12 MR. BASILE: That's what I'm addressing, Your Honor.

13 THE COURT: I wasn't sure if you heard the answer.
14 Okay. So the objection is sustained.

15 Q. BY MR. BASILE: Okay. I'd like to play 102, 19
16 through 104, 12 of Mr. Walker's deposition?

17 MR. REID: Same objection, Your Honor.

18 THE COURT: Objection sustained.

19 Q. BY MR. BASILE: Have you had an opportunity to review
20 Mr. Walker's testimony that was played in court here?

21 A. Other than when I was at stand earlier.

22 Q. Okay. Do you know that Mr. Walker has testified that
23 Paul Sheppard was the asset manager of the Sentinel Energy
24 Center facility?

25 MR. REID: Calls for speculation.

26 THE COURT: Overruled.

27 THE WITNESS: That's when I saw him on the video of
28 his deposition.

1 Q. BY MR. BASILE: You watched the video of his
2 testimony.

3 A. The one that when I was sitting here on the stand.

4 Q. Okay. And did you hear Mr. Walker testify that
5 whenever he would want to talk to an asset manager, that the
6 person he would always contact was Paul Sheppard do you recall
7 that testimony?

8 MR. REID: Misstates the testimony, Your Honor, lacks
9 foundation.

10 MR. BASILE: It's cross-examination.

11 THE COURT: It's overruled. If you recall,
12 Mr. Forsyth.

13 THE WITNESS: What I recall was that Tom Walker had
14 said that under his interpretation that Paul Sheppard was
15 asset manager.

16 Q. BY MR. BASILE: Right. Okay. Let's go back to the
17 asset manager you spoke of or the asset management agreement
18 you just spoke of, right, you said Mark McDaniels was the
19 asset manager, correct?

20 A. Correct.

21 Q. And isn't it true Mr. Walker has testified that Paul
22 Sheppard was the asset manager.

23 MR. REID: Lacks foundation, Your Honor.

24 THE COURT: Overruled.

25 THE WITNESS: I don't know what he testified to. My
26 understanding was what he showed was in the testimony, I
27 didn't think that he was testifying.

28 MR. BASILE: With that, Your Honor, I'd like to play,

1 102, 9 through 104, 12.

2 MR. REID: Same objection, Your Honor, relevance.

3 THE COURT: Sustained on relevance.

4 MR. BASILE: Then 116, 11 through 20. I'll move on,
5 Your Honor. I think I made my point. That's fine.

6 THE COURT: Objection sustained.

7 MR. REID: Thank you, Your Honor.

8 Q. BY MR. BASILE: I'd like to go back to my list here.
9 Now, at the Sentinel Energy Center, Diamond Generating
10 Corporation hired the plant manager; isn't that true?

11 MR. REID: Calls for speculation.

12 THE COURT: Overruled.

13 THE WITNESS: Correct.

14 Q. BY MR. BASILE: And when they hired the plant manager
15 at Sentinel, he was to report to executives at Diamond
16 Generating Corporation; isn't that true?

17 A. To the O and M manager, yes.

18 Q. Okay. Deputy, I must have done something wrong here.
19 So he would report and they provided Diamond Generating
20 Corporation provided the job of the manager at the Sentinel
21 Energy Center; isn't that true?

22 A. Yes.

23 Q. And that job description included his performance in
24 safety; isn't that true?

25 A. Yes.

26 Q. And they provided policies, safety policies to the
27 Sentinel Energy Center; isn't that true?

28 A. Yes.

1 Q. Diamond Generating Corporation had these quarterly
2 meetings on frequent meetings page as you call it, with the
3 manager at the Sentinel Energy Facility at the Diamond
4 Generating head quarters in Los Angeles; isn't that true?

5 A. With all the plant managers for all the facilities.

6 Q. So that's true, right?

7 A. Yes.

8 Q. And in September -- in the fall of 2016, leading up
9 to January of 2017, Diamond Generating Corporation was
10 reviewing safety procedures at the Sentinel Energy facility;
11 isn't that true?

12 A. Yes.

13 Q. Now, you're saying that Diamond Generating
14 Corporation was not responsible for safety at the Sentinel
15 Energy Center, is that your position, sir?

16 MR. REID: Calls for legal conclusion, Your Honor.

17 THE COURT: Overruled as phrased.

18 THE WITNESS: Everybody is responsible for safety. I
19 mean, I don't know how to answer that.

20 Q. BY MR. BASILE: Okay. So Diamond Generating
21 Corporation was responsible for safety at the Sentinel Energy
22 Center when Daniel Collins was killed; is that what your
23 telling us?

24 MR. REID: Still calls for legal conclusion,
25 Your Honor.

26 THE COURT: Overruled.

27 THE WITNESS: Yes.

28 MR. BASILE: Thank you. Nothing further.

1 RE CROSS EXAMINATION

2 BY MR. REID:

3 Q. Mr. Forsyth, did Mark McDaniels have an office at the
4 Sentinel facility?

5 A. Yes.

6 Q. Was he on site more than once a week?

7 A. The majority of the time, I understand.

8 Q. And on the limited occasions that you were at the
9 facility, did you see Mr. Walker communicating with
10 Mr. McDaniels?

11 A. Yes.

12 Q. To your knowledge, did Mr. McDaniels conduct audits
13 of the LOTO procedures or not the procedures, excuse me. The
14 LOTO sheets at the facility?

15 A. Not directly. He would have third parties come in.

16 Q. Do you know if he personally ever went into the
17 control room and pulled out the log book and looked at the
18 LOTO sheets?

19 A. No.

20 Q. So you don't know?

21 A. No.

22 Q. The updates to these safety procedures that were
23 discussed by plaintiff's counsel, in the fall of 2016, were
24 you involved in that process at all?

25 A. No.

26 MR. REID: No further questions, Your Honor.

27 THE COURT: Thank you, Mr. Reid.

28 Mr. Basile.

1 MR. BASILE: Nothing further, Your Honor.

2 THE COURT: Subject to recall?

3 MR. REID: Yes, Your Honor.

4 THE COURT: Okay. Mr. Forsyth, counsel will let you
5 know if you're needed back. So you're still under the order
6 to return to court. Counsel will let you know.

7 THE WITNESS: Okay.

8 THE COURT: Thank you for your time.

9 Mr. Basile that concludes the testimony of
10 Mr. Forsyth called in your case in chief. I believe you have
11 your next two.

12 MR. BASILE: The Goodmans.

13 THE COURT: The Goodman witnesses.

14 MR. BASILE: And my paralegal is checking to see if
15 they are here. I didn't know how long it would go. I'm
16 saying 1:00 o'clock.

17 THE COURT: We will take our break at 11:00.

18 MR. BASILE: We call Bob Goodman.

19 THE CLERK: You do solemnly state that the evidence
20 you shall give in this matter shall be the truth, the whole
21 truth, and nothing but the truth, so help you God?

22 THE WITNESS: I do.

23 THE CLERK: Thank you. Please be seated.

24 THE WITNESS: Thank you.

25 THE COURT: Mr. Basile, before we begin, if we -- I'm
26 not sure if we discussed in beginning, we have an exclusion of
27 witnesses.

28 MR. BASILE: This is Denise Collins, Your Honor.

1 THE COURT: Okay. Sorry.
2 MS. COLLINS: My son will be walking in shortly.
3 THE COURT: Sorry.
4 MR. BASILE: No problem, Your Honor. That's fine.
5 THE CLERK: Please state and spell your first and
6 last name for the record.
7 THE WITNESS: Robert Goodman.
8 THE CLERK: Spell it, please.
9 THE WITNESS: Spell the last name.
10 THE CLERK: Both.
11 THE WITNESS: R-o-b-e-r-t G-o-o-d-m-a-n.
12 THE CLERK: Thank you.

13 ROBERT GOODMAN,
14 called as a witness by Plaintiff, was sworn and testified as
15 follows:

16 DIRECT EXAMINATION

17 BY MR. BASILE:

18 Q. Good morning, Mr. Goodman.
19 A. Good morning.
20 Q. How are you doing right now?
21 A. Doing pretty good. All right.
22 Q. And where are you from?
23 A. Seattle, Washington.
24 Q. When did you get down here?
25 A. Yesterday afternoon.
26 Q. Now, you knew Daniel Collins?
27 A. Uh-huh.
28 Q. Is that "yes"?

1 A. Yes.

2 Q. Okay. We have to answer with words because the court
3 reporter, uh-huhs are kind of hard to take down for her.
4 Let's talk a little bit about Exhibit 301, just so we all see
5 who we're talking about. These exhibits that are going to
6 come up on that monitor in front of you or you can always look
7 over your left hand shoulder, the big screen. This is the guy
8 we're talking about?

9 A. Yeah.

10 Q. When did you first meet him?

11 A. I met Dan in -- we were in high school. Probably, I
12 think we were 15 years old.

13 Q. Where was that?

14 A. That was on Whidbey Island, Washington.

15 Q. Where is Whidbey Island, generally?

16 A. About an hour north of Seattle.

17 Q. It's in the Puget Sound?

18 A. It's in Puget Sound area.

19 Q. You have to get there by ferry?

20 A. There's a bridge on the north and there's a ferry on
21 the south.

22 Q. This picture we have up of Dan, does that appear to
23 be on one of the ferry's to Whidbey Island?

24 A. It looks like it, yeah.

25 Q. So let's go back to when you first met him, about how
26 old were you?

27 A. Fifteen.

28 Q. And you met him where?

1 A. I was at a friend's house. We were having a little
2 get together. And we just, yeah, we just ran into each other
3 and the rest is history, you know.

4 Q. Were you friends with him the rest of his life?

5 A. Yeah.

6 Q. Let's talk about the early life when you first met
7 him. Did you spend time with Dan in what his life was at that
8 time, I mean with his family, where he was living and what was
9 going on with him?

10 A. I'm not sure I understand the question.

11 Q. I'm trying to get to, what you knew of Dan's home
12 life when you first met him. Did you have a familiarity with
13 what his home life was like when you first met him?

14 A. Yeah, when I first met him, they lived on a farmhouse
15 up by Whidbey Island. His mom and his stepdad and his
16 brother. And I guess it was like any farmhouse living. You
17 know, you do your chores. You get up early, take care of
18 cows, all that. He had a pretty good life.

19 Q. Yeah. Now, did you and him, through high school,
20 start talking about the military?

21 A. Yeah. We were going to join the military together,
22 the Navy. And he went ahead and signed up, did that. I kind
23 of backed out on him. I got cold feet.

24 Q. How old was he when he signed up?

25 A. Seventeen, I think it was.

26 Q. Was it before or after he graduated from high school?

27 A. It was -- oh, man. I think it was after. I can't
28 remember exactly.

1 Q. Shortly after?

2 A. Yeah.

3 Q. And what was his -- how would you describe his
4 behavior whenever he told you he was enlisted?

5 A. He was excited about it. I think that's what he
6 wanted to do, and he did it.

7 Q. How was his reaction when you told him you weren't
8 going to hold up your end of the deal?

9 A. He wasn't that mad about it.

10 Q. Did you later go into the military?

11 A. I went in in 1996. So it was a few years later.

12 Q. Okay. What branch?

13 A. Air force.

14 Q. And what's your occupation today?

15 A. Aircraft mechanic.

16 Q. Did you learn that through your time in the air
17 force?

18 A. I did. That's what I was a crew chief in the air
19 force.

20 Q. Did Dan have any part in encouraging you to go into
21 the military?

22 A. Yeah. I kind of saw, you know, how it was working
23 out for him, and he was -- he was pretty successful at it. I
24 thought I should give it a shot.

25 Q. Okay. Now, Dan was stationed much of the time in
26 San Diego; is that correct?

27 A. Yes.

28 Q. And nonetheless, you and him kept in touch over the

1 years, right?

2 A. More or less, yeah. There was a time there where we
3 were both in the military, you know, it kind of -- kind of
4 puts a hamper on things. It was before cell phones. So kind
5 of split a part a little bit but --

6 Q. Do you consider him one of your best friends?

7 A. Yeah, my best friend, yeah.

8 Q. Your best friend in your life?

9 A. Yeah.

10 Q. So after a period of time and Christopher was born,
11 would Dan bring his whole family, Denise and Chris up to
12 Seattle area?

13 A. Yeah, all the time.

14 Q. How often would they come?

15 A. Oh, every -- well, I wasn't there for a period of
16 time, but when I came back, they would probably come up every
17 year or two.

18 Q. And so you watched the relationship between Daniel
19 and Chris or Daniel and Denise like grow over these years?

20 A. Oh, yeah.

21 Q. Do you remember when Daniel told you he was getting
22 married?

23 A. I don't actually.

24 Q. Okay. Did you go to the wedding?

25 A. I was there, yes.

26 Q. Okay. And when they would come visit, they would
27 bring Chris with you, right?

28 A. Uh-huh, yes.

1 Q. Let's talk about some things you would do. Let's
2 look at Exhibit 311, please. Exhibit 311.

3 MR. REID: Objection, Your Honor, cumulative.

4 THE COURT: Overruled at this point.

5 Q. BY MR. BASILE: Do you recognize this photograph?

6 A. Yes, I do.

7 Q. Who's in it?

8 A. That is Denise, Chris and Dan.

9 Q. And were you along on this outing?

10 A. Yes. Yes. I either took the picture or I was
11 probably standing right there.

12 Q. Where is this?

13 A. This is a bowling alley up in Seattle.

14 Q. What is Dan holding in his hand?

15 A. Looks like -- looks like a menu for Hooter's, it's a
16 Hooter's restaurant.

17 Q. Is that where you guys were?

18 A. Yeah.

19 Q. And I see in the back right, looks like some bowling
20 balls, was this at a bowling alley?

21 A. It was a restaurant bowling alley, yeah.

22 Q. It was a Hooter's bowling alley?

23 A. Yeah.

24 Q. I didn't know they had those. Looks like this is a
25 really fun time?

26 A. Yeah, it was Chris's first visiting to Hooter's.

27 Q. And that look on Dan's face there, you see, what does
28 that tell you?

1 A. I think he's -- it's a proud moment for him.
2 Q. Taking his son to Hooter's.
3 A. Yeah.
4 Q. So there was many of these occasions that they do
5 different things when they come to visit together?
6 A. Yeah.
7 Q. 330, please.
8 MR. REID: Objection, Your Honor, cumulative.
9 THE COURT: Overruled.
10 Q. BY MR. BASILE: What's going on in this picture, 330?
11 A. This I think -- this might have been one of the last
12 times they came up to visit. We were -- we were bar hopping,
13 this was just one of the local breweries by our house in
14 Seattle.
15 Q. And was Denise with you on this occasion?
16 A. Yes, she was.
17 Q. And was this -- can you give a timeframe about when
18 it was, assuming he passed in March of 2017?
19 A. Would have been 2016, I believe.
20 Q. Fall, late fall or --
21 A. Summer, fall, somewhere right around there.
22 Q. And was Denise with you?
23 A. Yes.
24 Q. And what would you be doing with Denise and Dan and
25 you and you'd have your wife with you?
26 A. Yeah, we were all there, yeah.
27 Q. What's your wife's name?
28 A. Beth.

1 Q. She also here?

2 A. She's here.

3 Q. Okay. So was Chris along on this episode?

4 A. No, he was not.

5 Q. And looking at this, this is how you remember Dan?

6 A. Oh, yeah, definitely.

7 Q. Okay. What type of personality would you say he had?

8 A. Oh, great personality, just a loving, you know, loved
9 everybody. He was kind, nice guy. Friendly. I think
10 everybody he ran into, you know, he could make friends with
11 right-a-way.

12 Q. 333, please.

13 MR. REID: Objection, Your Honor, cumulative.

14 THE COURT: Sustained.

15 Q. BY MR. BASILE: Okay. Did they --

16 THE COURT: If we can please remove that.

17 MR. BASILE: You can take it down.

18 Q. BY MR. BASILE: Tell the jury some other things they
19 would do up there as a family when they visit?

20 A. Besides visiting, you know, they would drive up to
21 his mom's house, stayed there for a while, just visit. His
22 grandma also lived up there. They would go visit his grandma.
23 And just kind of cite see, go to different places around
24 Seattle. Do family stuff.

25 Q. Do you know a place called Snoqualmie Falls?

26 A. Snoqualmie Falls, I think probably every visit they
27 went up there. Really nice area.

28 Q. Was that a special place for them as a family as you

1 saw?

2 A. Yeah, it's really pretty up there.

3 Q. 286, already in evidence, please. How long did you
4 know -- you said you were at their wedding rate?

5 A. Yes.

6 Q. And you were at the funeral, right?

7 A. Yes.

8 Q. How big was that funeral?

9 A. Lot of people there. Lot of people there. I would
10 like to have that many people at my funeral.

11 Q. Were you a pallbearer at that?

12 A. Yes.

13 Q. Were you able, when they got to the graveyard, to
14 actually get up to be a pallbearer?

15 A. Actually we -- my wife and I arrived late because so
16 many people and parking at the graveyard was kind of limited.
17 So, I got there just few minutes after.

18 Q. Since this has happened, have you noticed a loss that
19 Denise has suffered by Dan?

20 A. Yes, definitely.

21 Q. Can you tell us a little bit about that?

22 A. She to him was everything. He loved her so much and
23 talked about her all the time, yeah.

24 Q. How about Chris and Denise or Chris, I'm sorry. How
25 about the loss that you seen in Chris's health?

26 A. I can't imagine losing my father. He's still pretty
27 young. It was very hard on him. At the funeral, he broke
28 down.

1 Q. Okay. But you saw a lot of joy in their life
2 together, didn't you?

3 A. Oh, yeah.

4 Q. Okay.

5 A. There was a lot of joy.

6 Q. Right. That's what's most important?

7 A. Yeah.

8 Q. Okay. All right. Thank you.

9 MR. BASILE: Nothing further.

10 MR. REID: No questions, Your Honor.

11 THE COURT: Thank you Mr. Goodman.

12 Mr. Basile.

13 MR. BASILE: Beth Goodman, please.

14 THE COURT: Is someone going to get her?

15 Deputy Lee, can you see.

16 MR. BASILE: Beth Goodman.

17 THE COURT: Beth Goodman.

18 Thank you deputy.

19 THE CLERK: You do solemnly state that the evidence
20 you shall give in this matter shall be the truth, the whole
21 truth, and nothing but the truth, so help you God?

22 THE WITNESS: I do.

23 THE CLERK: Please be seated. State and spell your
24 first and last name for the record.

25 THE WITNESS: Elizabeth Goodman, E-l-i-z-a-b-e-t-h
26 G-o-o-d-m-a-n.

27 THE CLERK: Thank you.

28 ELIZABETH GOODMAN,

1 called as a witness by Plaintiff, was sworn and testified as
2 follows:

3 DIRECT EXAMINATION

4 BY MR. BASILE:

5 Q. Good morning, Ms. Goodman.

6 A. Good morning.

7 Q. It's nice to meet in person. We met on Zoom a few
8 times, right?

9 A. Yes.

10 Q. You've come down from Seattle with your husband Bob?

11 A. Yes.

12 Q. You've known the Collins family for sometime?

13 A. Yes.

14 Q. When did you first meet Denise and Daniel?

15 A. I met Denise and Dan for the first time in 2006. My
16 now husband Bob and I were dating for about a year, and he
17 brought me down for a visit to Hemet to meet Dan, who was his
18 best friend and his wife Denise.

19 Q. And we've heard a lot about that. I'm going to be
20 very brief with you.

21 A. Sure.

22 Q. How would you describe the relationship between Dan
23 and Denise?

24 A. Dan and Denise had an amazing relationship. When Bob
25 and I got married in 2013, we had Dan and Denise sign our
26 marriage license as our legal witnesses because their
27 relationship was one that we admired and looked up to. They
28 were so thoughtful of one another and so close. There were

1 always pictures of events and things that they would do
2 together. They always would pick things up if they were
3 running errands for one another. They just loved each other,
4 and being near them was like, it was relationship goals.

5 Q. You know every relationship has rocky spots though,
6 right?

7 A. Sure.

8 Q. Did you see any rocky spots in their relationship?

9 A. Nothing beyond like little frustrations, nothing
10 serious.

11 Q. You saw a lot of joy and happiness in them being
12 together?

13 A. Always.

14 Q. How about with Chris, how would you describe Dan's
15 relationship with his son?

16 A. Daniel was so proud of Chris. He was so proud that
17 Chris decided to go into the Navy. He was broken hearted
18 hearted when Chris was in high school as a senior and was
19 having prom, and I had posted on Facebook about coming down to
20 be with Denise and Christopher for that, and Daniel commented
21 odd that post that he was missing out on all of the important
22 milestones in Christopher's life. And so it was really hard
23 for Daniel when he was deployed and would have to be away from
24 the family.

25 Q. When he retired from the Navy, did Daniel express to
26 you how he was looking forward to spending the rest of his
27 life with Chris and Denise?

28 A. Yeah. We were all really excited about their plans.

1 Daniel and Denise came up for a visit when Daniel was getting
2 ready to discharge from the Navy. Bob and I went with Denise
3 and Daniel to go shopping for an interview suit for his
4 civilian job. And my sister works in HR. And so Daniel sent
5 me his resume so I could have my sister help make sure that he
6 would be able to get a good job. Dan and Denise talked about
7 wanting to move up to Washington State and to buying property,
8 and opening a dog rescue and having lots of dogs. They always
9 had dogs, always.

10 Q. Did he talk about opening a dog rescue up there?

11 A. He did, yeah. He was really excited about being in
12 Washington State again. And he was also really looking
13 forward to being close to Bob and I and being able to spend
14 more time together.

15 Q. If you could put your finger on the single most
16 unique quality of Daniel Collins, what would that be?

17 A. Dan loved out loud. He was so full of joy, and was
18 always happy for any accomplishment you had or any milestone
19 that you achieved. Their first visit to us in Washington,
20 after we bought our home in 2013, Dan was just joyful about
21 being able to visit us there and stay with us at our home, and
22 he just loved you out loud.

23 Q. Loved out loud. And you miss him, don't you. I miss
24 him every day.

25 MR. BASILE: Nothing further.

26 MR. REID: No questions, Your Honor.

27 THE COURT: Thank you. Thank you, Ms. Goodman.

28 Okay. 10:55 now. We'll take our morning recess and

1 that will allow you to have your next witness ready,
2 Mr. Basile. We'll return at 11:10. Thank you. Thank you.
3 Members of the jury, do not discuss the facts of the case or
4 any parties involved with each other or anyone else. We'll
5 see you at 11:10.

6 (Outside the presence of the jury).

7 THE COURT: We're outside the presence of the jury.
8 We'll return at 11:10. We have Ben Stanley coming in next,
9 Mr. Basile?

10 MR. BASILE: Yes, sir.

11 THE COURT: Great. We'll get your witness and we'll
12 want you in here another five -- we'll let you in in five
13 minutes, while we take our recess.

14 Mr. Schumann.

15 MR. SULLIVAN: We found out Brian Caprino last night
16 tested negative. He's going to be here this afternoon at
17 1:30. As soon as Stanley is finished, if they can have
18 Mr. Palalay available that should fill up the rest of the day,
19 Your Honor.

20 THE COURT: I think Mr. Mr. Reid and Mr. Schumann are
21 relying on the Court's -- I wouldn't say an order but the
22 Court's assurance, they didn't have to have Mr. Palalay here
23 until Wednesday morning.

24 MR. SCHUMANN: Tomorrow morning.

25 THE COURT: I'm going to honor that.

26 MR. BASILE: All right.

27 MR. SULLIVAN: As far as our schedule of witnesses,
28 Your Honor. It was based upon the estimate that Mr. Reid had

1 given about how much longer with Forsyth, I think.

2 THE COURT: That's fine. You're moving along,
3 gentlemen. All right.

4 I made a representation to them. So, I'm not going
5 to hold it against any of the parties. I'm sure we can find
6 something so.

7 MR. REID: I would remind the Court, Your Honor,
8 Mr. Stanley is appearing video. Not in person.

9 THE COURT: I need to look at that. Isn't that like
10 an hour and 30 minutes.

11 MR. REID: Hour, 28.

12 MR. BASILE: So only thing I don't want to get stuck
13 with, I want everybody to know this, I don't want to get stuck
14 with putting Chris and Denise on today. They are going to be
15 moved to tomorrow.

16 THE COURT: That's fine, as long as you let us know
17 ahead of time. I'm not upset at defense. They brought it up.
18 We'd be kind of rolling the dice on it. We're all in
19 agreement. Perfect.

20 MR. BASILE: Thank you, Your Honor.

21 THE COURT: Take your recess. We'll see you in a few
22 minutes.

23 MR. REID: Thank you.

24 (Brief recess.)

25 THE COURT: Back on the record in Collins versus DG
26 Corp. All members of the jury are present.

27 Mr. Basile, your next witness.

28 MR. BASILE: Yes, Your Honor. We'll be playing the

1 videotape testimony of Ben Stanley.

2 THE COURT: All right. And this has previously been
3 marked as 616, and I believe the transcript is 616A.

4 MR. BASILE: Yes, sir.

5 THE COURT: Let us know there's a way to dim the
6 lights here, if that would assist however you like.

7 MR. BASILE: Could we dim the lights, just slightly.

8 (Video played, not reported.)

9 MR. BASILE: Your Honor, that might be appropriate.

10 THE COURT: Thank you, Mr. Basile. I see that. Okay
11 we're going to pause this deposition testimony of Ben Stanley.
12 We'll have everyone return at 1:29 p.m. Enjoy your lunch.
13 Please do not discuss the facts of this case or any of the
14 parties involved with each or anyone else. Have a nice lunch.

15 Just briefly, we're outside the presence of the jury
16 now. I wanted to address something I received. It was -- I
17 believe these are from defense. I received jury instruction
18 109, and 5007, removal of claims or parties. So 109 I'm not
19 going to give, where we've already read the 100 series. I do
20 recall at some point, maybe it was during voir dire, the
21 Court, this came up a few times. I might have read that CACI
22 instruction already. I'll include 5007. It does seem to an
23 appropriate instruction to give once the case is closed and
24 evidence is closed.

25 MR. REID: Thank you, Your Honor.

26 THE COURT: Okay. But I wanted to let you know 109,
27 I'm not, we'll open the doors at 1:23.

28 (Lunch recess.)

1 JULY 12, 2022 - AFTERNOON SESSION

2 THE COURT: Back on the record in Collins versus DG
3 Corp. All members of the panel are present. We left off
4 with, I believe with Exhibit 616. You may resume when you're
5 ready, Mr. Basile.

6 MR. BASILE: We're ready. Go ahead, James.

7 (Video played, not reported.)

8 THE COURT: Mr. Basile, that concludes the
9 deposition, the redacted version of Ben Stanley one hour and
10 28 minutes, and 51 seconds.

11 MR. BASILE: Yes, sir.

12 THE COURT: Mr. Basile.

13 MR. BASILE: Brian Caprino.

14 THE CLERK: You do solemnly state that the evidence
15 you shall give in this matter shall be the truth, the whole
16 truth, and nothing but the truth, so help you God?

17 THE WITNESS: Yes.

18 THE CLERK: Please be seated. Adjust the mike as
19 necessary. State your name and spell it for the record.

20 THE WITNESS: My name is Brian Caprino, B-r-i-a-n.
21 Last name C-a-p-r-i-n-o.

22 BRIAN CAPRINO,
23 called as a witness by Plaintiff, was sworn and testified as
24 follows:

25 DIRECT EXAMINATION

26 BY MR. BASILE:

27 Q. Good afternoon, Mr. Caprino. Mr. Caprino, did you
28 know Daniel Collins?

1 A. I did, yes.

2 Q. And also Chris and Denise?

3 A. Yeah.

4 Q. When did you -- let's give the jury a little bit of a
5 background of who you are. I guess I can ask your age. How
6 old are you, sir?

7 A. 29.

8 Q. Are you employed?

9 A. I am, yes.

10 Q. Tell the jury where you work?

11 A. I work at a store called Baseballism. It's an
12 apparel fan base store.

13 Q. Where is that located?

14 A. We have a store in Irvine. That's the store I work
15 at. I'm the manager there.

16 Q. And do you also live over in that area, around
17 Irvine?

18 A. I do, yes.

19 Q. What town do you live?

20 A. I live in Lake Forest, California.

21 Q. You drove over here today to testify?

22 A. Yes.

23 Q. About how long did it take you?

24 A. Almost two hours.

25 Q. Okay. Thank you for coming. When did you first meet
26 the Collins family?

27 A. I met Chris in fall of 2006. It was my first year at
28 a public school. He was one of the first friends I made

1 there. I met his family, there was one day they were picking
2 -- my family was picking me up and Chris's dad was picking him
3 up, and I met him briefly there. It wasn't until maybe 8th
4 grade and 9th grade to where I started playing baseball. I
5 frequently went over Chris's house and hung out and pretty
6 much became brothers.

7 Q. That was when you were in 8th grade?

8 A. Yes.

9 Q. Where was the Collins's family living at that time?

10 A. They were in Hemet where I was living as well.
11 Closer to our high school, but from the distance from my
12 house, maybe two miles, three miles.

13 Q. What school did you go to with Chris?

14 A. I went to Diamond Valley Middle School, then West
15 Valley High School.

16 Q. So that was like 8th grade when you guys started
17 getting close?

18 A. Yeah.

19 Q. From then, through high school, how much time would
20 you spend with let's say Chris and his dad?

21 A. All my time, I think.

22 Q. Pardon me.

23 A. All my time. We were conjoined at the hip. I was
24 over at his house after practice. We were always hanging out,
25 going on trips together to San Diego and ball games.

26 Q. And did Daniel go with you?

27 A. Yes.

28 Q. What sort of games did you go to?

1 A. We went to a lot of storm games there in
2 Lake Elsinore.

3 Q. What games?

4 A. Lake Elsinore, Storms, minor league baseball game.
5 Went to Angels Mariners games a lot, me being the only Angels
6 fan and them being Seattle Mariners fans, that was always fun,
7 good time.

8 Q. They were the Mariners fans?

9 A. Yes.

10 Q. During that time, you had a -- well, how would you
11 best describe your relationship with Daniel Collins?

12 A. I think with Dan, it was -- he always felt like a
13 second dad to me. I was like surrogate son. But I think with
14 Dan, it was like the sense of a little bit of a mentor in a
15 way. You know, he coached us in baseball one summer, and he
16 always had this way of, you know, I wasn't the best person out
17 on the field. I was a great bench player, but he always had a
18 sense of encouraging you. There were certain times, you know,
19 I'd always let my ability, you know, get the best of me,
20 getting me down, and there were a lot of times he would just
21 give me, you know, words of encouragement, tell me other
22 things that I did well. Just kind of -- he always built
23 everyone one around him up. That's the relationship we had.
24 I was always, you know, not shy but like, you know, soft
25 spoken guy. He really brought a lot out of me and that's the
26 relationship we had. He was kind of like a hype man in a way,
27 second father.

28 MR. BASILE: Could we see 307, please. It's already

1 in evidence, Your Honor.

2 Q. BY MR. BASILE: Did you know that after Chris went
3 into the Navy that he played on a Navy baseball team?

4 A. I did, yes.

5 Q. Okay. And did you recognize this picture?

6 A. Yeah.

7 Q. Do you recognize that wrist band that Daniel has on
8 there?

9 A. That's an American flag wrist band. I don't know
10 where it's from, but probably representing just the team Chris
11 was on for the Navy.

12 Q. Okay. Now, you had plenty of opportunities over the
13 years to observe the relationship between these two men,
14 right?

15 A. Yes.

16 Q. And observing that relationship, did that have an
17 effect on your relationship with your dad?

18 A. It did.

19 MR. SCHUMANN: Relevance, Your Honor.

20 THE WITNESS: It did.

21 THE COURT: Sorry. One moment.

22 Overruled but keep --

23 MR. BASILE: It's limited.

24 THE COURT: Thank you. Go ahead.

25 THE WITNESS: Yeah. My dad was always older than a
26 lot of my friends dad. If for some reason, I let that sit
27 different with me because he was just always the older one.
28 And there was one day we were there, wasn't a lot of moments

1 where Dan and I were alone. It was either with Chris or our
2 family or Denise, there was an instance where it was just me
3 and him driving home from San Diego. One day Chris and I went
4 to the Padre's game, and we saw a movie. Chris stayed back
5 because he had work the next day. We drove back to Hemet.

6 It was just me and Dan in the car, talked about life,
7 talked about his life growing up in Washington and my life.
8 And I was 22 at the time. I was never a reluctant kid with my
9 dad but I always let that age thing sit with me for some
10 reason. We were driving back and he just talked up my dad so
11 much, and it really changed the prospective on what I thought
12 about my dad and made me think, wow, that's really stupid of
13 me to think of the age difference with my dad and everyone
14 else's dad, was something that would sit different with me in
15 my mind.

16 And he loved my dad a lot. He just talked about how
17 much he enjoyed being around him, how much he loved talking to
18 him. He was wise beyond his years, really made me see my dad
19 in a different light. I think it really changed the
20 relationship I have now with my dad. We talk a lot. We
21 always talk. I see him in a different light than just, you
22 know, as you get older, I hold onto it more and think back on
23 how much of him saying that, really, really changed my
24 perspective on it. And he didn't -- no one really knows that
25 story. No one knows how I felt after that car ride. That's
26 how I felt.

27 Q. BY MR. BASILE: Daniel really helped?

28 A. Just the way he talked to me about my dad really

1 changed my immature 22-year-old brain.

2 Q. Let's talk about happy times. Let's look at 344,
3 which is already in evidence. I'm sure that was a good time.

4 A. Yeah, it was.

5 Q. Do you recognize that?

6 A. Yeah.

7 Q. Where is that?

8 A. That's at their house in Hemet. Yeah, that is for a
9 bent bumper barbecue.

10 Q. What kind of barbecue?

11 A. It was name -- they called it a bent bumper, there
12 was a bent bumper on the back fence that they just put up.

13 Q. Daniel put a bent bumper there, this was called a
14 bent bumper barbecue?

15 A. That guy knew how to smoke tri tip and brisket.

16 Q. You've been to a number of those parties, right?

17 A. Yes.

18 Q. Those were happy times, weren't they?

19 A. Yeah, they were really fun.

20 MR. BASILE: That's all I have, Your Honor. That's
21 it. Thank you.

22 THE WITNESS: Yeah.

23 THE COURT: Thank you, Mr. Basile.

24 Cross-examination.

25 MR. SCHUMANN: No. Thank you, Your Honor.

26 THE COURT: Thank you. Thank you, Mr. Caprino.

27 THE WITNESS: Thank you.

28 THE COURT: Mr. Basile.

1 MR. BASILE: That's it.

2 THE COURT: Okay. Ladies and gentlemen of the jury,
3 unbeknownst to you, we were running a little bit behind
4 schedule with some of the witnesses; however, we're now back
5 up on schedule. So in fact, we might be a little ahead of
6 schedule now. I asked the party, the next witness that's
7 coming from out of the area, and because of how this was going
8 to unfold earlier today, wasn't sure we were going to get to
9 them. I asked the party, don't have this witness travel
10 unnecessarily. That witness will be here tomorrow morning.
11 What that means for you, we're concluded for the day. We'll
12 pick up again tomorrow morning. So please return at 9:59 a.m.

13 Again we're moving on schedule now. We'll see you
14 then. Please do not discuss the facts of the case or any
15 parties with each other or anyone else. Any questions so far?
16 Yes.

17 MR. ALVAREZ: Yeah, my job. They are asking to take
18 a paper that shows the past day I've been here, future days
19 I'll gone. I asked for one yesterday. It was just for that
20 one day. Is there a place I can get one for the whole
21 session?

22 THE COURT: Remind us tomorrow morning, and we can
23 provide you something in terms of future ones. I don't know
24 what the end date -- it will be before July 29th.

25 MR. ALVAREZ: Okay.

26 THE COURT: It could be sooner. But definitely
27 remind us tomorrow morning, and we can provide you something.
28 Anyone else need anything?

1 THE REPORTER: What was your name?

2 MR. ALVAREZ: Jose.

3 THE COURT: All right. Number Seven, sorry. All
4 right. Great. Thank you. Have a nice day.

5 (Pause in the proceedings.)

6 THE COURT: We're outside the presence of the jury
7 who have gone home for the day and will be back at 10:00 a.m.
8 tomorrow morning. Mr. Basile, who do we have lined up for
9 tomorrow?

10 MR. BASILE: Albert Palalay.

11 THE COURT: One moment. This is going to be treated as
12 a hostile witness.

13 MR. BASILE: 776, yes, sir.

14 THE COURT: Okay. One moment. So this is a witness
15 that looks like we should be able to finish in the morning.

16 MR. BASILE: Yes, sir.

17 THE COURT: Is this still your estimate for one hour
18 for direct?

19 MR. BASILE: Yes, probably less than half an hour,
20 Your Honor.

21 THE COURT: Okay. And Mr. Reid, you'll be doing
22 cross-examination?

23 MR. REID: Yes, Your Honor.

24 THE COURT: All right. We'll hold these to one hour
25 estimates, that sounds like, on the joint witness list.

26 Who's next.

27 MR. BASILE: Paul Sheppard, under 776 also,
28 Your Honor.

1 THE COURT: These are all live witnesses.

2 Same, another half hour?

3 MR. BASILE: Yes, sir.

4 THE COURT: Okay. And then, you have an estimate of
5 an hour and a half, Mr. Reid.

6 MR. REID: This won't be that long, Your Honor.

7 THE COURT: Okay.

8 MR. BASILE: Can we have an estimate, Your Honor, so
9 I know whether to have someone else.

10 THE COURT: You think an hour Mr. Reid?

11 MR. REID: I think an hour, yes, Your Honor, at the
12 moment.

13 MR. BASILE: What does that leave me then,
14 Your Honor, if I might be so --

15 THE COURT: So that's an hour and a half max for
16 Sheppard. Then leaves you possibly two hours with Palalay,
17 two of that hours. So that takes us into about early
18 afternoon, that leaves you another hour and a half.

19 MR. BASILE: Very well. I'll have Chris and Denise
20 tomorrow too.

21 THE COURT: Okay.

22 MR. BASILE: Assuming that everything goes like that.

23 THE COURT: Sure. You might sound like there might
24 be additional time. Is Chris and Denise, those are your final
25 witnesses?

26 MR. BASILE: Yes, sir.

27 THE COURT: There's another couple minutes with Chris
28 and Denise. I'll inquire of the jury if we can stay an extra

1 20, 30 minutes. If one of them has something they can raise
2 their hand, we'll conclude for the day.

3 You're down to your last four witnesses.

4 MR. BASILE: Yes, sir.

5 THE COURT: Okay. Thank you, Mr. Basile.

6 MR. BASILE: And if I might inquire, Your Honor, just
7 for sake of logistics on that, when I'm -- they conclude, I'm
8 ready to rest. That will be -- we still have to talk about
9 the exhibits hanging out there.

10 THE COURT: Yes. When you rest, it will be subject
11 to the admission of exhibits, but it should go smooth. We're
12 documenting as we go along, which we'll do here in a moment.
13 Regarding Chris and Denise, if you can -- in the morning, I'll
14 take the bench a little bit early, if you can have a print out
15 or doesn't have to be anything formal, doesn't have to be
16 pleading paper, just smooth Court and you can refer to how
17 many new exhibits you plan introducing, you know, regarding
18 damages as you saw one witnesses this morning. I cut it off,
19 you know, another two or three exhibits, I know you didn't do
20 any new ones. So if you're going to -- if there's any new
21 ones, I don't care about ones that already admitted and
22 admitted new ones. Let us know, so I can make objections
23 ahead of time, that way not interrupting your testimony.
24 That's the way -- we're not putting defense in the position of
25 having to make these objections in front of these sometimes
26 emotional witnesses.

27 MR. BASILE: Yes. Your Honor, if I may.

28 THE COURT: Mr. Schumann.

1 MR. SCHUMANN: I was going to say, if I may, in
2 addressing this, Your Honor, the cumulative objection,
3 cumulative means it's the same evidence, again. A new time, a
4 new place, a new vignette over the course, they weren't
5 together 47 years from when they were 19 over all those years.
6 It's not cumulative. I'll have those exhibits. I can even
7 send them tonight I'll do it but to give everyone a head of up
8 of what we're doing, certainly wedding photos can come in,
9 certainly photos shortly after the birth of Chris, can come
10 in. Chris is born, this is their child. There's going to be
11 two, maybe three cards that were exchanged over all of those
12 years, that I'm going to introduce 2 or 3 cards exchanged
13 between husband and wife. We have a stack like this,
14 Your Honor. Two to three cards, is all I'm asking, over that.
15 There is a videotape, Your Honor, that we have edited down
16 that Denise, depending on how much foundation we need to lay,
17 I'm hoping not too much, she's going to say what it is. It's
18 been recorded.

19 THE COURT: What exhibit is that?

20 MR. BASILE: It's three minutes long.

21 THE COURT: It's already been -- we have it up here?

22 MR. BASILE: Yeah, I think.

23 MR. SULLIVAN: It's part of the exhibits.

24 MR. BASILE: It's exhibits. You have the transcript
25 of what is said on the video. Basically what it is, it's --

26 THE COURT: Well, I'll take a look, Mr. Basile, I'm
27 not making any rulings on the exhibits now. Surely you
28 understand that at some point this crosses over where now

1 you're trying to elicit sympathetic responses from the jury.
2 It's overcome their ability to, you know, objectively weigh
3 the evidence.

4 MR. BASILE: I understand your concern, Your Honor.

5 THE COURT: It's not my concern. It's District Court
6 of Appeals, it's California Supreme Court so.

7 MR. BASILE: I'll rephrase. I understand my concern
8 with that. I mean, I have presented these before. But it's
9 the timeline that's gone over there. So they can appreciate
10 that. It's the relationship that this jury is going to have
11 to be evaluating. That's what I'm doing. I'm, frankly, I
12 don't feel good about some of the tears that have already been
13 shed here. It's natural, it came out natural. I don't
14 like -- well, we'll save that for another time.

15 THE COURT: It's understandable up to this point.
16 I'm just saying, please provide that. We can deal with it in
17 the morning. I don't want to catch you by surprise. I don't
18 want defense to be caught by surprise. Let's address it
19 before the witness is on the stand, it would be much more
20 awkward, you know, inconvenient.

21 MR. BASILE: That's an excellent plan. I appreciate
22 the Court's concern.

23 THE COURT: Thank you, Mr. Basile.

24 All right. Regarding the evidence. So beginning
25 with this mornings cross-examination of Forsyth, 481, I know
26 we discussed it yesterday, and it was discussed more with
27 interviews this morning. That will be admitted. Any
28 objection you want to note for the record, Mr. Basile and

1 Mr. Sullivan?

2 MR. BASILE: No, Your Honor.

3 MR. SULLIVAN: No, Your Honor.

4 THE COURT: I do appreciate your -- in reflecting, I
5 do appreciate your candor yesterday, Mr. Sullivan, regarding
6 the foundation Mr. Forsyth could lay. It's not lost on the
7 Court. Thank you.

8 Next is 414. This came in during the
9 cross-examination of Forsyth by defense. Any objection for
10 the record? It will be admitted.

11 MR. SULLIVAN: No, Your Honor.

12 THE COURT: It will be admitted. No additional
13 exhibits in redirect or recross of Forsyth. Then we had
14 during Robert Goodman's testimony this morning, we had 311.
15 There was an objection made on the record that was overruled.
16 So 311 will be admitted. Then 330, there was an objection by
17 defense that was on the record. That was overruled. That
18 will be admitted. 333, plaintiffs attempted to introduce.
19 There was an objection that was sustained. That will not be
20 admitted. That's 333 will not be admitted. 616, redacted
21 deposition testimony of Ben Stanley was played this morning
22 and this afternoon and completed. Any objection for the
23 record?

24 MR. REID: No, Your Honor.

25 THE COURT: That will be admitted. 616 is the
26 transcript. I'm sorry 616 is the video. 616A is the
27 transcript. Again, as with prior deposition testimony, if
28 there's any request for read back or not read back but to play

1 it back, that will be done outside in the presence of counsel
2 and the Court. So we won't be sending the video back.

3 MR. SCHUMANN: It will be read just like any other
4 testimony, it would be read.

5 THE COURT: If they are seeking portions, then, yes,
6 we can have that read back but remember it was not -- Madam
7 Court Reporter did not take that, so it's --

8 MR. SCHUMANN: We have the transcript is what I mean.

9 THE COURT: I'm sorry.

10 MR. SCHUMANN: We have the transcript, so we can read
11 it back.

12 THE COURT: We can. One of us can read it back. I
13 guess we can address that at the time, but it's not your
14 traditional testimony where the court reporter is going to be
15 able to pull up the testimony. So you understand that those
16 items of evidence will not be going back to the jury room.
17 Next in that -- contained within 616 and 616A, I did note the
18 following items were discussed. First 169, one page document.
19 Any objection for the record?

20 MR. REID: I apologize, Your Honor, let me --

21 Again, Your Honor, this is a document we object to on
22 relevance, and the fact that it's a post incident screen shot,
23 so there's no foundation for it, no relevance to this case.

24 THE COURT: I don't have it back in front of me. I
25 believe it was just -- it was discussed with Ben Stanley in
26 his deposition. He is a DGC OPS employee for a plant, high
27 pressure energy plant in New York, correct?

28 MR. REID: Correct, Your Honor.

1 THE COURT: Your objection is noted for the record.
2 Overruled. 169 will be admitted.

3 171.

4 MR. REID: No objection, Your Honor.

5 THE WITNESS: That will be admitted. 172.

6 MR. REID: No objection.

7 THE COURT: That will be admitted.

8 174. 174, if I recall correctly appeared to be a --

9 THE COURT: Chart created by plaintiff's counsel.

10 MR. BASILE: It was summary of rules he testified to.
11 It was a summary of rules, he testified to it. It was the
12 foundation for that.

13 THE COURT: Seems like something demonstrative used
14 during his deposition.

15 MR. REID: No objection, Your Honor. We do have a
16 comment about it, however. But that can wait.

17 THE COURT: Would you like to make a comment now?

18 MR. REID: Just, Your Honor, with regard to the
19 Privett instruction that we've asked the Court about, that
20 demonstrative is another example of plaintiffs directly tying
21 the ownership of the plant to DGC Corporation. That was
22 several places in this transcript where they made that, you
23 know, ownership of the plant, connection, so we wanted to
24 bring that to the Court's attention.

25 THE COURT: The way I recall the 174 being discussed
26 with Mr. Stanley is in the deposition. Essentially,
27 Mr. Basile was just asking questions off of this, like I guess
28 self created document as to Mr. Stanley and Mr. Stanley

1 elaborate, agree with it or disagree with it. Do you want to
2 make an objection on 174?

3 MR. REID: No, Your Honor.

4 THE COURT: 174 will be admitted. 175, looks like it
5 was a single page e-mail. That I don't know note any
6 objection here on the exhibit list, but I do recall at top of
7 the e-mail it said like attorney work product or something of
8 that nature.

9 MR. REID: It was a document inadvertently produced
10 in discovery, Your Honor. It should have been objected to as
11 an attorney-client privilege document and that unfortunately
12 has passed, it's not much we can do about it at this point.

13 MR. BASILE: Your Honor, the only thing I would note
14 is -- I'm sorry.

15 THE COURT: Mr. Reid.

16 MR. REID: I was going to say, Your Honor, we would
17 still object that it's attorney-client privilege, shouldn't
18 have been used.

19 THE COURT: Okay. I only note there was that, I
20 guess, heading at the top, in the upper left-hand corner;
21 however, what was being discussed in there seemed to be
22 appropriate subject matter for Mr. Stanley.

23 MR. REID: There are several attorneys that are also
24 CC'd in the e-mail.

25 THE COURT: There's four attorneys sitting here. I
26 don't think it's a surprise that there's attorneys on the
27 matter. That gentleman behind you, is that an attorney as
28 well?

1 MR. REID: Yes, Your Honor.

2 THE COURT: I figured. An associate with your firm.

3 MR. REID: No, Your Honor. It's appellate counsel.

4 THE COURT: Appellate counsel. Okay.

5 Now we have five attorneys here. So okay. But your
6 joint exhibit list does not have an objection. Your objection
7 here though is noted for the record. Now 175 will be admitted
8 as presented in the Stanley deposition. I do have a question
9 about 177. 177 seemed to be again something to do with the
10 LOTO steps, however, on the joint exhibit list, it says
11 reserved.

12 MR. SULLIVAN: If I may address it, Your Honor.

13 THE COURT: Yes, Mr. Sullivan.

14 MR. SULLIVAN: When Mr. Reid and I met, prior to a
15 couple weeks ago, prior to the start of the trial, we -- one
16 of the things we tried to do was we tried to condense down the
17 exhibit list. We found there were multiple exhibits that were
18 the same exhibit that listed numerous times. The same things
19 happened with 145 last week. This is another example testify.
20 Those are the same documents. There's still another exhibit
21 which was the one that we kept. And that's why they ended up
22 getting marked as reserved because we didn't want to have
23 three exhibits for the same thing listed. It was an
24 oversight. This exhibit had actually been used in a depo. It
25 was an oversight. The other one used in Walker's depo, that's
26 how those two exhibits ended up being referenced. They are
27 not listed on the exhibit list because anybody has any
28 objection to them, not because anybody is not aware of them,

1 it was simply --

2 THE COURT: What was referenced as 177 in the Stanley
3 deposition has that been admitted under another number.

4 MR. BASILE: I believe it has, Your Honor. It's the
5 blank LOTO sheet I believe is Exhibit Number 5.

6 THE COURT: Sounds familiar, Mr. Reid.

7 MR. REID: I still have all the exhibits.

8 MR. BASILE: The same applies to Exhibit 145 where
9 the same thing came up last week. I have a copy of 145 we can
10 attach introduce if you want to it really doesn't matter
11 because the document going to be back there.

12 THE COURT: I'm not going to say anything about 177,
13 although that's what it's referenced as in the Stanley
14 deposition; however, is that Exhibit Number 5 that has been
15 previously introduced and admitted?

16 MR. REID: Yes, Your Honor it is.

17 THE COURT: Okay. And then there's Exhibit Number 8.

18 MR. SCHUMANN: Is 177 out then?

19 THE COURT: We're not going to separately introduce
20 it or have it admitted. Wheel leave the video as is so it
21 adheres as Exhibit Number 5.

22 MR. SULLIVAN: Plaintiffs agree on that, Your Honor.
23 We don't need to admit it at this time.

24 THE COURT: Mr. Reid confirmed it's number 5, I feel
25 comfortable with that. Exhibit Number 8, is the unit five
26 filter skid.

27 MR. REID: That's acceptable, no objection.

28 THE COURT: Unless I missed something, that's all I

1 have for new exhibits today.

2 Unless there's anything else, we'll see everyone back
3 tomorrow morning, if you want come in at 9:45, we'll have a
4 full day tomorrow and defense should be getting ready to start
5 their case on Monday, next week Monday, the 18th.

6 MR. REID: Your Honor, in anticipation of Mr. Stanley
7 appearing by zoom, our trial tech would like to do
8 experimentation, since we have some extra time this afternoon.

9 THE COURT: How long do you think it will take?

10 MR. REID: Maybe half an hour.

11 THE COURT: That should be fine. It's not anything
12 to do with you, Mr. Reid or with plaintiffs counsel. It's
13 more, we close the doors. They'll call Deputy Lee to another
14 department. There are limited resources. We can't have
15 anyone in the courtroom unless there's a deputy.

16 MR. REID: Understood, Your Honor.

17 THE COURT: We'll tell everybody we're still in
18 trial.

19 MR. REID: Thank you, Your Honor.

20 MR. SCHUMANN: 9:45 tomorrow.

21 THE COURT: Yes. Hopefully that helps, come in and
22 get setup. We'll start at 10:00.

23 Everybody have a good evening.

24 (Proceedings adjourned.)

25 (Next Volume and Page number is Volume 10, Page 1601.)

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REPORTER'S CERTIFICATE

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DENISE COLLINS; CHRISTOPHER COLLINS,)	
)	
Plaintiffs,)	
)	
vs)	Case No. PSC1901096
)	
CPV SENTINEL ENERGY CENTER, LLC,)	
MOTT MACDONALD, LLC, GEMMA POWER)	
SYSTEMS, LLC, and DOES 1 to)	
15, Inclusive,)	
)	
Defendants.)	
)	

I, Demetria Bischoff, Certified Shorthand Reporter No. 12602, hereby certify:

On July 12, 2022, in the county of Riverside, state of California, I took in stenotype a true and correct report of the testimony given and proceedings had in the above-entitled case, pages 3 - 1462, and that the foregoing is a true and accurate transcription of my stenotype notes and is the whole thereof.

DATED: Palm Springs, California, April 10, 2023.



Demetria Bischoff, CSR NO. 12602

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COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT - DIVISION TWO
APPEAL FROM THE SUPERIOR COURT OF RIVERSIDE COUNTY

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DENISE COLLINS and CHRISTOPHER) DCA No. E080233
COLLINS,)
Plaintiffs/Respondents,) Superior Court
vs.) Case No. PSC1901096
DIAMOND GENERATING CORPORATION,) Volume 10 of 19
Defendants/Appellant.) Pages 1601 - 1621
) (1622 - 1800 Blocked)

REPORTER'S TRANSCRIPT ON APPEAL
BEFORE THE HONORABLE MANUEL BUSTAMANTE - DEPARTMENT PS2
July 13, 2022

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SUPERIOR COURT - STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

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DENISE COLLINS; CHRISTOPHER)
COLLINS,)
Plaintiffs,) Case No. PSC1901096
vs.)
CPV SENTINEL ENERGY CENTER, LLC,)
MOTT MACDONALD, LLC, GEMMA POWER)
SYSTEMS, LLC, and DOES 1 to 15,)
Inclusive,)
Defendants.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE MANUEL BUSTAMANTE - Department PS2

July 13, 2022

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1 JULY 13, 2022 - MORNING SESSION

2 BEFORE THE HONORABLE MANUEL BUSTAMANTE

3 THE COURT: Let's formally call the matter of Collins
4 versus Diamond Generating, DG Corp. We're on the record.
5 Okay. So we're going to have a bit of a delay here on our
6 start. You're here; we're here. It's nothing to do with you.
7 We're going to lose juror Number 7. Juror Number 7 no longer
8 can be with us. They have him quarantined for ten days, or
9 whatever, it's going to put us well past that. We'll have the
10 jurors come in here in a moment. We'll do the random draw.
11 We'll burn up another alternate and have that juror seated.

12 Then we're going to have the jurors step out, take a
13 brief recess. We have to follow county HR protocol and so
14 some of the jurors in their close vicinity will be contacted.
15 So that we just spoke to a representative from HR. They said
16 it should take about 30 minutes. We'll have them come back at
17 10:30. We'll see where we are then.

18 MR. BASILE: Thank you.

19 MR. REID: Okay.

20 MR. BASILE: Nice to see your smiling face,
21 Your Honor. We presented this exhibit that you asked for, I
22 gave your clerk a list.

23 THE COURT: Thank you. We're just discussing it this
24 morning. So, thank you for this lay out, counsel. You
25 received this, Mr. Schumann, Mr. Reid?

26 MR. REID: Just a few minutes ago, Your Honor.

27 THE COURT: Okay. Great. Take a look at it. The
28 Court will review these exhibits as well. We won't need this

1 for Mr. Palalay this morning. We'll definitely address these
2 before we have Denise and Chris testify.

3 MR. REID: Thank you, Your Honor.

4 MR. BASILE: Thank you.

5 MR. SULLIVAN: Thank you.

6 THE COURT: Thank you.

7 Deputy Lee, have the jurors --

8 (Pause in the proceedings.)

9 THE COURT: Good morning. Let's recall the matter of
10 Collins versus DG Corp. Good morning. All members of the
11 jury are present with the exception of juror Number 7.
12 Unfortunately, juror Number 7 will not be able to remain with
13 us for the remainder of the trial. So we're going to go ahead
14 and we've spoken with counsel already outside of your
15 presence. We're going to go ahead and do the random draw, it
16 will be alternate Number 1 or alternate Number 2.

17 THE CLERK: Ms. Leskoviansky.

18 THE COURT: Alternate 1 it is.

19 You're going to take an oath here in a moment.

20 You'll now become juror Number 7.

21 THE CLERK: You understand and agree that you will
22 well and truly try the cause now pending before the Court and
23 a true verdict render according only to the evidence presented
24 to you and to the instructions of the Court, say I will.

25 MS. LESKOVIANSKY: I will.

26 THE CLERK: Thank you. You may be seated.

27 THE COURT: Thank you. Now, unfortunately, we do
28 have to take a brief recess. We do have certain protocols we

1 have to follow. We were in session for yesterday, so because
2 of that, some of you, it's the Court's policy but some of you
3 will be contacted here in the next couple minutes. You'll
4 receive a phone call from county HR. They'll have a few
5 questions for some of you.

6 We provided a layout where you were seated, they'll
7 call you and we'll be back here, let's say 10:40, see if we'll
8 resume. They'll let us know if we can resume or not. Anyhow,
9 thank you for being here. We'll see everyone shortly. Please
10 do not discuss the facts of the case or parties involved with
11 each other or anyone else. Be careful.

12 With that said, please have your cell phones on.

13 THE DEPUTY: Juror Number 7 doesn't have her cell
14 phone.

15 THE COURT: If you want to step into the hallway
16 then, if we need anything, Deputy Lee will be in touch with
17 you. If we just need to have you use a phone somewhere here
18 in the building, it's just some questions though. Thank you.

19 MS. LESKOVIANSKY: Okay.

20 THE COURT: Great. Thank you.

21 (Pause in the proceedings.)

22 THE COURT: We're outside the presence of the jury.
23 Counsel, just a sign of the times. We'll do the best we can
24 but there's a protocol, our situation is not unique. I think
25 I've mentioned it from the beginning, my colleagues county
26 wide, I'm sure you probably have spoken with colleagues of
27 yours trying cases here in this county as well as in Southern
28 California, just has come up with this, this is a normal

1 policy. The reason I didn't have anything on last week, we
2 did break on Wednesday.

3 There was an inquiry into that. I believe that the
4 juror's symptoms did not start until after, maybe we were not
5 in session. So we were in session all day yesterday. So the
6 county HR does need to follow protocol, we'll take a brief
7 recess until 10:40. We'll probably come back in if you can
8 work with the equipment, I know it's more comfortable in here.
9 I mentioned before with staff shortages, we'll open the doors
10 up at 10:20. I know it's always uncomfortable to sit with the
11 jurors in the hallway. We'll do the best we can.

12 MR. REID: Thank you, Your Honor.

13 THE COURT: You're welcome. We're in recess.

14 (Brief Recess.)

15 THE COURT: Okay. We're back on the record in
16 Collins versus DG Corp. Thank you to the jury. Everyone is
17 present. Okay.

18 So I apologize for the, you know, late start this
19 morning. We've been on -- Madam clerk, myself, other staff,
20 we've been making several phone calls. We do have permission
21 to disclose to you juror Number 7 did test positive for Covid
22 last night or this morning. He was -- he is symptomatic. So
23 he's been excused. So some of you that were --

24 MS. LESKOVIANSKY: Yes. Excuse me, Your Honor. Was
25 my chair disinfected?

26 THE CLERK: Yes.

27 THE COURT: In terms of some of you, you were
28 contacted by HR. HR is a separate department that happens

1 from the Courts. But some of you were contacted in close
2 proximity, you've been called. You know if you were called or
3 not, HR told us that we're -- no one that was contacted has
4 any symptoms. So we're free to proceed; however, I don't
5 entirely feel comfortable with that because somebody might not
6 be asymptomatic, and I think in an abundance of caution, what
7 the Court has decided to do, we're going to break for today.

8 Ordinarily, the county protocol is if one of you were
9 contacted and said you did have symptoms or had tested
10 positive, but didn't have symptoms, we would take a five-day
11 recess anyway. So we're going to break for today, take a
12 five-day recess any way, that gives us Thursday, Friday,
13 Saturday and Sunday, the remainder of today. We'll come back
14 Monday. If anyone does test positive or start feeling
15 symptoms, please call the courtroom clerk before Monday, just
16 let us know and we can address it at that time. But it's just
17 in an abundance of caution, I think we should break for today,
18 despite county HR protocol saying we can move forward. I hope
19 there's no objection to that.

20 Our apologies. So we'll see everyone back on Monday
21 morning at 10:00 a.m. Please do not discuss the case or
22 parties involved with each other or anyone else.

23 (Pause in the proceedings.)

24 THE COURT: We're outside the presence of the jury.
25 They left. Probably not too happy. So we'll be back on
26 Monday. Counsel, essentially, I had to make a unilateral
27 decision in this respect. County HR did contact us, the
28 people that were contacted, I don't know who was contacted but

1 no one indicated that they had any symptoms. So according to
2 the Court, county HR, we were free to proceed; however, we
3 can't keep losing jurors at this rate we're at the end of
4 trial in a week. I think it's best we just break and then
5 come back on Monday.

6 MR. SCHUMANN: Okay.

7 THE COURT: Do you want to address -- we can use the
8 little bit of time if you like we can address the exhibits
9 here. The 300 series, and I believe we addressed that really
10 quick, I wanted to confirm with counsel either Mr. Schumann or
11 Mr. Reid or your colleague, regarding -- there was a -- I
12 asked for a supplemental brief on one of the Cal Supreme
13 cases. I did see the one from defense, specifically
14 addressing the Sandoval case, but was there one from --
15 there's been so many supplemental briefs on the Privitt issue.

16 MR. BASILE: You did see one from the plaintiff.

17 THE COURT: I did see one from the plaintiff. I'm
18 sorry, Mr. Schumann or Mr. Reid.

19 MR. REID: It was filed, Your Honor. I don't know.

20 THE COURT: Both sides been very diligent on this
21 particular issue filing back and forth briefs. So I didn't
22 see it though.

23 MR. SCHUMANN: Why don't we double check with --

24 MR. REID: We can forward it again, Your Honor.

25 THE COURT: Sure. They are just coming in. So, I'll
26 tell you what I have. On this instruction, the more I look
27 into it, again, I'm just waiting for the conclusion of the
28 evidence.

1 MR. REID: Understood, Your Honor.

2 THE COURT: So from July 11, this is the most recent
3 one. Plaintiff's response to defendant's brief regarding
4 judicial estoppel. Then I have plaintiff's briefs regarding
5 accountability of Sandoval versus Qualcomm. Defendant DGC
6 supplemental brief in response to the Court's inquiry
7 regarding preclusive Privitt doctrine on plaintiff's negligent
8 undertaking claim filed on June 29th.

9 MR. REID: I believe that's the one, Your Honor, the
10 supplemental brief you asked for.

11 THE COURT: Okay. Yeah. That's the one then.

12 MR. SCHUMANN: We'll also check with the trial
13 assistant, who's sent them to the Court, just to double check
14 what was sent.

15 MR. REID: We'll make sure you get it all.

16 MR. SCHUMANN: The Court has the ones that were
17 sent --

18 THE COURT: I do see these have been scanned.
19 They've all been received. I was wondering if that's the one.
20 It does address Sandoval and other cases. That's why I guess
21 I was confused.

22 MR. BASILE: The last brief I believe was filed, was
23 the one we filed regarding the judicial estoppel. There
24 wasn't any filed by defense.

25 THE COURT: Yes. The judicial estoppel one, defense
26 did file one as to the judicial estoppel.

27 MR. BASILE: That was before, and we filed --

28 MR. SULLIVAN: We filed our response.

1 THE COURT: This back and forth, correct, plaintiff
2 filed the last one. Then that has gone, sent me down another
3 rabbit hole with pulling up all the motions from the summary
4 judgment and Judge Johnson's initial tentative and change and
5 some positions taken at that motion. Okay.

6 MR. SULLIVAN: We can put exhibits up on the screen,
7 if that makes it easier, Your Honor.

8 MR. REID: Can we let Mr. Palalay go?

9 THE COURT: Sure. I didn't know -- I didn't make a
10 direct order on that. Yes, you can make a reasonable
11 inference that we won't be continuing today. Thank you.

12 I'm sorry about that.

13 MR. REID: That's okay, Your Honor. It just -- yeah.

14 THE COURT: I thought you had made a unilateral
15 decision on that.

16 MR. SCHUMANN: We forgot.

17 THE COURT: I'm sorry to Mr. and Mrs. Collins, I'm
18 sure Mr. Basile and Mr. Sullivan will explain when we're
19 concluded.

20 Okay. Beginning first with 312. I'm just going to
21 look at these now, and I'll let you know.

22 MR. BASILE: We can put them on the screen if you
23 like, Your Honor.

24 THE COURT: Mr. Reid, do you have a version of these
25 to look at, right?

26 MR. REID: Yes, Your Honor. We can look at them. We
27 just, you know, at this point, this is an additional 14
28 exhibits. So we're -- 14 by my count and 14 we're almost to

1 30. So we're objecting to all of these as cumulative. And
2 352 -- under 352, Your Honor, prejudicial.

3 THE COURT: So in looking at these in connection with
4 these, these were the 3000 series, the wrongful death
5 instruction.

6 MR. BASILE: Yes, Your Honor, 3921. Okay.

7 THE COURT: Okay. So 312, the Court will introduce
8 and be admitted. We're talking about -- again, I'm looking at
9 3921, the relevance of the loss of, in this case, Daniel
10 Collins, the loss of love, companionship, comfort, care,
11 protection, society, moral support. In looking at those
12 factors for jurors to consider that, I think that 312 is
13 relevant. It's the beginning of the family nucleus here.
14 This is to be distinguished, sometimes you see in wrongful
15 death cases are brought where a father or mother hasn't been
16 involved in the child's life for 15, 20 years. All of a
17 sudden they are now trying to bring a suit, I lost my parent.
18 Well, that doesn't seem like you were around. I think this
19 is, at least from what we're looking at here, the opposite
20 situation. So 312 will be introduced and admitted. 317
21 predates 312.

22 MR. BASILE: Yes, it does.

23 THE COURT: The wedding, that will be introduced and
24 admitted. And then 332 has some relevance in terms, I'm sure
25 soon Denise will be able to lay a foundation about that photo
26 taken their last weekend before the incident date.

27 MR. BASILE: Absolutely.

28 THE COURT: Okay. 304 will be -- there's an

1 objection under 352, I'm at this point -- I'm just taking a
2 standing objection to all of these photographs, correct,
3 Mr. Reid?

4 MR. REID: That's correct, Your Honor.

5 THE COURT: 352 will be sustained. As to 304, 304
6 will not come in. Of course, Mr. Basile, this type of
7 evidence is in large part through testimony, and exhibits are
8 merely going along and complement that. So in the Court's
9 opinion, this is cumulative, this photograph doesn't seem to
10 be -- I'm sure it's significant to the individuals involved
11 but it's cumulative for this purpose.

12 Moving on to 320. 320, I go back to the Court's
13 previous comments. This isn't a relationship between an
14 estranged father and son. So I think 320, the hanging, the
15 medal during his graduation from the Naval academy is
16 significant.

17 MR. BASILE: No, not the academy, it was advancement.

18 THE COURT: 320 will be introduced and admitted. 321
19 I don't have anything for it here. It's Daniel and
20 Christopher at a mud run. Regardless, even if I had it, I
21 would still go ahead and sustain the objection. So that will
22 not be introduced and admitted. 321 is out. 304 is out.
23 291. 291 already I think was shown in plaintiff's opening
24 statement.

25 MR. BASILE: Yes.

26 THE COURT: We'll go ahead and that will be
27 introduced and admitted. 324 postcard from 1992, that will be
28 introduced and admitted. Then finally Mr. -- not finally but

1 in terms of these exhibits with Denise, Mr. Basile, I'm going
2 to ask you to pick two or three. There's two poems and then a
3 card. You're free to pick two of the three, but one of them
4 is staying out.

5 I understand, again, going to -- going back to the
6 instructions here, this isn't -- you just happen to find one
7 card or something, this establishes that this was an active
8 relationship. The companionship was not something that was
9 stale. So it's pretty evident from these cards, I think two
10 of them should suffice.

11 MR. SULLIVAN: The one differentiating fact --

12 THE COURT: Please, Mr. Sullivan, just pick two.

13 MR. SULLIVAN: All right.

14 MR. BASILE: There is a point though, Your Honor,
15 because --

16 THE COURT: There is a point. Please pick two.

17 MR. BASILE: Okay. Got you. It will be 276 and 322
18 unless after speaking to Denise, she changes her mind. I
19 think we've already discussed this, so.

20 THE COURT: She's in the courtroom now, would you
21 like to speak with her about it?

22 MR. BASILE: Yeah.

23 THE COURT: Take a moment.

24 Mr. Schumann, Mr. Reid, sorry, I'm trying -- we're
25 trying to address this ahead of time. Again, as I mentioned,
26 it makes the examination of somewhat emotional testimony
27 awkward if there's objections and then putting defense in an
28 awkward position as well having to make these objections on

1 legal grounds, although, appearing perhaps somewhat
2 unsympathetic, I'm trying to remove that burden from you.

3 MR. REID: We appreciate that, Your Honor. Thank
4 you.

5 MR. BASILE: We'll use 276 and 322 as I indicated,
6 Your Honor.

7 THE COURT: 275 is out?

8 MR. BASILE: Right.

9 The scavenger hunt video, there isn't anything there.
10 The transcript is there. If you'd like me to describe it, we
11 can pull it up and play it, Your Honor.

12 THE COURT: Where is the transcript? We have 321
13 blank in the binder. Actually, I missed that too. 321 is
14 supposed to be the mud run photo but it's also listed
15 scavenger hunt video.

16 MR. BASILE: That was our mistake, probably, once
17 again. Scavenger hunt video is probably -- we probably
18 mislabelled it. We can pull it up, and I can tell you --

19 THE COURT: If you can play it for us here in the
20 courtroom.

21 MR. BASILE: Your Honor, what this shows, this is a
22 summary of the family unit together. And it shows interaction
23 between all three parties. Oh --

24 THE COURT: One moment. Pause.

25 MR. BASILE: Pause it.

26 THE COURT: Let's make a record first. Okay. So, is
27 it -- I'm looking at the joint exhibit list here.

28 MR. SULLIVAN: It is 321, Your Honor.

1 THE COURT: Whatever that mud run is, that's
2 excluded. Whatever number it actually is.

3 So the most recent joint exhibit list we have, it's
4 listed video of scavenger hunt Daniel setup for Denise.

5 MR. BASILE: Yes, sir.

6 THE COURT: How long is the video?

7 MR. BASILE: It's less than three and a half minutes.
8 It's three minutes and 21 seconds. What it demonstrates is a
9 family relationship, Your Honor. It demonstrates it in life
10 time. There's no other video of Daniel Collins we're seeking
11 to introduce. There would have been lots, we didn't include.
12 We condensed it down to this one three-minute video of them.
13 It was during an anniversary, it was when Christopher was
14 involved and Denise was involved. Daniel was involved. It's
15 a demonstration of the family unit and multiple elements of
16 3921. It also saves time by doing this without going into
17 other stuff.

18 THE COURT: Pursuant to the Rules of Court, you have
19 an accompanying transcript with it?

20 MR. BASILE: Yes, we do. It's been submitted, yeah.

21 THE COURT: We don't even have a video, much less the
22 transcript.

23 MR. SULLIVAN: Ms. Garcia has it on her computer.

24 THE COURT: The Court doesn't have it. Does defense
25 have it?

26 MR. SULLIVAN: They were supposed to have been copied
27 and in the exhibit binders.

28 THE COURT: Mr. Reid.

1 MR. REID: We have the video. We do not have the
2 transcript.

3 THE COURT: Okay. Let's watch the video.

4 THE REPORTER: Off the record?

5 THE COURT: Yes. I'm sorry, Madam Court Reporter, we
6 don't need to transcribe this.

7 (Video played; not reported.).

8 THE COURT: Mr. Basile, find that transcript.
9 Mr. Reid says he has a video. The video can come in, you need
10 to provide the transcript, make sure it's this video. I don't
11 want to watch a six-minute video when we agreed to a two and a
12 half minute video.

13 MR. BASILE: I apologize. You don't trust me. I'll
14 have the same one.

15 THE COURT: It's not a matter of trust, it's a matter
16 of, you know, being accurate with what we're introducing.

17 MR. BASILE: Thank you, Your Honor.

18 THE COURT: So 321 will be introduced and admitted
19 over objection. 280 -- 280 will be introduced and admitted.
20 I'll note for the record, this may not be -- it's not just a
21 photograph of a T-ball bat, significant to me as, having
22 coached baseball, there appears to be a label on here
23 indicating statistics. Although I don't know how you keep
24 these statistics for T-ball, since there's no out, the kids
25 just get to run around the bases. That part there, to me,
26 it's not just a T-ball bat, it's a -- I'm sure there will be
27 some stories behind the statistics. It does look like a
28 father wrote those on there. That will be introduced and

1 admitted.

2 MR. BASILE: Would you like to hear the voicemail?

3 THE COURT: There's 294. What's the time period for
4 the voicemail?

5 MR. BASILE: It's very short.

6 THE COURT: Not the length of the voicemail, when was
7 this?

8 MR. BASILE: This voicemail was made within days of
9 -- right before the last weekend before he died.

10 THE COURT: We're still talking March or
11 February 2017?

12 Mr. Reid?

13 MR. REID: 294, what we have is a photo from the
14 San Diego Zoo. I don't know if they mislabelled it.

15 MR. BASILE: They have the -- we'll find the right
16 one.

17 MR. SCHUMANN: 298.

18 MR. BASILE: 298. I'm sorry on the numbering,
19 Your Honor. 298.

20 THE COURT: So 298, I do have a transcript of a
21 voicemail. Do you -- do you know the date for this? Doesn't
22 appear to be reflected in the voicemail itself.

23 MR. BASILE: If I might inquire, Your Honor.

24 MR. SULLIVAN: It was two weeks before Mr. Collins
25 was killed, Your Honor. I'm familiar with the voicemail.

26 MR. BASILE: Mr. -- Chris says it was March 1st.
27 It's the last that he heard from his dad.

28 THE COURT: Okay. Mr. Reid, the Court can just

1 review the transcript here. If you -- do you need to hear the
2 audio, or do you already have audio?

3 MR. SULLIVAN: He's been sent the audio, Your Honor.

4 MR. REID: It's a short paragraph, if you look at
5 298B, Your Honor.

6 THE COURT: I'm looking at it now, rather than us
7 play it here in court.

8 MR. REID: I don't think we need to play it. You can
9 read it. That's fine, Your Honor.

10 THE COURT: Assuming Chris Collins can lay foundation
11 for this, in terms of the time period, the Court finds that
12 very relevant, going back to 3921, this voicemail, seeing it's
13 the only thing -- this is more as opposed to the previous
14 scavenger hunt video that was specific to Denise Collins.
15 This one is specific to Chris Collins, close proximity to the
16 incident date. That will be introduced and admitted. We'll
17 note it's going to be 298.

18 Mr. Basile and Mr. Sullivan, these are the exhibits
19 with the exception of 275 which is excluded. Three --
20 whatever the mud run photo is, so he is, and then 304.

21 MR. BASILE: 304.

22 THE COURT: Thank you for pairing this down because
23 it would have been a lot more excluded as we counted
24 previously you had close to 60. Whether it's 60 photographs
25 or 600, there's no amount of photographs that will be able to
26 encompass this person's life. So the Court understands that
27 but we need to -- a line needs to be drawn where, obviously,
28 these come in for a relevant purpose under -- for damages to

1 be considered under 3921. Before the jury gets there, there's
2 other issues to be considered, and specifically as to
3 liability. So we don't want this type of evidence to override
4 the jurors ability to, you know, objectively weigh the
5 evidence before getting there. So with that, the Court has
6 balanced that under 352, and so you can have your directive
7 now on which exhibits you may proceed with.

8 MR. BASILE: We got it. Thank you, Your Honor. I
9 just want to be clear to the Court, the reason, in trying a
10 wrongful death case, the reason you have a list of so many of
11 those is because you never know who's going to get here, who's
12 going to be testifying, we never -- I want to make that clear
13 to the Court. We never intended to offer all of those. This
14 is perfect, this is all I need what we have. I appreciate the
15 time you did to lay this out. Thank you.

16 THE COURT: Mr. Reid.

17 MR. REID: Thank you, Your Honor.

18 THE COURT: Okay. Please, take care.

19 MR. SULLIVAN: You too, Your Honor.

20 THE COURT: We'll see you on Monday. Only pending
21 issue we have still is with the negligence instruction and
22 with the written instructions.

23 MR. REID: We understand, Your Honor. Thank you.

24 THE COURT: Thank you. Have a nice weekend.

25 MR. REID: You too, Your Honor.

26 (Proceedings concluded.)

27 (Next Volume and Page number is Volume 11, Page 1801.)

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REPORTER'S CERTIFICATE

DENISE COLLINS; CHRISTOPHER COLLINS,)	
)	
Plaintiffs,)	
)	
vs	)	Case No. PSC1901096
)	
CPV SENTINEL ENERGY CENTER, LLC,)	
MOTT MACDONALD, LLC, GEMMA POWER)	
SYSTEMS, LLC, and DOES 1 to)	
15, Inclusive,)	
)	
Defendants.)	
)	

I, Demetria Bischoff, Certified Shorthand Reporter No. 12602, hereby certify:

On July 13, 2022, in the county of Riverside, state of California, I took in stenotype a true and correct report of the testimony given and proceedings had in the above-entitled case, pages 1604 - 1620, and that the foregoing is a true and accurate transcription of my stenotype notes and is the whole thereof.

DATED: Palm Springs, California, April 11, 2023.



Demetria Bischoff, CSR NO. 12602

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COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT - DIVISION TWO
APPEAL FROM THE SUPERIOR COURT OF RIVERSIDE COUNTY

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DENISE COLLINS and CHRISTOPHER) DCA No. E080233
COLLINS,)
)
Plaintiffs/Respondents,) Superior Court
) Case No. PSC1901096
vs.)
)
DIAMOND GENERATING CORPORATION,) Volume 11 of 19
) Pages 1801 - 1968
Defendants/Appellant.) (1969 - 2000 Blocked)
)

REPORTER'S TRANSCRIPT ON APPEAL

BEFORE THE HONORABLE MANUEL BUSTAMANTE - DEPARTMENT PS2

July 18, 2022

APPEARANCES:

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SUPERIOR COURT - STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

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DENISE COLLINS; CHRISTOPHER)
COLLINS,)
Plaintiffs,) Case No. PSC1901096
vs.)
CPV SENTINEL ENERGY CENTER, LLC,)
MOTT MACDONALD, LLC, GEMMA POWER)
SYSTEMS, LLC, and DOES 1 to 15,)
Inclusive,)
Defendants.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE MANUEL BUSTAMANTE - Department PS2

July 18, 2022

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JULY 18, 2022 - MORNING SESSION

BEFORE THE HONORABLE MANUEL BUSTAMANTE

THE COURT: Let's formally recall the matter of Collins versus DG Corp. All counsel are present. I don't believe either, any of the parties are though.

MR. BASILE: Yes.

MR. REID: Your Honor, I just wanted to note, Ms. Cubos was exposed to Covid Friday morning. She didn't want to come and take a chance of exposing anyone.

THE COURT: I appreciate that, Mr. Reid.

MR. REID: Thank you, Your Honor.

MR. BASILE: The Collins are present.

THE COURT: I'm sorry. Yes, the Collins are here. The record will reflect. Okay. So we did receive this morning prior to us beginning the morning's calendar and that's why I asked counsel to come in a little bit earlier, one of our jurors does have symptoms, did test positive for Covid on Friday, one of the seated jurors. We're down to our last alternate. Initially, it sounds like the juror tested positive.

We checked again this morning, light cough, per the California department of Health guidelines, if he had no additional symptoms, he could test, he would be okay to return five days after his initial test. If he retested five days and it was negative, although symptomatic, it goes out to ten days. So every courtroom has its opinion, I guess, the guidelines a leave little to be desired or a lot. The Court's inclined to go ahead and proceed and seat Alternate Number 1.

1 See how we move forward, however, we don't have any more
2 alternates.

3 The Court is going to hold timelines represented to
4 the parties. I went through timelines again, plaintiff's case
5 should be concluded by the end of today, and then I calculated
6 approximately seven hours left of defense witnesses. It looks
7 like there's a lot of witnesses that ultimately plaintiff
8 didn't call. I guess they were just additional damage phase
9 witnesses.

10 MR. BASILE: Your Honor, we also notified the defense
11 well not be calling Mr. Palalay, to move things along. Also
12 we're going to go about with Shepard and then Denise and
13 Chris. And if I might say something about the jury situation
14 or would you like me to wait.

15 THE COURT: I'm sure. Let me just confirm with
16 defense something. In terms of pure defense witnesses, I have
17 David Krauss, you still expect to call that individual?

18 MR. REID: Yes, Your Honor.

19 THE COURT: Okay. That's two-hour estimate. Brady
20 Held.

21 MR. REID: Mr. Held basically is laying foundation
22 for an animation. I think we can do that with Dennis Johnson,
23 we may not need Mr. Held.

24 MR. SCHUMANN: Or we can stipulate.

25 MR. REID: If they are willing to stipulate to the
26 work that Mr. Held did, they took his depo.

27 THE COURT: Okay. I'll let them consider that.
28 James Mason.

1 MR. REID: We will be calling Mr. Mason.

2 THE COURT: That's a two-hour estimate. Jayne Cubos.

3 MR. REID: It depends on Ms. Cubos's situation,
4 whether we'll be able to call her or not.

5 THE COURT: Is she available by Zoom, it was an
6 exposure?

7 MR. REID: She could potentially be available by
8 Zoom, we may be able to take care of her testimony with some
9 witnesses. It's a necessary a witness.

10 THE COURT: I'll let you -- I don't mean to put you
11 on the spot, just trying get an estimate here.

12 MR. REID: No problem.

13 THE COURT: You don't have your closing argument
14 ready. Okay. I'm following up, it's not my intent to put you
15 on the spot. I'm trying to figure out Bo Buchynsky.

16 MR. REID: We'll not be calling Mr. Buchynsky.

17 THE COURT: If Ms. Cubos does testify, that's
18 15 hours I have right there.

19 MR. REID: Okay so you left out Robert Ward, Jason
20 King and Mark McDaniels.

21 THE COURT: Robert Ward is listed as a witness for
22 both sides, defense estimate an hour and a half who else?

23 MR. REID: Jason King.

24 THE COURT: Okay. That's after. Okay.

25 MR. REID: The plan this afternoon, Your Honor,
26 assuming they finish by noon, would be Mr. Ward at 1:30, and
27 then, Mr. Stanley by Zoom, that should be pretty short. And
28 then tomorrow Mr. McDaniels.

1 THE COURT: Okay. So based on what I have thus far
2 outside the estimate though, we should be done with witnesses
3 and evidence by Wednesday so.

4 MR. REID: That is our expectation at this point,
5 Your Honor.

6 THE COURT: That would still leave us on schedule for
7 us to conclude next week. I was trying to remember, I don't
8 know if we discussed it, what your preference is. I was
9 trying to remember what my preference was. If you prefer the
10 Court read all instructions, that pre-instruct. I think that
11 was my preference to pre-instruct, then you'll do your
12 closings, then the jury goes back and as opposed to you
13 closing and then they hear from the Court all necessary
14 instructions.

15 MR. REID: We're agreeable to that, Your Honor.

16 THE COURT: That will leave us instructing on Monday,
17 arguments probably, you know, Monday or Tuesday, so, we're
18 still on schedule. But, we're rolling the dice with jurors
19 too, Mr. -- I'm sorry, Mr. Basile.

20 MR. BASILE: I might welcome forgetting my name.
21 Well, two things. Since we're talking about scheduling, I
22 think, time runs out for them on Wednesday. It should be over
23 on Wednesday. We're not planning on any rebuttal as far as
24 timing goes, perhaps, if I'm just suggesting this, as thinking
25 out loud, Your Honor, perhaps you could pre-instruct Thursday.
26 If have you, it's probably an hour, maybe for instructions,
27 would be -- if you can instruct on Thursday, there's some
28 concluding instructions after argument, you know, that goes --

1 so maybe, instruct on Thursday.

2 If we can get them in for like an hour or something,
3 and your schedule on Thursday, then go right in to closing
4 arguments on Monday morning, first thing. I think that would
5 be good for -- because then we can conclude argument in one
6 day, other than, you know, splitting that up as far as the
7 jury goes. What I would ask the Court to inform this jury,
8 that obviously there's a lot of work. I'm sure you can do it
9 better than me, Your Honor, you've been here, a lot of work
10 has gone into this trial, a lot of effort by everyone
11 including this jury. And we say something to them, we need 12
12 of you, we need 12 of you, we're down to 12.

13 Please protect yourself. I have a mask today. I'm
14 going to wear it. Do whatever you can, but stress upon them,
15 we need 12 of you to do this. I'm just asking.

16 THE COURT: Okay. Thank you, Mr. Basile. Okay.
17 Well, that's what the Court -- that's what we'll go with,
18 we'll go ahead and seat the alternate. So you won't need to
19 pull straws or anything. You know, we know who it's going to
20 be. The only thing, I'll say this, if someone else comes up,
21 I will inquire of the juror if they are which willing to come
22 back, if they are willing to hold out on the guidelines and
23 come back to see. It seems in speaking to my colleagues,
24 that's been the norm of late. Someone gets long cause trials,
25 something happens, they take a ten-day break.

26 If all jurors agree to it, to conclude the trials,
27 that's ultimately my informal pole, I've been doing with my
28 colleagues. San Bernardino has done similar. I think they

1 had two or three month trials, they had taken a two-week break
2 after not having anything for a month, then having to come
3 back.

4 MR. BASILE: Stressing with them we need 12, would be
5 very helpful, Your Honor. Thank you.

6 THE COURT: I don't want to offend the jurors either.

7 MR. BASILE: That's why I said, I thought you could
8 do better than me.

9 THE COURT: Sorry, Mr. Schumann.

10 MR. SCHUMANN: Just thinking it's tough to tell the
11 jury that you need to be -- they need to do whatever they want
12 with their lives. I don't think we can tell them to "protect
13 yourself or not go out or not do something."

14 THE COURT: I'll take that. Counsel doesn't have to.
15 However, it's not lost on us that, you know, I'm not sure how
16 much needs to be reflected on the record. Very few of them
17 are wearing masks. I'm wearing a mask when I'm not speaking.
18 There's been very little of that going on; however, I think,
19 based on what I'm reading in the local papers, there has been,
20 transmission appears to be up quite a bit since we started
21 back in end of June. So okay. We're going to begin. We will
22 bring in the jurors here in a moment, just to confirm. We
23 have first, so Mr. Palalay will not be called any more. So it
24 would be Paul Shepard then?

25 MR. BASILE: Yes, sir.

26 THE COURT: And was there anything else, counsel?

27 MR. REID: No, Your Honor.

28 MR. BASILE: No.

1 THE COURT: Thank you for your understanding.

2 MR. REID: If you could mention to the jury that
3 Ms. Cubos' is not here because she's been exposed, just so
4 that -- up to you.

5 THE COURT: Would you like me to mention that.

6 MR. REID: I just don't want them to, you know,
7 thinking something adverse about DG Corp., Your Honor.

8 THE COURT: Let me know. It's just one of those
9 things, if you don't mention it, maybe no one will notice,
10 then you draw attention to it.

11 MR. SCHUMANN: Dam if you do, dam if you don't.

12 THE COURT: Well, your preference, Mr. Reid.

13 MR. REID: We'll leave that alone for now,
14 Your Honor. Thank you.

15 (Pause in the proceedings.)

16 THE COURT: Let's formally recall the matter of
17 Collins versus DG Corp. All members of the jury are present
18 with the exception of juror Number 8. Alternate Number 2,
19 it's your turn. We're going to go ahead have you seated at
20 the new --

21 JUROR BENITEZ: You're not going to take my name out
22 of the --

23 THE COURT: That's why we're four minutes late. We
24 were debating if we need to pull straws, it's inevitable
25 though.

26 JUROR BENITEZ: Do I leave this here?

27 THE COURT: That's your notebook.

28 THE CLERK: Mr. Bonita, stand and raise your right

1 hand. Do you understand and agree that you well and truly try
2 the cause now pending before this Court and a true verdict
3 render according only to the evidence presented to you and to
4 the instructions of the Court, if so, say I will.

5 JUROR BENITEZ: I will.

6 THE CLERK: Thank you so much.

7 THE COURT: Thank you. So we're down to the last 12.
8 You know, it's unfortunate, but the Court's are not closed
9 down, we're going to do our best to try to move forward.
10 Obviously, you each can do as you please in terms of any
11 precautions you like to take. As I mentioned very beginning
12 when we were doing jury selection, when there's in criminal
13 case, you have somebody accused of violating, one, a law in
14 this particular jurisdiction in civil cases, there's disputes
15 that arise between parties and individuals, and when you have
16 that, they can't settle disputes. We have the courts for
17 that.

18 This is how we prefer to have people settle disputes.
19 Around the world disputes are settled in a much less
20 preferable way. So you being here helps settle this dispute,
21 means a lot. You've put a lot of time into it. The parties
22 vested a lot of time into it. We'll see how we can proceed
23 here. If something comes up, I'll come back to you and ask
24 you in terms of whether we can take a pause, we're almost
25 there. So timetable, plaintiff is going to finish their case
26 today, they have a couple witnesses left. They'll be done
27 then.

28 Defense will begin their case. And they represented

1 they'll be done by Wednesday as well. I have whole list of --
2 not this entire binder, but a good part of this binder of
3 instructions to read you that I have to, it's required by law.
4 And then, the parties will give their closing arguments and
5 then you'll go back and deliberate and hopefully help and see
6 if you can assist the parties in settling this dispute
7 according to the instructions I give you. So we're still on
8 -- we're on time, on schedule to finish by next -- I think the
9 time qualified through July 29th, really through July 27. So
10 that's in terms of what we're trying to accomplish here.
11 That's what we're trying to accomplish.

12 Okay. Are there any questions, not about the case,
13 anything about the timetable or the schedule?

14 THE COURT: Yes, juror number 9.

15 JUROR BURKE: You may recall that I indicated that I
16 have a conflict on Monday, July 25th.

17 THE COURT: Okay. Is that an all-day conflict?

18 MR. BASILE: Yes.

19 JUROR BURKE: Yes, I'm flying back from Portland, I
20 won't be back until that evening.

21 THE COURT: Thank you for reminding us of that. I do
22 recall it now. We will -- we don't have an alternate right
23 now. So we will, of course, please proceed with your plans,
24 and then we'll work around it. I may ask on Wednesday, I'm
25 not going to ask now, as I mentioned a couple days ago, all
26 you need to do is raise your hand, you don't need to tell us
27 why. If there's a dentist appointment, whatever it may be,
28 child care, you don't need to tell us. If you raise your hand

1 then that's it. I won't inquire further. I may ask on
2 Wednesday for perhaps if we can come back on Thursday, just in
3 the morning, so I can read you these instructions. It does
4 take quite a bit for me to read instructions that way when we
5 return on Tuesday, counsel can right-a-way from the beginning
6 start with their closing arguments. I'm sorry, juror 9.

7 JUROR BURKE: I leave Thursday morning.

8 THE COURT: You can't do it then.

9 If we return Tuesday though?

10 JUROR BURKE: Oh, yeah, I'll be back Tuesday.

11 THE COURT: We'll be on schedule, you leave this
12 Thursday?

13 JUROR BURKE: This Thursday in the morning.

14 THE COURT: To fly out?

15 JUROR BURKE: Coming back the following Monday so.

16 THE COURT: Okay. Well, circumstances, we are going
17 to be flexible. Okay. All right. Thank you so much for
18 reminding me of that, of course, we're going to honor that.

19 Okay. Mr. Basile, are you ready?

20 MR. BASILE: Yes. Thank you, Your Honor. We'll call
21 adverse witness under Evidence Code 776, Paul Shepard.

22 (Pause in the proceedings.)

23 THE CLERK: You do solemnly state that the evidence
24 you shall give in this matter shall be the truth, the whole
25 truth, and nothing but the truth, so help you God?

26 THE WITNESS: I do.

27 THE CLERK: Thank you. Please be seated. Please
28 state and spell your first and last name for the record.

1 THE WITNESS: Paul Shepard, S-h-e-p-a-r-d.

2 THE COURT: Mr. Basile, when you're ready.

3 PAUL SHEPARD,

4 called as a witness under Evidence Code 776 by Plaintiff was
5 sworn and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. BASILE:

8 Q. Mr. Shepard, will you tell the jury what your current
9 position is with Diamond Generating Corporation?

10 MR. REID: Objection. Relevance.

11 THE COURT: Overruled.

12 THE WITNESS: I'm COO of Diamond Generating, LLC.

13 Q. BY MR. BASILE: What does COO stand for?

14 A. Chief operating officer.

15 Q. Back in the timeframe of 2013 through 2017, you were
16 the vice president of Portfolio and Asset Management with
17 Diamond Generating Corporation; isn't that true?

18 A. Yes.

19 Q. Could we have Exhibit 368, please. Now, Diamond
20 Generating Corporation is in the business of producing and
21 selling electricity?

22 A. Yes.

23 Q. Isn't that true?

24 A. Yes.

25 Q. Pardon me.

26 A. Yes.

27 Q. Yes. And you would agree that corporations that are
28 in the business of producing and selling electricity, should

1 pay as much attention to safety as they do production?

2 A. Yes.

3 Q. Now, Diamond Generating -- the 2016, oh, we have your
4 blown up from Exhibit 368, it's on your screen. This
5 accurately will reflect what your positions were with Diamond
6 Generating Corporation as vice president of Port Folio and
7 Asset Management from 2014 to 2019, correct?

8 A. Yes.

9 Q. And then you became senior vice president at Diamond
10 Generating Corporation from 2019 through what?

11 A. I don't remember. Yeah.

12 Q. Okay.

13 A. 2021.

14 Q. Diamond Generating Operations operates a number of
15 plants that Diamond Generating Corporation has a financial
16 interest in; isn't that true?

17 A. Yes, DG Operations.

18 Q. They operate plants that Diamond Generating
19 Corporation in the 2016, 2017 timeframe, Diamond Generating
20 Corporation had a financial interest in?

21 A. Either wholly or partnership.

22 Q. Those plants include Sentinel Energy Center?

23 A. Yes.

24 Q. Mariposa?

25 A. Yes.

26 Q. Indigo?

27 A. Yes.

28 Q. And Larkspur?

1 A. Yes.

2 Q. And also where Mr. Stanley worked back in New York?

3 A. Valley.

4 Q. There were other plants in 2017 timeframe that
5 Diamond Generating Corporation had a financial interest in;
6 isn't that true, that I haven't mentioned?

7 A. Yes, there were others.

8 Q. There was about 14, I think, weren't there?

9 A. That sounds about right, yeah.

10 Q. Couple in Mexico too, right?

11 A. Yes.

12 Q. Now, Diamond Generating Operations was a wholly owned
13 subsidiary of Diamond Generating Corporation in the 2016, 2017
14 timeframe; isn't that true?

15 A. Yes, it's called DGC Operations, just to be clear.

16 Q. Right. It's been referred to as DGC OPS here too?

17 A. Sure.

18 Q. That was wholly owned subsidiary of Diamond
19 Generating Corporation?

20 A. It is.

21 Q. Now, Diamond Generating Corporation in that 2016 --
22 let's say 2013 through 2017, was the manager of Diamond
23 Generating Operations; isn't that true?

24 A. You mean terms of corporate structure, is that what
25 you're talking about?

26 Q. As being the manager, they were managing -- Diamond
27 Generating Corporation was managing Diamond Generating
28 Operations in the 2014 through 2017 timeframe?

1 A. So this corporate structure I think is a single
2 member company, and so the manager of that company is DGC. If
3 that's what you mean in terms of dictating what people do, I
4 would say no.

5 Q. Okay. So my question is Diamond Generating
6 Corporation was the manager of DGC OPS from 2014 through 2017?
7 Yes or no?

8 A. The corporate structure, yes.

9 Q. Okay.

10 A. It's a -- it's a single member LLC, they call it a
11 manager with an operating agreement.

12 Q. Let's look at Exhibit 351, please are you familiar
13 with the secretary of state filings required by the state of
14 California?

15 A. I'm not.

16 Q. Okay. I want to show you this. I want to ask you
17 some questions. Up in the upper right hand corner, this is a
18 state of California, that's filed in the office of the
19 secretary of state, back in October of 2004, do you see that,
20 sir?

21 A. I see that.

22 Q. Okay. These are -- for the record, these are
23 certified copies which have been presented to the Court and
24 already in evidence, Your Honor. Okay. Let's go back to this
25 filing down to -- next section. Go ahead. Do you see in this
26 filing with the secretary of state, where the name and
27 completed address of any managers, provide the name, you see
28 Diamond Generating Corporation was listed with the secretary

1 of state as the manager of DGC OPS in 2004, do you see that,
2 sir?

3 A. I do.

4 Q. You agree with that?

5 A. Yeah. That's what I was trying to say, I think it's
6 corporate structure.

7 Q. Okay. The corporate structure they were managers of
8 DGC OPS?

9 A. You're getting out of my wheelhouse. I think how --
10 THE REPORTER: Speak up into the mic, sir.

11 THE WITNESS: If you own subsidiaries under operating
12 agreement, it can be a manager who owns the subsidiaries,
13 the company, I think that's how it works, I'm not a legal
14 person.

15 Q. BY MR. BASILE: Exhibit 352, please. The date -- I'd
16 like to show you Exhibit 352, another file with the secretary
17 of the state. Here's the date. This is June 3rd, 2014, do
18 you see that, sir?

19 A. Yes.

20 Q. Okay. Let's go back. And this is James, could you
21 show who's filing this up there. Right there under Number 1.
22 This is being filed by DGC Operations, LLC, do you see that,
23 sir?

24 A. Yes.

25 Q. Okay. Let's go down. And that next section, James,
26 no. Change, I believe. When this was filed, if there's been
27 no change in any of the information contained in the last
28 statement of the information filed, check here, there was no

1 change filed, right?

2 A. Yes.

3 Q. Okay. So let's go next to Exhibit 353. This was
4 filed in 2017. I believe. Do you see that, Mr. Shepard?

5 A. Yes.

6 Q. Okay. Go ahead and this was filed by Diamond
7 Generating operations?

8 A. Yeah.

9 Q. Right there. And they list as their manager, you see
10 that right there?

11 A. I do.

12 Q. Go ahead, James. Can you enlarge that. Diamond
13 Generating Corporation. Do you see that, sir?

14 A. Yes.

15 Q. That's where your office is today, 633 West 5th
16 Street.

17 A. Yes.

18 Q. But you're on the 27th floor now, I think.

19 A. That's correct.

20 Q. Not 1,000.

21 A. Right.

22 Q. You guys occupy that whole floor?

23 A. Yes.

24 Q. Now, thank you, James. You can take that down.

25 Are you aware of any filings with the secretary of
26 state where Diamond Generating Operations lists anyone else
27 besides Diamond Generating Corporation as their manager?

28 A. No, because it would be -- they are 100 percent owned

1 subsidiaries.

2 Q. Okay. Thank you. Back to 368, the whole exhibit,
3 please, James. Now, you knew Adam Aaberg, who -- can we
4 enlarge that. Down. First of all, before you enlarge that.
5 Go back, James. All these executives shown in Exhibit 368 are
6 Diamond Generating Corporation executives; isn't that true?

7 A. Yes.

8 Q. And Aaberg, Aaberg go ahead. Aaberg, he was the vice
9 president of operations and maintenance from '05 through
10 9-9-2014, correct?

11 A. I don't -- take your word for it, yes.

12 Q. You don't take my word for it?

13 A. I take your word for it, yeah.

14 Q. Thank you. Go ahead. Then, let's look at
15 Mr. Kromer. Mr. Kromer then took over vice president of
16 operations and maintenance for Diamond Generating Corporation
17 from January 5, 2015 to 2-28-2017, you take my word?

18 A. Sure.

19 Q. Now, Mr. Aaberg and Mr. Kromer had the role of
20 managing DGC OPS; isn't that true?

21 A. Yeah, I would agree with that.

22 Q. And the plant manager, Tom Walker, would report
23 directly to either Adam Aaberg or Michael Kromer; isn't that
24 true?

25 MR. REID: Vague and ambiguous as to time.

26 THE COURT: Sustained.

27 Q. BY MR. BASILE: In these timeframes from '05 up
28 through 2017?

1 A. I'm pretty sure Adam Christodolu was in -- I reported
2 to him. Mike eventually hired a general manager named Adam
3 Cristodoulou, who managed the plant managers.

4 Q. Okay. My question is Tom Walker, when he was
5 managing the plant, he would report directly to Aaberg and
6 Kromer; isn't that true?

7 A. For sure, when he started, he reported to Oden and I
8 would think at a certain time period he reported to Mike, but
9 then he eventually reported to Adam Cristodoulou.

10 Q. But he was reporting to Kromer and Aaberg?

11 A. At some point in time for a duration until Adam was
12 hired on.

13 Q. Okay. Mr. Aaberg (sic), you're familiar to some
14 extent of what a Lock Out/Tag Out sheet; isn't that true?

15 A. I am.

16 Q. Isn't it true that Mr. Aaberg and Mr. Kromer would
17 review LOTO sheets before Daniel Collins was killed?

18 MR. REID: Objection. Foundation. Assumes facts not
19 in evidence.

20 THE COURT: Overruled, if he knows.

21 THE WITNESS: I don't know.

22 MR. BASILE: Your Honor, I'd like to play from
23 Mr. Shepard's deposition page 56, lines 13 through 24.

24 MR. REID: Lacks foundation, Your Honor. Relevance,
25 Your Honor. There's no question pending.

26 THE COURT: The previous question prior to the one I
27 overruled was if he was familiar with the Lock Out/Tag Out
28 LOTO sheets. He said he was. He doesn't remember this, I

1 assume impeachment is coming. So I'm going to review.

2 MR. REID: Thank you, Your Honor.

3 MR. BASILE: 56, 13 through 24, it relates to both of
4 those questions.

5 THE COURT: It wasn't in Box 1. I'm looking in
6 Box 2. One moment.

7 MR. BASILE: Earlier questions were about Aaberg and
8 Kromer, Your Honor.

9 THE COURT: You're going to play exactly as it is
10 here, correct?

11 MR. BASILE: Yes, sir.

12 THE COURT: You've reviewed this, Mr. Reid?

13 MR. REID: Yes, Your Honor. Testimony says
14 "probably."

15 THE COURT: Well, I'm not sure how much this is going
16 to help. Please go ahead, Mr. Basile.

17 Q. BY MR. BASILE: You remember your deposition was
18 taken?

19 A. I remember doing a deposition, yeah.

20 Q. Before your deposition, you took an oath just like
21 you did here in court?

22 A. Yes.

23 Q. Mr. Reid was present at your deposition?

24 A. Yes.

25 Q. I asked you if you needed any more time to speak to
26 him before we began?

27 A. Sure.

28 Q. In your deposition?

1 A. Sure.

2 MR. REID: Relevance, Your Honor.

3 THE COURT: Mr. Basile, if you want to play the
4 portion, please.

5 MR. BASILE: Yes.

6 THE COURT: Go ahead.

7 (Pause in the proceedings.)

8 MR. BASILE: I'll just read it.

9 THE COURT: Okay. If he want to take that off the
10 screen, please.

11 MR. BASILE: Take it off.

12 THE COURT: Okay. If you want to read those portions
13 there, lines 13 through 24.

14 MR. BASILE: Yes. "Question: Well, have you or
15 anyone at Diamond Generating Corporation ever reviewed one of
16 these LOTO sheets before Daniel was killed?"

17 "Answer: The plant manager would. Like the Audun
18 Aaberg and Mike Kromers of the world, probably, yes."

19 "Why would they do that? Why would Kromer and
20 Aaberg?"

21 "Answer: In their role as managing DGC Operations,
22 as part of the procedure, they may or they probably looked at
23 the LOTO sheets, I would assume at some point in time."

24 Exhibit 209, please.

25 Q. BY MR. BASILE: Now, there would be -- before you,
26 pull that up, James. There would be quarterly meetings at
27 Diamond Generating Corporate head quarters in LA of the plant
28 managers; isn't that true?

1 A. Yes.

2 Q. And plant managers would be from those plants we
3 talked about, would come in quarterly, right?

4 A. Yes.

5 Q. And that would include Tom Walker from the Sentinel
6 Energy Center, right?

7 A. Yes.

8 Q. And he would be coming in from 2014, all the way
9 through 2017, right?

10 A. Yeah, I don't exactly remember when they were.

11 Q. He would meet with -- sometimes you would attend
12 those meetings?

13 A. Yes.

14 Q. Those would be important meetings?

15 A. Yes.

16 Q. And at those meetings, some of the items that would
17 be discussed would be how plants are producing?

18 A. Yes.

19 Q. And expenses at the plant?

20 A. Sorry, what?

21 Q. You would discuss production, but you also sometimes
22 at those quarterly meetings would discuss expenses?

23 A. Expenses, yes.

24 Q. And you would also discuss at times safety; isn't
25 that true?

26 A. They did.

27 Q. You attended some of the meetings where safety was
28 discussed, too; is not that true?

1 A. Probably, yes.

2 Q. Okay. Exhibit 209, please. And could you -- this is
3 an e-mail at the top, and this is from Adam Cristodoulou to
4 various plant managers concerning the OPS meeting, do you see
5 the heading for this e-mail, sir?

6 A. Yes.

7 Q. Further down now, there. This is for the quarterly
8 meeting on January 27th, 2017. Go ahead. And there were
9 going to be presentations at these quarterly meetings that one
10 of the managers would give a presentation to executives at
11 Diamond Generating Corporation; is that right?

12 A. Yes. Yes.

13 Q. Right. And those would be Mike Kromer, he would
14 attend them?

15 A. Yes.

16 Q. Okay. And you would sometimes?

17 A. Yes.

18 Q. Okay. Let's look at the agenda for this meeting. Go
19 ahead, go down. There was a safety committee meeting at the
20 Diamond Generating Corporate head quarters on January 27th of
21 2017; isn't that true?

22 A. That's what the agenda says, yes.

23 Q. All right. Safety is very important at these plants;
24 isn't that true?

25 A. Yes.

26 Q. Because high pressure gas can be catastrophic; right?

27 A. Yes.

28 Q. At these safety meetings on the agenda, was monthly

1 award for safety and approval process and discussion of how do
2 we pay, what's the frequency, see that on the agenda?

3 A. Yes.

4 Q. Do you recall this meeting?

5 A. I honestly don't know if I was in -- typically how
6 those meetings would go, they would present it to the
7 executives to see how the plant was doing. They didn't want
8 the executives back in there for the back and forth
9 discussions for the plant managers. I may have. I don't
10 remember. It's possible.

11 Q. You saw the beginning of this where this meeting was
12 going to include Mike Kromer, you saw at the beginning of the
13 e-mail, right?

14 A. Yeah. It's the same thing. At some point they don't
15 want the -- they want the plant managers to discuss among
16 themselves. I don't know if he was here at this point in
17 time.

18 Q. Let's go back to that, James, the meeting, the agenda
19 for the meeting after this will be attended by Mike Kromer,
20 let's take a look at that, first paragraph. I believe right
21 there. Yes. Following presentation I'd like a separate
22 meeting which will include myself, Adam Cristodoulou and Mike
23 Kromer. You see that?

24 A. He should have been there.

25 THE REPORTER: Please slow down.

26 Q. BY MR. BASILE: At least keep my voice up.

27 Further down the agenda. Go down. Do you see under
28 up coming implementations? Can we enlarge that, please, that

1 section underneath. You see up coming implementations for the
2 agenda in this meeting.

3 A. Yes, under operating procedures, "Paul to discuss."
4 Yes.

5 Q. That Paul is you, right?

6 A. That's correct.

7 Q. And what would you be discussing in the operating
8 procedures at this safety meeting?

9 A. So I'm the asset manager at the time for four of the
10 projects. So would have been Wildflower, Mariposa -- sorry.
11 Indigo, Larkspur, Mariposa, those three, as the manager, I
12 would check what DGC OPS were doing. I didn't like some of
13 their procedures. It was like how do we improve and make
14 stuff better. That's always the case.

15 Q. The manager from Sentinel Energy Center was at this
16 meeting as far as you know, right?

17 A. The plant manager, Tom Walker.

18 Q. Yes. Yes. And do you know that Tom Walker has
19 testified under oath that whenever he wanted to speak to an
20 asset manager, that you'd be the guy he would talk to, did you
21 know that?

22 A. Could have testified to that.

23 Q. So he could have done that, right?

24 A. Yeah. Tom Walker and I were friends. I would say I
25 would respect his 30 plus years in the industry when I was
26 asking any kind of power questions, I'd ask him like what do I
27 do?

28 Q. That's not quite what I'm saying. When Tom Walker

1 would want to talk to the asset manager of the Sentinel Energy
2 Center, he testified that you were the guy?

3 A. That's incorrect.

4 Q. Tom Walker was incorrect when he said that?

5 A. That's correct. Now, I have not say on what happens
6 at Sentinel Energy at all.

7 Q. Well, that's going to be for this jury to decide.

8 A. Okay.

9 THE COURT: Mr. Basile, is there a question pending?

10 MR. BASILE: Yes, there is.

11 MR. REID: Argumentative, Your Honor.

12 THE COURT: Sustained.

13 Q. BY MR. BASILE: Do you understand --

14 MR. REID: Thank you.

15 Q. BY MR. BASILE: Do you understand, Mr. Shepard, what
16 you just said will be for this jury to decide?

17 A. Yes. I'm the asset manager at Sentinel.

18 THE COURT: Sustained.

19 Q. BY MR. BASILE: Now --

20 THE COURT: Okay. So, I'm going to go through a
21 reminder. We're not going to have last week repeat itself.
22 There's an objection, the Court will make a ruling, then if
23 it's overruled, you may answer.

24 THE WITNESS: Okay. Sorry, sir.

25 THE COURT: It's fine. You weren't here last week.
26 This isn't directed at you, Mr. Shepard. If it's sustained,
27 then please don't answer. Okay. But I need to hear the
28 objections, you need to wait, counsel and I'll rule, it will

1 be in the record for you and then you may proceed.

2 MR. BASILE: Thank you. Very well.

3 MR. REID: Thank you, Your Honor.

4 Q. BY MR. BASILE: Now, were you aware that Wayne
5 Forsyth has testified in this case?

6 A. Yes, I was aware.

7 Q. And Wayne Forsyth at the time that Daniel Collins
8 incident at the Sentinel Energy Center, Wayne Forsyth was the
9 environmental health and safety vice president at Diamond
10 Generating Corporation; isn't that true?

11 MR. REID: Misstates the testimony, Your Honor.
12 Lacks foundation.

13 THE COURT: One moment. Overruled.

14 THE WITNESS: It's not correct. Wayne Forsyth, I
15 believe at the time was manager of compliance, was his title.
16 I don't recall exactly. I'm pretty sure that's right.

17 Q. He was senior compliance manager at Diamond
18 Generating Corporation at the time of this incident?

19 A. He could have been senior, he reported to me.

20 Q. He was the compliance manager at Diamond Generating
21 Corporation?

22 A. Yes.

23 Q. Have you been made aware that he's testified in this
24 case that Diamond Generating Corporation was responsible for
25 safety at the Sentinel Energy Center when Daniel Collins was
26 killed?

27 A. Am I aware of his testimony? I'm not aware of his
28 testimony.

1 Q. Do you agree with that?

2 A. I don't agree with that.

3 Q. Exhibit 254, please. This is Sentinel Energy Center?

4 A. Yes.

5 Q. And Diamond Generating Corporation had a financial
6 interest in this center in 2014 through 2017; isn't that true?

7 A. We owned 50 percent.

8 Q. Now, this is the largest or at the time, it was the
9 largest plant of it's kind in the world; isn't that true?

10 A. I think it's the largest peaker, that's an accurate
11 statement.

12 Q. In the entire world.

13 A. I think so.

14 Q. You've been to that plant?

15 A. I have.

16 Q. And you've been to it a number of times, right?

17 A. Yes.

18 Q. You are generally farm with it?

19 A. I am.

20 Q. The lower left-hand corner, please, enlarge that.
21 Lower left-hand corner. Right there. This is where you come
22 into the plant, that lower left-hand side, that's where the
23 gate is.

24 A. Yes.

25 Q. There's a code to get in through the gate?

26 A. There's a key code, yes.

27 Q. You have that key code, right?

28 A. I think you just hit A and then call, they'll call

1 the --

2 Q. That's the way you come in?

3 A. Yes.

4 Q. Okay. Back to the full picture, please. And right
5 in the center, in the first row, that's where the -- that's
6 where I took your deposition, right, down right there?

7 A. Yes.

8 Q. That's where I took your deposition?

9 A. Yes.

10 Q. And --

11 MR. REID: Relevance, Your Honor.

12 THE COURT: Overruled at this moment.

13 Q. BY MR. BASILE: Okay. We talked about your
14 familiarity, you're familiar with the control room at the
15 plant?

16 A. Yes.

17 Q. You've been in the control room a few times?

18 A. Yes.

19 Q. 191, please. This is a picture of the control room?

20 A. Yes.

21 Q. Yes. Do you recognize anyone in that picture?

22 A. I know two of the guys.

23 Q. Which two do you know?

24 A. The ones on the ends.

25 Q. The two on the ends?

26 A. Yes.

27 Q. Wearing the hard hats?

28 A. Yes.

1 Q. You don't know anyone else?

2 A. I think the guy in the middle to the left is named
3 Ziggy. I think the Mr. Collins is the other person.

4 Q. Okay.

5 A. I've never met them.

6 Q. All right. Now, you can take that down. Being the
7 COO of Diamond Generating Corporation, do you -- well, strike
8 that. There are signs that hang in like the entryways to all
9 the Diamond Generating Corporation plants that refer to
10 corporate responsibility; isn't that true?

11 A. Are you talking about the Mitsubishi, I don't know
12 if they are in all the plants. I know they are in Sentinel
13 Energy Center, if that's what you're referring to.

14 Q. Right.

15 A. I don't think they are actually, but they could be.

16 Q. They are at Sentinel Energy Center?

17 A. They are at Sentinel.

18 Q. These are what, what are we talking about? Tell the
19 jury what we're talking about.

20 A. Mitsubishi -- if I can remember, Mitsubishi has three
21 corporate values. It's responsible at Sentinel Energy Center,
22 they posted them up on the board.

23 Q. The first one is corporate responsibility to society,
24 right?

25 A. Yes.

26 Q. Knowing what you know about this case, do you believe
27 Diamond Generating Corporation has fulfilled its corporate
28 responsibility to society?

1 MR. REID: Argumentative, Your Honor.

2 THE COURT: Sustained.

3 MR. BASILE: I'm sorry, Your Honor, I didn't hear
4 you.

5 THE COURT: Sustained.

6 MR. BASILE: Okay.

7 Q. BY MR. BASILE: As vice president of or as COO of
8 Diamond Generating Corporation, are you willing to accept any
9 responsibility for the death of Daniel Collins?

10 MR. REID: Argumentative, Your Honor.

11 THE COURT: Sustained.

12 MR. BASILE: Okay. Nothing further, Your Honor.

13 THE COURT: Mr. Reid.

14 MR. REID: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. REID:

17 Q. Good morning, Mr. Shepard. How are you this morning?

18 A. Good.

19 Q. Thank you for coming out. I know you made a trip
20 several times. Thank you for being here this morning.
21 Plaintiff's counsel talked about your title from 2012 to 2017.
22 Can you roughly give me a brief run down of the positions you
23 held?

24 A. I was always the asset manager. So we have another
25 asset management company, I moved from director up through
26 SPP, so it varied.

27 Q. As COO, you're not a COO of Diamond Generating
28 Corporation, DG Corp.; is that correct?

1 A. That's correct.

2 Q. What company are you the COO?

3 A. It's called Diamond Generating LLC. So DGC owned
4 three main companies, one's called Boston Energy, One's Nexamp
5 and the other one is Diamond Generating LLC.

6 Q. Okay. So as the Portfolio Asset Manager, you had
7 different responsibilities for different plants, correct?

8 A. That's correct.

9 Q. Tell me what a Portfolio Manager does?

10 A. Well, an asset manager is in charge of the facility,
11 all the commercial, all the compliance, everything. So
12 there's usually a group owners that own the facility. They
13 can't all tell how to operate, so they get an asset manager to
14 dictate how the plant should go, that's what asset manager
15 does.

16 Q. What does Portfolio management?

17 A. The Portfolio is the investment side. We monitor
18 investments. We don't do asset management.

19 Q. So for the Sentinel Energy Center plant, DGC was not
20 providing asset management; is that correct?

21 A. That's correct.

22 Q. That asset management was provided through Mark
23 McDaniels; is that correct?

24 A. Yes, it's a company was called CPV.

25 Q. CPV Sentinel Energy Center manager was the company,
26 if you recall?

27 A. I don't recall, but it could have been.

28 Q. So, you never did any asset management for Sentinel

1 facility; is that correct?

2 A. That's correct.

3 Q. Had you done asset management for the Sentinel
4 facility you would have been interfering with the asset
5 management agreement; is that correct?

6 A. That's correct. I have no authority.

7 Q. Okay. We talked a little bit about the corporate
8 structure. Counsel showed you several documents from
9 secretary of state. The fact that that document lists DGC
10 Corp. As the managing member of DGC Operations, doesn't mean
11 that they were directly managing DGC Operations; is that
12 correct?

13 A. That's correct. It's a legal term, it doesn't mean
14 we're managing the company. It's a legal term, that's right.

15 Q. Does DG Corp. have a subsidiary called DGC management
16 LLC?

17 A. That's correct.

18 Q. Is that the company that contracts for asset
19 management?

20 A. Yes.

21 Q. So there was no contract between DGC Management LLC
22 and DGC OPS for management of the Sentinel facility; is that
23 correct?

24 A. That's correct.

25 Q. Now, you've mentioned that DG Corp. was a 50 percent
26 owner of Sentinel facility; is that correct?

27 A. Yes.

28 Q. You mentioned three other facilities, Larkspur,

1 Indigo and Mariposa?

2 A. Yes.

3 Q. Those are all facilities wholly owned by DG Corp.?

4 A. Yes.

5 Q. They have a hundred percent ownership?

6 A. Correct.

7 Q. That's why DG Corp. is able to provide asset
8 management to those three facilities, correct?

9 A. We do third party asset management, too, but DG
10 management was doing management with those facilities.

11 Q. That's because they were a wholly owned facility?

12 A. Yes.

13 Q. Wholly owned plant, right?

14 A. Yes.

15 Q. Exhibit 481, please. You recognize the title page of
16 this document?

17 A. Yes.

18 Q. And this is the asset management agreement between
19 CPV, Sentinel LLC and CVP Sentinel management?

20 A. That's correct.

21 Q. Dated May 26th, 2011?

22 A. That's correct.

23 Q. Same date as the operations and maintenance agreement
24 was entered?

25 A. Probably.

26 Q. CPV Sentinel LLC is the company that actually owned
27 the power plant?

28 A. Yeah, that's Sentinel for lack of easy way of saying

1 it.

2 Q. The name's been changed, CPV dropped?

3 A. Sentinel Energy Center, LLC.

4 Q. To this agreement, to your knowledge is till in
5 place?

6 A. So we --

7 Q. Let me strike that. Let me ask it a different way.
8 At the time of the incident when Mr. Collins was killed, this
9 agreement was still in place?

10 A. That's correct.

11 Q. Okay. Page 5, please. Highlight the top. And we've
12 already discussed this but CPV Sentinel LLC ws the project
13 company, CPV Sentinel management LLC was the asset manager?

14 A. That's correct.

15 Q. Next down. I apologize. Let's go to page 10,
16 please. This is in the definition section of the agreement,
17 the operator in this case DGC Operations, LLC, correct?

18 A. That's correct.

19 Q. Page 20, paragraph C. Paragraph C, operating
20 agreement. "The asset manager shall be designated
21 representative for the project company, to be the operator for
22 the project and shall oversee operating agreement pursuant to
23 which the operator at the direction of the asset manager
24 consistent with the annual budget, shall be responsible for
25 among other things, the following, complete care, custody and
26 control of the project, project staffing, and then skipping
27 down to the second to last sentence, the delegation of the
28 responsibilities for onsite environmental compliance and

1 safety collectively, the O and M services."

2 Is it your understanding, sir, that the asset manager
3 Mark McDaniels was responsible to oversee the operating
4 agreement and the operator?

5 A. That's correct.

6 Q. And the asset manager's responsibilities, again,
7 Mr. McDaniels, included onsite environmental compliance and
8 safety?

9 A. That's correct. Again, this goes back to what I say,
10 they are the owners' rep. As the owner you're in charge of
11 everything, they can't do it. So they assign an asset manager
12 to do it.

13 Q. They can't do it because there's three companies that
14 have ownership interest, correct?

15 A. That's correct, some of them are just pure financial
16 players.

17 Q. You're never going to get any agreement between three
18 parties on how to run a facility, correct?

19 A. Right. They hire rep to run and be in charge of the
20 facility.

21 Q. The owner delegates that responsibility to the asset
22 manager under this agreement, correct?

23 A. That's correct.

24 Q. Exhibit 414, please. You seen this document before?

25 A. Yes.

26 Q. Okay. And looking at the date of March 26th, 2011,
27 does that refresh your recollection that these two agreements
28 were entered into at the same time?

1 A. Yes.

2 Q. Page 12, please. We talked about O and M manuals and
3 the asset manager being responsible for O and M manuals, means
4 the administrative procedure manual, operating and maintenance
5 activities, procedures and schedules, plant assets, system
6 descriptions, and Lock Out/Tag Out procedures, housekeeping,
7 loss prevention, safety -- or excuse me. Security, training,
8 safety, water chemistry, environmental manuals and compliance,
9 together with the documents and scheduled and described in
10 such manuals?

11 A. Yes. So the operator, DGC Operations, would present
12 procedures to the asset manager to approve.

13 Q. Okay. All right. And the operator DGC OPS was also
14 responsible for training their employees, correct?

15 A. Yes.

16 Q. Page 15. This is just article three, the
17 responsibilities of the operators. I'd like to go to page 22.
18 Highlight that paragraph. This was under the responsibilities
19 of the operator. Starting on the second line. "Operator will
20 review the existing O and M manuals for the owner and
21 recommendations, if needed, on O and M manual modifications,
22 as soon as practical -- let me start over. The operator will
23 review the existing O and M manuals for owner and make
24 recommendations if needed on O and M manual modifications as
25 soon as practical after the takeover date. So that -- what
26 does that tell you, sir, about the original manuals for the
27 project?

28 A. Sometimes they created -- the engineering procurement

1 EPC, they're the ones that build the facility. Sometimes
2 whoever builds it will create here's how you operate it and
3 hand it over.

4 Q. In this case, the company that built the plant was
5 Gemma Power Systems; is that correct?

6 A. I think that's correct.

7 Q. Do you know if they provided operating manuals?

8 A. I'm sure they did, to the extent that, I don't know
9 how much they provided. I don't know, but I'm sure they did.

10 Q. All right. And then --

11 A. Before the facility would even be built, they would
12 be checking with EPC contractor provided.

13 Q. And then, two lines down from that, subject to owners
14 review. There we go.

15 A. Yes. There's no --the owner would be the owners rep
16 as far as the asset manager essentially.

17 Q. Let me read this into the record. Subject to owners
18 review and approval, operator will develop and update from
19 time to time as necessary, the administrative procedures
20 manual including all E, H and S program materials. So E, H
21 and S is Environmental Health and safety, correct?

22 A. Yes.

23 Q. The operator, DGC OPS was required to update the
24 manuals subject to the owners review and approval, correct?

25 A. That's correct.

26 Q. Who is responsible for setting the yearly budget for
27 Sentinel?

28 A. The asset manager.

1 Q. Did he do that in coordination with the plant manager
2 Tom Walker?

3 A. Yes.

4 Q. Do you know if Mr. McDaniels had an office at the
5 plant?

6 A. He did.

7 Q. Do you know the budget contained a line item for
8 safety?

9 A. Yes, it did.

10 Q. Would that amount for safety been requested by the
11 plant manager Tom Walker?

12 A. Yes.

13 Q. Does that budget line also contain a line item for
14 training?

15 A. Yes.

16 Q. Would that amount for training been requested by the
17 plant manager?

18 A. Yes.

19 Q. We talked a little bit about Adam Cristodoulou.

20 A. Yes.

21 Q. Does it -- well, let's look at Exhibit 208, if we
22 could. And just highlight the last line, under, "Thanks,
23 Adam," there. That one. There we go. So, do you recall when
24 Mr. Cristodoulou was hired by DGC Operations?

25 A. I don't recall the exact year.

26 Q. If I said August 2016, would that ring a bell for
27 you?

28 A. Sure.

1 Q. Okay. He was hired as the general manager for DGC
2 Operations; is that correct?

3 A. That's correct.

4 Q. That was the role he was performing at the time of
5 the incident, correct?

6 A. That's correct.

7 Q. And as of August 2016, he was Tom Walker's direct
8 supervisor; is that correct?

9 A. Yes, for DGC Operations.

10 Q. For DGC Operations. Thank you. I want to go back to
11 209, please. Exhibit 209. Second page. Yeah. Highlight the
12 title block at the bottom again under Adam. So "regards,
13 Adam," then there's a title block. So this e-mail that
14 counsel was questioning you about regarding safety meetings,
15 this was sent by Adam Cristodoulou in his role as general
16 manager for DGC Operations, correct?

17 A. That's correct.

18 Q. All right. Do you know if Mr. Cristodoulou would
19 have been the person to conduct Mr. Walker's performance
20 review in 2017 for 2016 calendar year?

21 A. Yes.

22 MR. REID: That's all the questions I have. Thank
23 you.

24 REDIRECT EXAMINATION

25 BY MR. BASILE:

26 Q. 209, James. That's the same exhibit that was up
27 there. Now, this meeting, in January 27 of 2017 was just six
28 weeks before Daniel Collins was killed on March 6th, 2017;

1 isn't that true?

2 A. Yes.

3 Q. Now, could we go to the agenda in that section. That
4 was -- on that agenda, under updates, first line, was safety
5 procedures. "How are we going to communicate when a change
6 has to be made?" That's pretty important, isn't it?

7 A. Yes.

8 Q. When there's a change in a safety procedure, it's
9 important to have that communicated to the workers?

10 A. Well, so safety procedures are very individual for
11 each plant. But the idea when they get together is how can we
12 -- so they are never static. If you create a safety procedure
13 in year one, you want to make it better every year. You want
14 to get all the knowledge from all the plants to say, how can
15 we make this procedure better. I'm pretty sure that was going
16 on.

17 Q. It's back to my question. When the procedure is
18 changed, safety procedure, like which valve to close and that
19 would be important to communicate that to the workers?

20 A. The updated procedures should be trained back to the
21 workers.

22 Q. Now, at this meeting, was there anybody there from
23 any of those organizations that you've been talking about,
24 other than DGC OPS and Diamond Generating Corporation?

25 MR. REID: It's vague and ambiguous, Your Honor.

26 THE COURT: Mr. Basile, I was thinking the same
27 thing. I apologize, which entities are you referring to?
28 Sustained.

1 Q. BY MR. BASILE: Mark McDaniels wasn't at that
2 meeting, isn't it true?

3 A. He was not at this meeting.

4 Q. No one from CPV SENTINEL LLC was at that meeting;
5 isn't that true?

6 A. Yes.

7 Q. Answer?

8 A. Yes.

9 Q. The only people that were there at this meeting were
10 executives at Diamond Generating Corporation, and people from
11 Diamond Generating Operations; isn't that true?

12 A. Yes.

13 Q. Exhibit 389, page 3, please. This is --

14 MR. BASILE: Go ahead, enlarge that, James, if you
15 could.

16 Q. BY MR. BASILE: This is some of that structure you
17 were talking about, right?

18 A. It's an ownership structure.

19 Q. Right. Sentinel is way down here at the bottom,
20 right?

21 A. Yes.

22 Q. And Mitsubishi Corporation is at the top, right?

23 A. Yes.

24 MR. REID: Objection. Relevance.

25 MR. BASILE: And here --

26 THE COURT: Overruled.

27 Q. BY MR. BASILE: Here is Diamond Generating
28 Corporation, right, this structure?

1 A. Yes, in the middle.

2 Q. Were you involved in setting up this structure of
3 ownership?

4 A. No.

5 Q. Do you know if it was set up for a way to limit
6 liability and responsibility?

7 MR. REID: Argumentative, Your Honor.

8 THE COURT: Sustained.

9 MR. REID: Calls for speculation.

10 THE COURT: Sustained.

11 Q. BY MR. BASILE: You don't know how or why this was
12 set up, do you?

13 MR. REID: Calls for speculation.

14 THE COURT: Sustained.

15 Q. BY MR. BASILE: Do you know how this was set up?

16 A. I do not.

17 MR. BASILE: That's all I have.

18 THE COURT: Okay. Briefly on the -- a reminder to
19 the jurors. You'll receive this instruction at closing. The
20 only claim that you're going to be asked to resolve in this
21 case if you arrive there, is the claim of plaintiffs Denise
22 and Christopher Collins against DG Corp. Mitsubishi should
23 not play a part in the consideration of the evidence, it
24 should play no part in the your deliberations.

25 Mr. Reid, any follow up.

26 MR. REID: Just a short question.

27 RE CROSS EXAMINATION

28 BY MR. REID:

1 Q. The O and M, Operations and Maintenance agreement
2 that was between CPV Sentinel and DGC OPS; is that correct?

3 A. That's correct.

4 Q. The asset management agreement was between Sentinel
5 again and CPV Sentinel management, correct?

6 A. That's correct.

7 MR. REID: Nothing further, Your Honor.

8 MR. BASILE: No question.

9 THE COURT: So subject to recall?

10 MR. REID: Yes, Your Honor.

11 THE COURT: All right. Mr. Shepard, please stay in
12 contact with Mr. Reid or Mr. Schumann, if they need you to
13 come back, they'll let you know, then you're subject to
14 return. All right. Thank you.

15 Thank you. Members of the jury, I think we're a
16 couple minutes shy of our -- I think we started at 10:05, but
17 we'll go ahead and take our recess now before our next witness
18 comes in. Then we'll resume, please return at 11:15, please.
19 Thank you. Please do not discuss the facts of the case or any
20 parties involved with each other or anyone else. Thank you.

21 (Outside the presence of the jury.)

22 THE COURT: Anything before we take our recess.

23 MR. REID: No, Your Honor.

24 THE COURT: Okay. We have the -- Mr. Basile, we have
25 the Collins next?

26 MR. BASILE: Yes.

27 THE COURT: Okay. You recall last time -- sorry.
28 You guys wanted to head out. Last week we went through --

1 MR. BASILE: Yeah.

2 THE COURT: -- and we discussed the exhibits.

3 MR. BASILE: Yeah.

4 THE COURT: Okay. Perfect. So Mr. Reid, it's up to
5 you if you want to object, it's the same ones you've already
6 objected to.

7 MR. REID: We understand, Your Honor. Thank you.

8 THE COURT: Just wanted to remind everyone.

9 MR. REID: I appreciate it.

10 THE COURT: Thank you. We'll see you in a couple
11 minutes.

12 (Brief Recess.)

13 THE COURT: Let's formally recall the matter of
14 Collins versus DG Corporation. My eyes keep looking for
15 alternates, but you're here. Okay. All members of the jury
16 are back and present.

17 Mr. Basile, when you're ready.

18 MR. BASILE: We call Denise Collins. May she walk
19 through the well, Your Honor?

20 THE COURT: Of course.

21 THE CLERK: You do solemnly state that the evidence
22 you shall give in this matter shall be the truth, the whole
23 truth, and nothing but the truth, so help you God?

24 THE WITNESS: I do.

25 THE CLERK: Thank you. Please be seated. Please
26 state and spell your first and last name for the record.

27 THE WITNESS: Denise Collins, D-e-n-i-s-e
28 C-o-l-l-i-n-s.

1 THE CLERK: Thank you.

2 DENISE COLLINS,
3 called as a witness by Plaintiff, was sworn and testified as
4 follows:

5 DIRECT EXAMINATION

6 BY MR. BASILE:

7 Q. Denise, how are you?

8 A. I'm here.

9 Q. Yeah. I know this might be hard, but let's take our
10 time and relax. Are you ready to share some of your and
11 Daniel's story?

12 A. Yes.

13 Q. Okay. First, let's talk about your background a
14 little bit. Where did you grow up?

15 A. In San Diego.

16 Q. Where did you go to high school?

17 A. Sierra High School.

18 Q. And how are you employed now?

19 A. I work for the County of Riverside as an employment
20 services counselor.

21 Q. Pull that microphone up, please.

22 County of Riverside as what?

23 A. Employment services counselor.

24 Q. Tell us a little bit about what that job involves?

25 A. I work with welfare to work program helping people on
26 assistance to get off assistance through employment to be self
27 sufficient.

28 Q. How long have you been doing that work?

1 A. It will be 15. It was 15 years in June.
2 Q. Do you enjoy your work?
3 A. Very much.
4 Q. Now, tell the jury how you met Daniel?
5 A. I was dating his best friend.
6 Q. Whoops.
7 A. Yeah whoops.
8 Q. And was he in the Navy at the time?
9 A. Yes.
10 Q. Stationed in San Diego?
11 A. Yes.
12 Q. There's a night when you guys got together in
13 Soledad.
14 A. Daniel and I -- there was a club on 32nd street Naval
15 base and we were talking and talking, and Chris who was the
16 person I was dating, his friend, never showed up and so Daniel
17 and I kept talking. And then the club closed down, and I said
18 I'll give you a ride back to your ship because his ship was
19 docked at 32nd Street. We were driving back to his ship
20 something inside of me said, you don't have to go back to your
21 ship, do you, like right now. He said no.
22 Q. So what did you do?
23 A. I'm going to take you to place that's beautiful over
24 looking all of San Diego.
25 Q. Where's that?
26 A. Mount Soledad.
27 Q. How long did you guys spend up there that evening?
28 A. We talked in my car until like 3:00 o'clock in the

1 morning. Then at one point he -- such an awkward moment, he
2 said, hey, this is where I'm supposed to kiss you and me being
3 the independent woman that I am and I was, I said you ruined
4 the moment now, don't even try. But we did of course, it was
5 beautiful, I took him back to the ship, and I talked to him
6 the next day.

7 Q. Okay. Did he go out on deployment then after that?

8 A. Shortly after that he went on what they called a rim
9 pack. It's three months. And they just do drug ops,
10 actually. It's what they were doing. The only way to
11 communicate then was letters, and I hadn't heard from him for
12 like a month, and I got a phone call one day at home, and it
13 was a ship to shore call. Never had that before and all I
14 heard was, "Denise, it's Daniel, over." And I'm like oh, my
15 God, every time you said something you have to say over.
16 After you were done saying it. So the first thing I said to
17 him was, "I thought you had forgot about me, over." He's
18 like, "You haven't gotten the letters, over?" And "what
19 letters?" Right then the doorbell rang. We had a mail slot
20 in the door. The postman said, "I couldn't fit it in the
21 slot." It was a stack of letters from Daniel.

22 Q. Okay.

23 A. He said, I hope you don't mind I put them in order
24 for you because he numbered them 1 through 30. And I got back
25 on the phone, I said, "I just got them." He said, "I didn't
26 forget about you. I never could."

27 Q. Now, you need a drink or anything?

28 A. No, I'm okay.

1 Q. Now, after that Exhibit 324, please. Did Daniel send
2 a postcard way back shortly after he got back about his home
3 town?

4 A. Yes.

5 Q. And --

6 A. He wanted to show me where he was from.

7 Q. This is the postcard, Exhibit 324?

8 A. Yes, that's it.

9 Q. And this is what he sent you then to tell you this
10 was his little town, right?

11 A. Yes.

12 Q. Where War of Roses was filmed?

13 A. Yes.

14 Q. Let's show the first page. And this is on Whidbey
15 Island.

16 A. Correct, that's downtown Whidbey.

17 Q. Where's Whidbey Island?

18 A. Outside waters off of Seattle, ferry ride there.

19 Q. There Mrs. Goodman talked about that you and Daniel
20 maid plans to move back to Whidbey Island?

21 A. Yes, later in the life, yes.

22 Q. Now, let's go to 317. We're just going to progress
23 quickly through your life. I'm sure you remember this day,
24 317. Where was that?

25 A. At the Silver Gate Yacht Club in San Diego.

26 Q. What was the date of your wedding?

27 A. November 1st.

28 Q. '92?

1 A. Correct, 1992, yes.

2 Q. And were the Goodman's there?

3 A. Beth was not. He wasn't married to Beth yet, but
4 Bob, his family, his mom, his dad and his brother were at our
5 wedding.

6 Q. Dr. O'Hara, Gianna?

7 A. She was my flower girl at the time.

8 Q. All right. Thank you. Let's go 312. This is
9 another happy time, right?

10 A. Yeah.

11 Q. And what's going on there, how soon -- when was
12 Christopher born?

13 A. October 30th, 1993.

14 Q. And what's going on there in that picture?

15 A. We went to the mall and at the time, that's when the
16 mall had those sit in booths, and we said, let's take our
17 first family picture. So that's what we did real quick.
18 Yeah. Chris was like four weeks old, I think, at the time.

19 Q. Okay. Thank you. As time went on -- well, did
20 Daniel write you poems throughout your --

21 A. He did.

22 Q. How often would he write you poems?

23 A. At least every Valentine's Day for sure. But, yeah,
24 he would, when he was deployed, he'd write quite a few poems
25 to go along with his letters but definitely, birthdays or
26 Valentine's Day.

27 Q. And was Daniel a husband that kind of always came up
28 with new and different things for you?

1 A. All the time.

2 Q. Now, have I asked and you showed me a short video
3 that's called a scavenger hunt; is that right?

4 A. Yes.

5 Q. Can you -- when was this scavenger hunt done?

6 A. Probably about 1997, it was mother day or
7 anniversary, I can't remember. But it was about 1997, Chris
8 was about four years old.

9 Q. Where were you living at the time?

10 A. We lived in North Park, San Diego.

11 Q. Have you been expecting something to happen or was
12 this a surprise?

13 A. No, not at all. He always surprised me.

14 Q. This was a video, we're going to show the jury. It's
15 about three minutes, right? I don't know, have you seen the
16 shorter version?

17 A. I haven't seen the short version. I'm assuming it's
18 about that.

19 Q. This is when you were living in North Park, Chris was
20 about five and Daniel surprised you with this?

21 A. Correct. Chris was about four, yeah. But, yes, he
22 did.

23 Q. All right.

24 A. This is a surprise.

25 Q. Let's play Exhibit 324, please, the scavenger hunt.

26 THE COURT: One moment.

27 Deputy, can we lower the lights a bit. Aside from
28 the lights, so it's not Exhibit 324.

1 MR. BASILE: It's 321.

2 THE COURT: Thank you, counsel.

3 MR. BASILE: We've already shown 324, I think or I
4 misread it. Good catch. Thank you. 321.

5 (Video played; not reported.)

6 Q. BY MR. BASILE: That was fun to watch, huh?

7 A. Yes, good memories.

8 Q. Is that an example of some of the things Chris --
9 Daniel would do for you over the years?

10 A. Absolutely, yes.

11 Q. And let's just talk a little bit about his work out
12 at Sentinel. What was his hours out there?

13 A. Depending, sometimes he did -- they would do a
14 6:00 a.m. to 6:00 p.m. shift. And then they would do that for
15 like a week, and then they would go to 6:00 p.m. to 6:00 a.m.
16 shift and do that for, it's switched quite a bit.

17 Q. Did you have occasion to go with Daniel to Diamond
18 Generating Corporation Christmas parties?

19 A. Yes.

20 Q. And did he introduce you to any Diamond Generating
21 Corporation people at those Christmas parties?

22 A. Yes.

23 Q. Who?

24 A. Jayne was someone I met at the first one, and a
25 gentleman, I don't remember his name but --

26 Q. Jayne who's been sitting in court, who's not here
27 today?

28 A. Correct.

1 Q. Okay. Let's talk about some of the -- oh, first I
2 have to get there. What was Daniel's birthday?

3 A. November 6th, 1969.

4 Q. And how would you describe Daniel as a person taking
5 care of them for their health?

6 A. He was at the gym dally. His routine was to, if he
7 worked 6:00 a.m. to 6:00 p.m., he would go to the gym, leave
8 the house, go to the gym from 4:30 to 5:30, and then get to
9 work around 6:00, 6:15 at the latest. If he worked 6:00 p.m.
10 to 6:00 a.m., he would go home, sleep, and then he would get
11 up and go to the gym during the day while I was at work.

12 Q. That's when you guys lived in Hemet, right?

13 A. Correct.

14 Q. Where would he work out?

15 A. At LA fitness by the house.

16 Q. Now, what were some of -- just give us a few of what
17 you feel were your favorite times with Daniel?

18 A. Oh, there so many. We would go every year to Mexico,
19 see my parents, enjoy Mexico together. Being the parents to
20 Christopher, he was so proud. Welcoming home on the flight
21 decks or at the piers when the ship would come home. Then
22 when he got out of the Navy, him being home. You know, he
23 would be home, that hadn't happened our whole marriage. So,
24 having him home and his barbecues, our family and friend
25 gatherings, we had those on a regular, at our house. He would
26 grill or smoke. His love of sports. His love of his son and
27 my family. He was the core, he really was.

28 Q. Could we have 276, please beside 322. 276, that's

1 one of the -- tell us what it is, the one on the left?

2 A. The one on "the Denise" one at the top. That was a
3 poem that he -- I don't remember what year that one was. But
4 it was, I believe, during one of his deployments.

5 Q. It was early on in your --

6 A. That was, yes.

7 Q. The one on the right is -- when is that from?

8 A. That was from Valentine's Day 2017.

9 Q. Valentine's Day before he passed?

10 A. Yes.

11 Q. That's the last poem he wrote?

12 A. Yes.

13 Q. All right. Take that do you know. Let's look at
14 332, please. Do you remember this picture?

15 A. I do.

16 Q. When was this picture taken?

17 A. The weekend before he passed away, before the
18 accident on Monday, the 6th. That was on Saturday, the 4th,
19 when we went to San Diego for the weekend.

20 Q. This weekend before it happened, you went to
21 San Diego?

22 A. Correct.

23 Q. And you took the dog with you?

24 A. That's Charlie.

25 Q. Okay. And how long have you had Charlie?

26 A. That was -- she was my last birthday present before
27 Daniel passed away.

28 Q. Okay. And when you guys would go to the beach, would

1 you most often take Charlie?

2 A. Oh, all the time. That weekend we stayed in a dog
3 hotel on Ocean Beach so we could take her with us and stay the
4 weekend, and so it was a dog hotel that other people had their
5 dogs in, it's right on the beach.

6 Q. This is your last picture of Daniel?

7 A. Yes.

8 Q. Just one more question, Denise, if you can. What do
9 you miss most?

10 A. Just loving him. My best friend, being a dad to
11 Chris, I just -- his laugh, his humor, his love.

12 MR. BASILE: Okay. That's enough. I'm sorry.
13 Nothing further.

14 THE COURT: Mr. Reid, Mr. Schumann.

15 MR. SCHUMANN: No questions, Your Honor. Sorry for
16 your loss.

17 THE COURT: Thank you, Ms. Collins.

18 MR. BASILE: We call Christopher Collins.

19 THE COURT: Yes, Mr. Basile, when you're ready.

20 MR. BASILE: Permission to walk through the well.

21 THE COURT: Of course.

22 THE CLERK: You do solemnly state that the evidence
23 you shall give in this matter shall be the truth, the whole
24 truth, and nothing but the truth, so help you God?

25 THE WITNESS: I do.

26 THE CLERK: Thank you. Please be seated. State your
27 first and last name and spell it for the record, please.

28 THE WITNESS: Christopher Collins,

1 C-h-r-i-s-t-o-p-h-e-r C-o-l-l-i-n-s.

2 THE CLERK: Thank you.

3 CHRISTOPHER COLLINS,

4 called as a witness by Plaintiff, was sworn and testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. BASILE:

8 Q. Christopher, you're Daniel's son?

9 A. Very much so.

10 Q. Yes. Let's tell the jury a little bit about your
11 background. Are you a full time student now?

12 A. That's correct, yes.

13 Q. What are you studying?

14 A. Zoology.

15 Q. What are your career plans?

16 A. To work as a wild life care specialist for zoos
17 across the nation, if that can go overseas, that would be
18 great, actually, specifically in the wild.

19 Q. Great. Where did you grow up?

20 A. San Diego, California.

21 Q. And you watched the scavenger hunt video?

22 A. I did. I was -- I immediately remember every moment
23 of that day, too, even being that young, I still can remember
24 everything that led up to that planning it and everything.

25 Q. Now, what was -- you went to Hemet High School; is
26 that right?

27 A. West Valley High School.

28 Q. In Hemet?

1 A. That's correct.

2 Q. While you were growing up, did your dad spend a lot
3 of time with you?

4 A. When ever he was home, back from deployment me and
5 him and my mom would spend every moment together.

6 Q. Did your dad direct you or inspire you to go into the
7 Navy yourself?

8 A. Very much so.

9 Q. How did he do that?

10 A. There's a whole bunch of ways. The pride he carried,
11 himself with, you know, there was times of, like, you know,
12 everything was in order and everything like that. I liked
13 that because I was a messy person as a kid growing up and
14 everything. Also, in high school, I was supposed to use my
15 dad's GI bill, he didn't use it. He wanted to give it to me
16 to go to school. I said, yes, my junior year, when I was
17 applying and everything to the University of Washington. When
18 I was in my senior year, I told my dad I was going to join the
19 military, I actually joined when I was 17. I had to get
20 permission from my mom and my dad to sign the waiver.

21 Q. How do you feel about going in at such a young age?

22 A. I don't regret it one bit.

23 Q. How did your dad feel?

24 A. There was a part where he was very proud like I would
25 say that was the majority of how he felt, very proud. At the
26 same time, I believe he was kind of sad, he knew I was going
27 to be away at times, too.

28 Q. Exhibit 208, please.

1 THE COURT: Mr. Basile, are you sure it's not 280?

2 MR. BASILE: It was previously. That's not the right
3 one. 280. 280, once again my numbers. Thank you, Your
4 Honor. 280.

5 Q. BY MR. BASILE: Do you recognize that?

6 A. Very much.

7 Q. What is that?

8 A. That's my T-ball bat with statistics that may seem
9 shocking, you know, for any adult but that's what made me keep
10 wanting to play and my dad pushing me to, you know, do what
11 you love.

12 Q. Was your dad -- was he a T-ball coach?

13 A. No, not for T-ball, but the step above, he was.

14 Q. Did he do these statistics on your T-ball bat?

15 A. Yes.

16 Q. Can we zoom in on those James. This is 2001, I
17 think, is that the date? That's your dad's handwriting?

18 A. Very much so, yes.

19 Q. T-ball, what age?

20 A. It depends. It usually -- if you start earlier
21 enough, you can be in T-ball for two years. I would say it's
22 probably like around four and five, somewhere around there.

23 Q. T-ball, your just hitting the ball?

24 A. That's all it is.

25 Q. Your dad kept your stats for that, doing that?

26 A. Every time he was home, he would go to every game.

27 Q. You had 13 home runs there?

28 A. I don't know, but I'm going to go with it, yes.

1 Q. And two grand slams?

2 A. I'm going to let my dad tell the story on that one.

3 Q. You caught seven fly balls?

4 A. I know I caught a lot of fly balls, yes.

5 Q. All right. Thank you. After you got in the Navy,
6 could we have Exhibit 320, please. You've seen this picture
7 before?

8 A. Yes.

9 Q. That's your dad on the right?

10 A. Yes.

11 Q. When was this?

12 A. This was after my first deployment back, we got back
13 in 2015.

14 Q. Okay. Where was your first deployment?

15 A. We went into Westpac, we were in the Persian Gulf and
16 Middle East.

17 Q. What's happening here in this?

18 A. So while on deployment, I was basically -- I passed a
19 board where you achieve a warfare pin, very huge deal in the
20 military. You get to pick who want to pin. It has to be
21 somebody who has the warfare pin, I waited until I got back
22 form deployment because everybody else got theirs. I wanted
23 my dad to pin me.

24 Q. Where was your dad when this is happening? He's not
25 in the uniform?

26 A. No, he was already in retirement working at the
27 plant.

28 Q. All right. So that was a very proud moment for both

1 of you?

2 A. Very much.

3 Q. Could we have 328, please. This is -- here's another
4 picture, zoom in on them. Do you remember when this one was
5 taken?

6 A. That's when my dad returned from his last deployment
7 and I was officially out of boot camp.

8 Q. Where was your dad's last deployment?

9 A. It was also Westpac.

10 Q. How many deployments in his 25 year Navy career do
11 you recall him having?

12 A. I would say a minimum of ten, if I can remember, a
13 minimum.

14 Q. And how long was each deployment?

15 A. It would be from six to nine months.

16 Q. Can you share with the jury where some of those
17 deployments were?

18 A. Like I said, Westpac, my mom said earlier that, you
19 know, they would -- in the early times in his career, they
20 would go to drug ops off the coast of South America. I know
21 that to get to Westpac, you have to go through, you know, like
22 South Asia and everywhere around there.

23 Q. Was he deployed shortly after 911?

24 A. Yes.

25 Q. Tell us about that deployment?

26 A. From what I remember, I just remember when, you know,
27 the attack, 911 happened, my dad immediately called my mom,
28 and said do not take him to school right now, and he was

1 already on the boat. They were -- from what I remember, they
2 were just getting ready to leave, just don't know where at the
3 time.

4 Q. Did your dad also have deployments to Iraq?

5 A. Yes.

6 Q. And Afghanistan?

7 A. Yes.

8 Q. How many times to Afghanistan?

9 A. He did it once.

10 Q. Do you remember what his duty assignment was there in
11 Afghanistan?

12 A. He was a warden of a prison in Afghanistan, that was
13 his one time with boots on grounds instead of being on the
14 ship. The whole time that was his longest one, it was nine
15 months.

16 MR. BASILE: Can we zoom in on the ribbons on Daniel,
17 please.

18 Q. BY MR. BASILE: Are you familiar with these ribbons?

19 A. Majority of them, yes.

20 Q. Can you point out some of the most significant ones
21 for the jury?

22 A. Yeah. The one with the four gold stars at the top;
23 right, that's the Navy, Marine Corps achievement medal. It
24 will have four gold stars that represent how times he got that
25 award. He got that including the ribbon five times, which is
26 a lot in your career. I only got one being in for eight
27 years.

28 Q. What does that represent?

1 A. Just being an outstanding sailor. The one kind of at
2 the top middle, just maroon color with four, those four bronze
3 stars, good conduct achievements. So every four years, if you
4 do what you're told, you do what you -- you exceed in what you
5 do, you get one of those ribbons.

6 Q. Was there a ribbon -- I'm sorry.

7 A. The top middle, that maroon one, blank maroon one
8 with the four bronze stars. Then that also signifies, as a
9 first class, he was able to wear gold stripes. If you have
10 gold stripes, you've never gotten in trouble, you've always
11 done what you're told, that goes off of good conduct.

12 Q. 25 years?

13 A. Correct.

14 Q. Was there also ribbons here for work on terrorism?

15 A. The one -- so it's in the middle.

16 Q. It's the actual middle to the right, that's the
17 global war on terrorism, this one here?

18 A. Correct.

19 Q. And what did you say that signifies?

20 A. That you were enlisted at the time of the global war
21 on terrorism.

22 Q. All right. And any other ones without going through
23 all of them, I assume they are all pretty significant. To
24 show how long he was in the bottom left one, the very colorful
25 one, that's Kuwait, when the Persian Gulf war happened?

26 A. He was on the ship in the Persian Gulf, yes.

27 Q. What ships do you remember he served on?

28 A. Mostly the USS Valley Forge. I can't remember all of

1 the ships he was on. I know he was also stationed at Camp
2 Pendleton with the LCATS hovercrafts, that was AC5.

3 Q. Now, is there a thing when you're a family member
4 where you can do like a tiger tour, what's it called?

5 A. Tiger cruise.

6 Q. Tell the jury what a tiger cruise is?

7 A. You're allowed to stay -- you can't have basically if
8 you're married, you can't have your partner on that cruise, of
9 course, because they don't want the fraternization to happen
10 so usually it's uncles, aunts, sons, daughters, anybody
11 that's, you know, not your direct partner. And you get to
12 tour.

13 Q. Someone is invited from your family to come on the
14 ship?

15 A. Correct, only one.

16 Q. Only one member?

17 A. Only one member.

18 Q. Did your dad invite you to do one of those tours?

19 A. Yes.

20 Q. Where was the tour from and to?

21 A. So it was from -- usually goes family member flies
22 out to Hawaii, the ship will come into port there. You arrive
23 with them in the ship back to port, in our case that was San
24 Diego.

25 Q. How old were you?

26 A. I just graduated from high school, that was my
27 graduation gift from my parents.

28 Q. How long was that cruise from Hawaii with your dad on

1 the ship to San Diego?

2 A. About two weeks.

3 Q. How meaningful was that to you?

4 A. It made me persuade more that I made the right choice
5 in joining the military, getting off the plane in Hawaii.
6 I've never been to Hawaii. My dad had been there many times.
7 He showed me everything. When it was time to sail the seas
8 back home, they had an air show, they had -- they would
9 partner up with the aircraft carrier, they were partnered with
10 in that strike group, you would do so much. I would go with
11 my dad on his job duties, I would get a tour of the captain of
12 the ship, talk to everybody and everything like that.

13 Q. Exhibit 307, now you us about your dad got you into
14 baseball with the T-ball, right?

15 A. I would say even before that.

16 Q. Have you like pursued an interest in baseball?

17 A. Very much so, that would be a dream.

18 Q. You're still playing baseball?

19 A. Correct.

20 Q. Did you play this past weekend?

21 A. Yes.

22 Q. Did you win?

23 A. Yes.

24 Q. Was your mom at the game?

25 A. Yes.

26 Q. You miss your dad? Let's talk a little bit about
27 baseball, back in the time, this time period?

28 A. This was when I got selected to play for an all

1 military team in 2016.

2 Q. What's an all military team?

3 A. It's basically you get selected upon a try out that
4 they have kind of like throughout the country at different
5 stations, and if you're good enough you get to travel with
6 that team on temporary assigned orders, that's basically you
7 get to play baseball around the country.

8 Q. You had to do that?

9 A. Yes.

10 Q. And your dad came to see you play while you were
11 doing that?

12 A. In Florida, yes.

13 Q. This picture was taken in Florida?

14 A. Correct.

15 THE REPORTER: Please slow down.

16 Q. BY MR. BASILE: I noticed his wristband here, this
17 picture was in Florida, right?

18 A. Yes.

19 Q. And I noticed this wristband here?

20 A. Uh-huh.

21 Q. When did your dad get that wristband?

22 A. I think maybe like, right after retirement.

23 Q. Where did he get it?

24 A. If I can remember, it was -- I can't say exactly. I
25 don't know exactly, but I have kind of like an idea, but I'm
26 not sure if it's correct.

27 Q. What's your best estimate?

28 A. There were shops that he would like go to that were

1 very, you know, pro military, help people and everything like
2 that in the veteran community. I think it was a store called
3 allegiance at the time, but I'm not entirely sure.

4 Q. Was your dad involved in wounded solders?

5 A. No.

6 Q. No. Was he involved in a veteran's group?

7 A. He was getting out, getting ready for retirement. He
8 was part of like an advocate, kind of like veterans group for
9 people either retiring or getting out of the military. He
10 helped out in that aspect to kind of show, like who to talk
11 to, where to go, kind of thing. It wasn't, you know, like a
12 suicide hotline for veterans or anything like that. It was
13 more of like helping them pave their way for the next chapter.

14 Q. Did he always wear that wristband?

15 A. Almost every day.

16 Q. Could we have Exhibit 291, please. When do you
17 remember going to a -- well, did you get to go to hockey games
18 with your dad?

19 A. Very much, it is Ontario Reign.

20 Q. Did you go to Ontario Reign one time when he was
21 singled out by the Ontario Reign?

22 A. I think actually, maybe two or the game before we
23 went to this one.

24 Q. What happened at that game?

25 A. He was -- so my mom set up to where, you know, he
26 just returned from deployment. We surprised him. They gave
27 us -- when my mom talked to the -- I don't think it was the
28 owners, more of like the people that kind of do advertising

1 something like that. We had great seats. They were like
2 lounge chairs basically, in the middle of a period
3 intermission, they made him stand up, and they were saying all
4 of his decorated awards, and thanking him for his service and
5 everything.

6 Q. I bet the crowd appreciated?

7 A. It was pretty much sold out at the time, it was
8 pretty loud.

9 Q. Great. Can we have 311, please. Do you remember
10 going with your mom and dad to Washington?

11 A. All the time.

12 Q. Do you remember this occasion?

13 A. That was my first time in Hooters.

14 Q. Not the last time?

15 A. I will say, I went more often with my parents than I
16 ever did just by myself.

17 Q. Okay. Did your dad provide counsel for you as far as
18 rips?

19 A. Yes.

20 Q. Tell us a little bit about that?

21 A. I don't wanted to get explicit though, that's the
22 thing.

23 Q. We're not going to go there. Did he tell you about
24 relationship building and with the people, I don't want to
25 have the necessary --

26 A. I know. Honestly he always told me to follow what my
27 heart and mind told me. Sometimes, he always told me, your
28 mind is going to outweigh your heart. Sometimes your heart

1 needs to be leading and go with your instincts with that, and
2 I remember, specifically, I got into my first relationship
3 right before my dad went on his deployment, that's my senior
4 graduation with. He said, "Do you like her?" I said, "yes."
5 He said, "Well, what's stopping you from asking her out, going
6 on a date." I said, "I don't know what to say," and he wrote
7 down kind of like a game plan, and it sure worked.

8 Q. Great. Okay. Back -- let's go to about two weeks
9 before this incident, when it happened. Were you assigned --
10 were you in the Navy at that time?

11 A. Correct, yes.

12 Q. You were in the Navy when your dad lost his life?

13 A. Yes.

14 Q. And about two weeks before that, did you get an
15 assignment in the Navy to take you to Las Vegas?

16 A. It was on Nelles Air Force Base.

17 Q. What was that assignment?

18 A. We worked with other countries around the world and
19 aviation strategic stuff.

20 Q. It was the Navy guiding you to an air base?

21 A. Correct.

22 Q. You told your dad you were going?

23 A. Yes.

24 Q. And while you were driving to go to Vegas, did your
25 dad leave a voicemail for you?

26 A. Yes, he did.

27 Q. Is that the last time you ever heard your dad's
28 voice?

1 A. It is.

2 MR. BASILE: Your Honor, I'd like to play
3 Exhibit 298, that voicemail.

4 THE COURT: When you're ready.

5 (Audio played; not reported.)

6 Q. BY MR. BASILE: Chris, what are you going to tell
7 your kids about your dad?

8 A. That I can't compete with what he gave me. I could
9 say so much. It's just more upsetting like a 23-year old
10 should not lose his dad that early. I mean, I know things
11 happen in this world and for different circumstances, but it
12 just -- I don't know what to tell my kids.

13 Q. What do you miss most?

14 A. Everything. Like just -- just being around him was
15 like the greatest time of -- especially growing up, he's not
16 home all the time. I understood that as a kid, I understood
17 what my dad was doing, and then when he's home, he made the
18 best of everything that we got and when he was home out of
19 retirement, it was just, I've never seen my dad so happy. I
20 mean, he was happy all the time. Don't get me wrong, with my
21 mom and him actually home together, all the time, it was the
22 most joyful thing you could ever see.

23 Q. So, when Beth Goodman testified, said your dad loved
24 out loud, you know what that meant?

25 A. Exactly.

26 MR. BASILE: Nothing further.

27 THE COURT: Mr. Reid, Mr. Schumann.

28 MR. SCHUMANN: No questions. Sorry for your loss.

1 THE COURT: Thank you, Mr. Collins.

2 THE WITNESS: Thank you.

3 THE COURT: All right. We're going to take our
4 recess. Mr. Basile, anything we need to address, we can do
5 outside the jury's presence. Do you have any additional
6 witnesses?

7 MR. BASILE: Oh, one moment, Your Honor.

8 Your Honor, on behalf of Christopher and Denise
9 Collins, we are satisfied with the state of the evidence, and
10 we rest our case.

11 THE COURT: Okay. We'll deal with any procedural
12 issues afterwards. Members of the jury, it's now the noon
13 hour. Please enjoy your lunch. We'll see you back at 1:29.
14 Thank you. Please do not discuss the facts of the case or any
15 of the parties involved. We still have additional evidence.
16 Thank you.

17 (Outside the presence of the jury.)

18 THE COURT: We're now outside the presence of the
19 jury. We're going to take our noon recess. Before we do,
20 Mr. Basile, I guess subject to the -- we've already admitted
21 exhibits at the conclusion of each day of evidence. So we can
22 come back and we will -- subject to the admission of the
23 exhibits introduced this morning, do you have anything
24 further?

25 MR. BASILE: No, Your Honor.

26 THE COURT: Okay. Mr. Schumann or Mr. Reid, anything
27 additional before -- well, the exhibits introduced this
28 morning. I'm sorry with the Collins, we addressed last week.

1 MR. REID: Yes, Your Honor.

2 THE COURT: We're going to go ahead and I'll put
3 those on the record when we come back. Just to save time
4 right now, then with Mr. Shepard a couple new exhibits, 351,
5 352, 353, the Court previously took judicial notice of those.

6 MR. REID: Yes, Your Honor. No objection.

7 THE COURT: Then 191 was the only new one. I can see
8 191 and 389.

9 MR. BASILE: 191 was with Tom Walker's video
10 deposition, Your Honor. I think it was already in.

11 THE COURT: No, 191 was a photo of four individuals
12 at --

13 MR. REID: I think it's been previously admitted,
14 Your Honor.

15 MR. SCHUMANN: At the plant.

16 MR. REID: I know they've shown it.

17 THE COURT: It wasn't through a witness, this is the
18 first time we've seen it. Unless I'm mistaken, Madam clerk.

19 MR. BASILE: It was.

20 MR. SULLIVAN: It was I believe shown in Mr. Walker's
21 video depo.

22 THE COURT: We don't have it previously, however, it
23 was today. So 191 and 389, those are the only new exhibits
24 other references -- there were other exhibits referenced,
25 those we're already done with 389. The CPV Sentinel ownership
26 structure, a chart that was introduced, that will be -- I'm
27 sorry, Mr. Reid.

28 MR. REID: No, we don't have any objection to 389,

1 Your Honor.

2 THE COURT: 389 was one the where the Court, at the
3 conclusion of Mr. Shepard's testimony did give the jury
4 instruction requested by defense going back again to the
5 parties not involved in the suit.

6 MR. BASILE: Yes, Your Honor.

7 THE COURT: The Court on its own felt it was
8 appropriate to read the instruction at that time.

9 MR. REID: Thank you, Your Honor.

10 THE COURT: Okay. Mr. Schumann, Mr. Reid.

11 MR. SCHUMANN: We have -- we have a nonsuit,
12 Your Honor, we'd like to file.

13 THE COURT: Okay. Do you have it, I believe you said
14 you have it in writing.

15 MR. SCHUMANN: We have it in writing. He has a
16 printer. I didn't want to print it out while testimony was
17 going on. We can e-mail the clerk, printout three copies.

18 MR. REID: E-mailed to the clerk and counsel.

19 THE COURT: How much reading do I have?

20 MR. SCHUMANN: It's not that long, Your Honor.

21 MR. REID: It's not terrible.

22 THE COURT: I'll review it during the lunch hour.
23 We'll discuss it outside the presence of the jury, and then
24 we'll see how we proceed.

25 MR. REID: All right. Thank you, Your Honor.

26 MR. SCHUMANN: Thank you.

27 MR. BASILE: What time do you want us back?

28 THE COURT: 1:15.

1 MR. BASILE: Thank you.

2 THE COURT: Thank you. Have a nice lunch.

3 MR. SCHUMANN: Thank you.

4 MR. REID: Thank you, Your Honor.

5 (Lunch recess.)

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1 JULY 18, 2023 - AFTERNOON SESSION

2 THE COURT: Okay. Back on the record in Collins
3 versus DG Corp. Welcome back.

4 MR. REID: Thank you, Your Honor.

5 MR. SULLIVAN: Thank you, Your Honor.

6 THE COURT: Okay. So plaintiff has rested their
7 case. At the end the day, we'll go through and do the
8 exhibits. I did receive a motion for nonsuit from defendant
9 DG Corp. 17 pages, so that does have a table.

10 MR. REID: I apologize, Your Honor.

11 THE COURT: At least it has a table, since it was
12 over the 15. So we'll address this. This might take a few
13 minutes here. Okay. So the motion for nonsuit is that
14 plaintiffs have not, in this case, established that DGC owed a
15 duty to the decedent in this case, in this case Daniel
16 Collins. However, plaintiff is proceeding under a what
17 survived their motion for summary judgment in front of Judge
18 Johnson was just a general negligence theory.

19 Undertaking -- sorry. Negligent undertaking is a
20 theory that doesn't have to be specifically pled. That is
21 what plaintiff, I believe, is proceeding on. Defense has
22 brought up the Privett doctrine. Thank you. I do have all of
23 the back and forth briefs, those have been helpful.

24 I also went back and reviewed the party's position
25 for the motion for summary judgment and, forgive me if I'm
26 just bouncing around, I had to write notes in different areas.
27 Ultimately, the Court concluded the Privett doctrine doesn't
28 apply to this situation here, factually. Start by first

1 noting that in defendant's moving papers, at the time of
2 summary judgment, back in April of this year, I believe it was
3 April 15th, DGC Corporation argued that they had no liability
4 for the actions of DGC OPS because of the parent subsidiary
5 relationship. That part I do want to go back to hear at the
6 end. But I'm treating that as separate from the Privett
7 doctrine.

8 Because of that parent subsidiary relationship, DGC
9 did not control operations of DGC Operations. DGC ultimately
10 argued that it had no control over the power plant or its
11 operations. And that's one of the arguments that they put
12 forward is that that they did not directly own the power
13 plant, did not design, build or maintain or lease the power
14 plant. The Court's -- this Court at least wrestling with this
15 issue has to do with several of the cases provided by DG Corp.
16 for the Privett doctrine, including Sandoval, which I
17 mentioned much earlier in the case that was brought up by
18 defense. It feels as though we're trying to put a round peg
19 into a square peg here.

20 Those cases all involved and what Privett stands for
21 is independent contractor. You own the home, you hire a
22 contractor to build a pool, the pool builder subcontracts
23 someone for gummite, someone for the pavers, whatever it may
24 be, and that's your typical example. The relationship here
25 between DG Corporation and DGC OPS is different. It's a
26 parent subsidiary relationship, it's a special relationship.
27 This isn't a one project thing where thence suddenly we'll pay
28 you X amount for this job. It included with that worker's

1 compensation benefits and everything that you general
2 contractor make sure that the subcontractors and you provide
3 to the employees.

4 I think that's the distinction here between DG
5 Corporation and DGC OPS. It's just completely different.
6 Defense brings in their motion for nonsuit that there are two
7 exceptions that were previously brought up in their other
8 papers as well, but first with Kensman versus Unical Corp.,
9 2005 California case, from the 4th District. That under that
10 exception to the Privett doctrine, a hire may not be held
11 liable for failing to warn contractors and/or employees of a
12 dangerous condition. If the contractor either knew of the
13 dangerous condition or in that exercise of reasonable care
14 could have discovered it.

15 Again, the Court's position is that it doesn't
16 believe that Privett applies to this situation, it's a
17 completely different type of relationship, arguably if it did,
18 Kensman would seem to apply here in that the issue seems to
19 involve the change in the order that these valves were to be
20 opened up in. Somehow that never made down to DGC OPS and
21 most importantly to the employees, that changed the order in
22 which the pressure had to be released from skip -- what is
23 that, Number 7.

24 MR. REID: Number 5, Your Honor.

25 THE COURT: That specifically that rearranging of
26 that valve Number 2. Rearranging it seemed that at least from
27 what the Court recalls here, there's been evidence that DGC
28 Corporation was aware of this change, was involved in the

1 discussions, and somehow that never made it down to the
2 employee level.

3 The second exception, the Hooker exception, common
4 spelling, versus the Department of Transportation, 2002
5 California case, that one is a little bit more arguable, I
6 suppose, if it was an exception. But an affirmative
7 contribution by DGC, I think that exception would be more of a
8 stretch, I guess, the argument could be made again, this
9 change in the procedure, affirmatively contributed to this
10 incident and to the death of Daniel Collins. However, it
11 seemed to have gone through different layers before it
12 ultimately resulted in this -- however, again the Court, or
13 the Court's ruling, the Court does not believe Privett
14 applies.

15 Moving to the parent subsidiary relationship, the
16 corporate entities, as you know, are known to have separate
17 existences, probably explains the hierarchy, we seen in this
18 case. It was a strong presumption that the parent company is
19 not the employer of its subsidiary employees. In this case, I
20 think it's undisputed that DGC -- sorry. DG Corporation did
21 not employ Daniel Collins rather Daniel Collins was an
22 employee of DG OPS or DG Operations. General rule that the
23 parent corporation cannot be liable for its subsidiary's
24 negligence, unless the parent has control over the subsidiary
25 regarding safety measures. I'm looking at that ultimately,
26 the issue this Court has boiled this down to is did the
27 defendant DG Corporation surpass the control exercise that is
28 a normal incident of ownership.

1 Now, I'm going to come to you, Mr. Basile and
2 Mr. Sullivan here in a moment, because I'll tell you what does
3 not surpass normal incident of ownership. Mere input over
4 budgetary issues does not surpass the normal incident of
5 ownership. Use of a similar or identical corporate logo does
6 not surpass the mere incident -- mere incident of ownership.
7 In one respect, plaintiff has argued -- well, I'm not going to
8 say argued. They certainly implied that by alluding to
9 Mitsubishi a few times and a few times unsolicited witnesses
10 that brought it up. Mitsubishi, under the Mitsubishi, you had
11 DG Corporation. So, in that vein, it's almost, they are
12 trying to combine the two, while the Mitsubishi and DG Corp.
13 are the same. In the others, you have DG Corp. and DG OPS,
14 almost the same argument being put forth there, that they are
15 the same. Even because they -- I suppose, used the -- what,
16 Tom Walker testified that he used the logo because as defense
17 puts, he liked the way it looked better. Something else I was
18 looking for here.

19 So Mr. Basile, we again heard testimony this morning
20 that DG Corporation was the part owner. I'm sorry, Deputy
21 Lee, I apologize, we can let the jurors know we'll be probably
22 20 more minutes in here.

23 THE DEPUTY: 20?

24 THE COURT: Sorry. It's now 1:35.

25 DG Corporation was part owner of PVC Sentinel LLC.
26 Essentially, the argument being put forward is or
27 representation that DG Corporation and CPV Sentinel was or CPV
28 Sentinel is the agent for the defendant. CPV Sentinel went

1 out and hired DG OPS to run the Sentinel plant; is that
2 correct, Mr. Reid?

3 MR. REID: Yes, Your Honor.

4 THE COURT: We heard reference against as to the
5 asset management agreement which specifically detailed that DG
6 OPS was responsible for the operations and management of the
7 Sentinel plant. The Court disagrees that DG OPS is an
8 independent contractor in this case. It's a parent subsidiary
9 relationship and the mere fact that Workers Compensation
10 benefits may have been paid by DG Corp., is not dispositive to
11 the Court.

12 There are cases where the parent corporation has been
13 held liable, even if those Workers Compensation benefits have
14 been paid by the subsidiary, and they -- it's not limited to
15 the exclusive remedy of Workers Compensation. The Courts'
16 inquiry to plaintiff, what evidence is there that DG Corp. has
17 exercised control over DG OPS, beyond that, just the mere
18 incident, quote, the ownership, that is what the Court's
19 wrestling with.

20 MR. BASILE: Yes.

21 THE COURT: Mr. Basile.

22 MR. BASILE: Thank you. Yes, thank you, Your Honor.
23 Your Honor, looking at first of all, we look at 450C, did they
24 provide services, what evidence do we specifically have is
25 that Diamond Generating Corporation not only hired Tom Walker,
26 they provided him with that job description that included
27 safety of it. They did performance reviews of Tom Walker,
28 which included reviews of his performance in the areas of

1 safety. Mr. --

2 THE COURT: Let me stop you there, Mr. Basile. So
3 that the record is clear on this point. It's the parent
4 corporation. The hiring of employees for the subsidiary is
5 not beyond the mere incidents of ownership.

6 MR. BASILE: Okay. That's still evidence. The other
7 thing you heard from Mr. Forsyth, you had Mr. Forsyth say they
8 were responsible for safety, but most importantly, he said
9 they reviewed the LOTO sheets, they reviewed the LOTO.

10 THE COURT: Who's they?

11 MR. BASILE: Him. Forsyth said he had reviewed the
12 LOTO sheets that were in use at the plant. Forsyth says that
13 on there.

14 THE COURT: Again, just for the record, Forsyth his
15 rip was with, wasn't it with DG OPS.

16 MR. BASILE: No. The corporation, he was the head.
17 Remember Shepard this morning pointed out to he was the
18 compliance officer at Diamond Generating Corporation. I
19 called him the environmental and safety. He corrected me and
20 he said he's the compliance officer at Diamond Generating
21 Corporation, Forsyth was.

22 THE COURT: The way the Court interpreted it as
23 though trying to lower his position at DG Corp. making him, I
24 guess, lower with the corporate chain. You're saying there's
25 ambiguity of what his title was.

26 He was vice president. I don't know if it's on 368
27 or not. May I approach with 368?

28 THE COURT: Yes.

1 MR. BASILE: This is under 368, he was the compliance
2 manager at Diamond Generating Corporation, and first he was
3 operation specialist like in his exam and compliance manager
4 during the relevant dates.

5 THE COURT: Okay. Then the relationship with that to
6 the Sentinel plant, that's DG Corporation you can have that
7 position. How do you tie that to the Sentinel plant, how
8 would you argue it?

9 MR. BASILE: He was on the e-mails to them. He also,
10 not just him, but there's other people that were e-mailing
11 them about safety, about following up, if you recall. Well,
12 let me finish with Forsyth. Forsyth said he reviewed the LOTO
13 sheets, actually. He said he reviewed the LOTO sheets at the
14 plant. I also want to show beyond the normal incidents of
15 ownership, the e-mails which started in 2016, Your Honor,
16 where, Kromer, again, he's on this board. I don't need to
17 pull him up. Kromer is writing directly to the plant managers
18 including Walker and saying we have to review the safety
19 procedures. Please review them and get them to me, so I can
20 accept or reject them. That he's actually requesting the
21 review of the safety procedures.

22 He's also saying so that I can accept or reject them.
23 On that, Kromer, the DG Corporate VP of operations and
24 maintenance. There those go back and forth with approving
25 them, when am I getting them? What are we doing? I have to
26 send it up the food chain. He also says on one of the
27 e-mails, Kromer does, get it back to me. He has to go up the
28 food chain.

1 I think these are 207, 208, 209, 243, it's the e-mail
2 change. That's the undertaking, too, if we go back to 450C.
3 So they're reviewing the e-mails, they are asking for the
4 specific safety procedures to be reviewed, and sent back to
5 them to be reviewed, back and forth on that. So that is
6 certainly beyond the normal incidents. Then, they are having
7 quarterly meetings in that agenda six weeks before where they
8 are specifically discussing updates, safety procedures, how
9 are we going to communicate to the workers when a change needs
10 to be made. So they're dealing back and forth with the
11 procedures that need to be changed between DG Corporation, and
12 the plant manager, send them to me, we'll approve them, send
13 them back. Then they have the meeting in January where they
14 are discussing changes in the procedures and how are we going
15 to communicate them to the workers.

16 And I think, Your Honor, that the Court is right on,
17 this is a straight 450C case from the beginning, did they
18 provide -- and I don't have the elements up here in front of
19 me, looking at the specific elements of 450C, Your Honor. We
20 certainly -- there's been evidence produced to satisfy each of
21 them.

22 THE COURT: Thank you, Mr. Basile. I'm not going to
23 disagree, the elements do appear to apply in terms of a
24 triable issue for the jury, if this instruction were to apply;
25 however, as to a matter of law, that's the question. Should
26 this proceed, is there a triable issue for the jury, if the DG
27 Corp. as the parent company is not liable as a matter of law,
28 then this should not proceed to the jury. It would be a

1 exercise in futility, it's not a matter of law, they shouldn't
2 be held liable.

3 Mr. Reid, I have here from last reviewing my notes, I
4 also went back to annotations I made from the transcript.
5 Last Tuesday when we were here -- one moment. We had -- Ben
6 Stanley was that just a deposition you played?

7 MR. REID: Yes, Your Honor. Mr. Stanley will be here
8 by Zoom this afternoon. That's the plan anyway.

9 THE COURT: We have the cross, you had your cross
10 examination of Mr. -- was it Mr. Forsyth that came back in?

11 MR. REID: Yes, Your Honor.

12 THE COURT: That's what it was. So, Mr. Forsyth
13 testified, the question to him was in September, in the fall
14 of 2016, so we're about three -- arguably seven months in
15 before this incident, leading up to January 2017, Diamond
16 Generating Corporation was reviewing safety procedures at the
17 Sentinel Energy Facility, isn't that true? His answer was
18 yes. There was a follow up question. Diamond Generating
19 Corporation was responsible for the safety of the Sentinel
20 Energy Facility when Daniel Collins was killed, is that what
21 you're telling us? His response was yes. There was a similar
22 question, he said everybody was responsible for safety, I mean
23 I don't know how to answer that.

24 So going to Mr. Basile's point, there was testimony
25 that your client was reviewing the safety procedures at the
26 Sentinel Energy Facility, which the Court has difficulty
27 reconciling that with Mr. Shepard's testimony this morning,
28 that DG OPS was hired as -- they are the asset manager.

1 MR. REID: CPV Sentinel Management was the asset
2 manager and Mark McDaniels. OPS was operating the facility.

3 THE COURT: There's another one, CPV Sentinel LLC.

4 MR. REID: Yes. We have been referring to Sentinel.

5 THE COURT: There's two parts there, there's the
6 asset management managing the plant.

7 MR. REID: Supervising the plant, yes.

8 THE COURT: Then there was at Port Folio Management.

9 MR. REID: Correct.

10 THE COURT: The Court is having difficulty
11 reconciling that that asset manager should be managing the
12 plant and you have the parent company here, I guess, further
13 along the chain here, that's actively reviewing safety
14 procedures at the Sentinel Energy Facility. I believe his
15 testimony was that since there's so many owners, your client
16 being one of them, that the asset manager was hired to
17 essentially, so there's clear direction and you don't have all
18 this input and, you know, you essentially have inability to
19 move because no consensus can be reached. How do you
20 reconcile that, Mr. Reid?

21 MR. REID: First off, Your Honor, it's incorrect to
22 say that Mr. Forsyth was reviewing the procedures. He said he
23 may have looked at them one or two occasions prior to the
24 incident, but he was not conducting audits at the plant.
25 Mr. Aaberg.

26 THE COURT: Go ahead.

27 MR. REID: I'm sorry, Your Honor.

28 THE COURT: Sorry.

1 MR. REID: Mr. Aaberg, Mr. Kromer were DG Corp.
2 employees; however, they were replaced in August of 2016,
3 which Mr. Adam Cristodoulou who was DGC OPS employee and he
4 was the person at the time of the incident who was supervising
5 the plant managers including Mr. Walker.

6 Your Honor, one of the things that the Good Samaritan
7 doctrine applies to negligent undertaking is that duty doesn't
8 exist forever. If they undertake it, then stop doing it, in
9 this case Mr. Cristodoulou took over, he's the one driving
10 these policy reviews or procedure reviews. After August of
11 2016, he's also the person conducting the meetings, the
12 physical fact Mr. Kromer or Mr. Shepard happened to be there,
13 is not indicative. There's been no testimony that they were
14 actually reviewing these procedures. Yes, there is an e-mail
15 where Mr. Kromer says he's good to go, review it, but once
16 Mr. Cristodoulou takes over, Mr. Cristodoulou as DGC OPS
17 employees, the one's looking at those procedures.

18 And Your Honor, there's been no evidence that any of
19 those procedures that were reviewed had anything to do with
20 the LOTO. And in addition, Your Honor, Mr. Ward is going to
21 come in here shortly and Mr. Ward is going to say that he came
22 up with the idea of making that change. He cleared it with
23 management. He doesn't remember if it was Jason King or Tom
24 Walker and then he discussed it with Daniel Collins and the
25 rest of the operators. They all agreed to it.

26 He testified the day of the incident, he reminded
27 Mr. Collins on two separate occasions that that LOTO procedure
28 had been changed, the step was moved further down. So this is

1 again --

2 THE COURT: But -- so I'm apologize.

3 MR. REID: I apologize.

4 THE COURT: I'm sorry, Mr. Reid. Your points are
5 well taken. I have to do this in context, you're telling me
6 about anticipated testimony but the motion at this time from
7 Mr. Schumann is nonsuit as of this time. There's also the
8 other things I'm not to consider, there's the motion it talks
9 about Workers Compensation benefits, all these things are not
10 before the Court.

11 MR. REID: I understand.

12 THE COURT: I appreciate that, I have to be clear,
13 I'm not going to consider that.

14 MR. REID: Understood.

15 THE COURT: To be quite dispositive, here we're --

16 MR. REID: Understood, Your Honor. And, again, I'll
17 just come back to the point that Mr. Cristodoulou was the
18 person responsible for reviewing Mr. Walker's performance,
19 auditing procedures, in addition to Mr. McDaniels who had
20 responsibility for them.

21 THE COURT: Thank you, Mr. Reid.

22 MR. REID: Thank you, Your Honor.

23 THE COURT: Going back --

24 MR. SCHUMANN: May I add something?

25 THE COURT: Of course, Mr. Schumann.

26 MR. SCHUMANN: So, there's case law too that an owner
27 always has a right to keep it's fingers on the pulse, talk to
28 the contractor, what to do, whatnot to do, that doesn't make

1 them take over the project.

2 THE COURT: No, that's ultimately what the issue we
3 tried to frame here. Although, again, to this Court, I don't
4 see this as an issue of hiring an independent contractor.
5 It's much different, this is a special relationship.

6 MR. SCHUMANN: Sure. What we talked about was maybe
7 being at a safety meeting, maybe even reviewing safety
8 procedures, right.

9 THE COURT: No parent corporation.

10 MR. SCHUMANN: Certainly has a right to and should
11 review, that's what one does as an owner or part owner. So
12 that doesn't make you have taken over safety at the plant.
13 And there's no evidence in this case that DGC affirmatively
14 took over any portion of safety. There's been testimony that
15 in '11 and in '13, might have been some forms, even a possible
16 safety manual might have been shared with the plants manager,
17 who then changed it; however, which way he wanted to, that
18 will be how you execute your duty, you hired a professional
19 company. There's been no testimony that the OPS and CPV
20 hiring of CPV Sentinel management was not a proper hiring.
21 That it was fake, that it was not a real company. There's
22 been only evidence and an operation agreement and an O and M
23 management agreement that confirms that they performed their
24 duty by hiring two separate companies. So whether they
25 oversee them or not, I don't see that being sufficient to get
26 over the hurdle.

27 THE COURT: Isn't that the evidence that DG
28 Corporation though -- so there's DG Corporation. I'm trying

1 to keep this all straight. I can't imagine with the jury,
2 there's DG Corporation, there's a part has 50 percent
3 ownership in CPV Sentinel.

4 MR. SCHUMANN: Correct.

5 THE COURT: CPV Sentinel is the one that hires DG
6 Operations.

7 MR. SCHUMANN: Yes.

8 THE COURT: DG Operations hires the asset manager.

9 MR. REID: No, other way around.

10 MR. SCHUMANN: CPV Sentinel hires DG OPS.

11 And the management company to oversee OPS and oversee
12 the entire plant.

13 THE COURT: OPS is ostensibly responsible for day to
14 day.

15 MR. REID: Yeah.

16 THE COURT: CPV Sentinel has more than 30,000
17 overview.

18 MR. SCHUMANN: Including overview of OPS though,
19 including overview of OPS's safety procedures and including
20 overview of LOTO sheets. So there's no testimony that anyone
21 from DGC looked at any of the 2017 LOTO sheets, changed any of
22 the LOTO sheets, did anything to any of the 2017 LOTO sheets
23 including the one from March 2017. There's only been hints at
24 the form was used in 11 -- the logo on it, and you were in a
25 meeting, there's six e-mails, that's the only evidence there
26 is to link DGC as having enough control over safety with that.

27 THE COURT: Thank you, Mr. Schumann.

28 Mr. Basile, specifically, if you can address the LOTO

1 sheet issue and what if any input or control DG Corporation
2 had on that specific LOTO procedure change.

3 MR. BASILE: Right. We go back to Wayne Forsyth, he
4 said he reviewed -- may have tried to split hairs, may have or
5 could have. Don't forget that Shepard this morning said both
6 Aaberg and Kromer also did. Now, this thing, this kind of new
7 that Cristodoulou all at once comes in, he's not on the
8 witness list.

9 THE COURT: We're only dealing with evidence up to
10 this moment.

11 MR. BASILE: Right. The review of the safety
12 procedures which needed to be changed that Walker talked about
13 that Kromer was asking about from -- they start actually in
14 August of 2016, interestingly enough after this Cristodoulou
15 guy supposed to comes in, it's gone right from DGC Corporation
16 to the plant to the plant coming back to them on these
17 procedures. Then, the quarterly meeting where the agenda is
18 specifically addressing changes to procedures. Now, Your
19 Honor, we're requesting a failure to produce stronger evidence
20 because we only could get, what we could get on these e-mails
21 and things. So that's what was going back and forth, there's
22 specific evidence in there that Kromer reviewed the LOTO
23 sheets, that Aaberg and Forsyth reviewed the LOTO sheets on
24 that and more importantly --

25 THE COURT: Who proposed change to the LOTO
26 procedure?

27 MR. BASILE: I don't know that I can answer that,
28 Your Honor. Only in this way, there's only one where it

1 points that starting at the top, this stuff, it's all new.
2 We'll see when Mr. Ward testifies.

3 THE COURT: Okay. Please stop eluding to evidence
4 that's not before the Court.

5 MR. BASILE: So the evidence is specifically that.
6 That they were reviewing the safety procedures at this plant,
7 what bigger safety procedure is there then when they do the
8 annual outage, when they are shutting down the whole plant.
9 That's what's gone on. That's what's being reviewed, that's
10 what Forsyth said he reviewed, that's what Aaberg said he
11 reviewed.

12 THE COURT: That review of just the safety procedures
13 as a whole, is that going to exceed the control normally
14 exercised by the parent corporation? I'll tell you now, the
15 case law does not support that position.

16 MR. BASILE: Well, it certainly exceeds ordinary
17 control, because when you put it in the context of what's
18 going on there, this was not a routine like, okay, let's just
19 review it or anything like that, we need changes. And in this
20 specific e-mail.

21 THE COURT: Who said we need changes.

22 MR. BASILE: In the e-mail, if we can get 208 or 209
23 where Walker is saying, here's the changes I came up with. We
24 need to have them reviewed. We need -- I don't have it in
25 front of me. Mr. Sullivan might be able to address this
26 better than me, Your Honor.

27 THE COURT: Mr. Sullivan.

28 MR. BASILE: Certainly, Your Honor. In the e-mail

1 chain that started in August, that was involving Michael
2 Kromer, who was DGC Executive at that particular point in
3 time, when Mr. Cristodoulou got involved in there,
4 specifically in his e-mails, it's talking about the updates of
5 the safety policy. He specifically states that this is at the
6 direction of Mike Kromer, who's the person later on in
7 November when they are talking about updating of the safety
8 policies. He's asking for my recommendations regarding
9 changes. He says get them to me right-a-way because I need to
10 go up the food chain in order to get things approved.

11 Specifically, as relating to the LOTO sheet itself,
12 some of the most compelling evidence that the Court hasn't
13 talked about at this point in time because it really hasn't
14 gotten into that much, it brought up through Tom Walker's
15 testimony the site orientation video, it's not necessarily a
16 video, it's a slide show, power point presentation.

17 THE REPORTER: Please slow down.

18 MR. SULLIVAN: That's Diamond Generating Corporation
19 document, that all of the outside contractors are required to
20 follow and pass a test on in order to be able to do work at
21 the facility. Two of the slides within that, specifically,
22 command the outside contractors, that they must follow the
23 LOTO that are in place at the time or that are in place at the
24 Sentinel Facility, the other one says outside contractors are
25 specifically required to walk the LOTO before they can sign
26 onto the LOTO sheet and begin doing any work.

27 By Diamond Generating Corporation, instructing the
28 outside contractors, that they must follow that LOTO procedure

1 in place, that's some powerful evidence to suggest that they
2 have reviewed and approved those procedures because what
3 corporation is going to be instructing and all of these
4 outside contractors who are going to come to do work at this
5 valuable asset that they have investment interest in, tell
6 them they have to follow these procedures, if they haven't
7 followed the procedures, that certainly a logical inference
8 the jury is allowed to make in this particular case. And the
9 other thing is, Your Honor, is that when discovery was taking
10 place --

11 THE COURT: Okay. Well, thank you, Mr. Sullivan.

12 I'm sorry. Go ahead. I don't want to get into back
13 stories about discovery just the evidence before the Court.
14 So I don't mean to cut you off, I'm sensitive to the jury
15 waiting outside.

16 MR. REID: Your Honor, if --

17 THE COURT: Just one -- Mr. Sullivan, how would you
18 answer what entity made the final decisions regarding the
19 change in the LOTO sheets?

20 MR. SULLIVAN: Our contention would be that Diamond
21 Generating Corporation had the final decision in all of that
22 stuff, based on the testimony from Wayne Forsyth that he said
23 he reviewed the LOTO sheets; testimony from Paul Shepard this
24 morning where he indicated that Adam or Mike Aaberg, Michael
25 Kromer who have reviewed the LOTO sheets, including the
26 evidence showed they had the responsibility to do that.
27 Additionally, the evidence as it relates to the site
28 orientation, this thing was in place for, you know, several or

1 couple months before this incident actually happened. So
2 there's plenty of time in order for that to have occurred.
3 The fact they may have hidden that evidence from us to show
4 that direct connection, I think is something for the jury to
5 weigh and decide for themselves as to whether or not that
6 connection should be made.

7 THE COURT: Thank you, Mr. Sullivan.

8 Mr. Reid, then I'll --

9 MR. REID: Understood, Your Honor. Just one quick
10 thing. Mr. Forsyth said he may have, but when I specifically
11 questioned him about it, he said I did not review the changed
12 LOTO procedure until after the incident. He did not review it
13 beforehand, and there is no evidence as to who actually made
14 the change or approved the change beyond DGC OPS at this
15 point, Your Honor.

16 THE COURT: Thank you, Mr. Reid.

17 MR. REID: Thank you, Your Honor.

18 THE COURT: So going back to the original question
19 about the parent of the subsidiary's relationship, we have DG
20 Corporation having a 50 percent ownership, and CPV Sentinel, I
21 don't think there's any evidence. I don't suppose it's
22 relevant who the other ownership is, the 50 percent is made up
23 of multiple parties.

24 MR. REID: Two other parties.

25 THE COURT: The majority of the shareholder or
26 ownership is through DG Corporation?

27 MR. REID: That's correct.

28 THE COURT: Okay. So that I guess, some respect that

1 would explain why they have direct involvement here with their
2 subsidiary. The court finds that the DG Corporation has
3 exceeded the control over that that is incident to ownership,
4 specifically what the Court can't -- I'm speaking about this
5 with Mr. Schumann earlier, I can't reconcile how there's these
6 multiple layers, we're not talking about DG Corporation, and
7 then reviewing the policies of CPV Sentinel. We're talking
8 about DG Corporation, not only going over CPV Sentinel, they
9 are reviewing specifically the policies of the plant being run
10 by DG Operations. Then CPV Sentinel LLC is the asset manager
11 for the incident location here. The tentacle seems -- I know
12 that's a poor analogy, that's how I visualize it.

13 It's really going beyond, just really going beyond
14 that which is normal part of the ownership with CPV Sentinel,
15 which they are the majority owner at 50 percent. They are
16 hiring Tom Walker or providing the -- sorry. I believe, I
17 have this here. This is back from June 29, am I mistaken that
18 they were responsible for hiring Tom Walker and also reviewed
19 his annual performance review in terms of whether bonuses
20 would be awarded.

21 MR. REID: Up until April 2016.

22 THE COURT: This plant opened in 2013.

23 MR. REID: That's correct.

24 MR. SULLIVAN: I think that's a misstatement of the
25 evidence, Your Honor.

26 THE COURT: How so, Mr. Sullivan?

27 MR. SULLIVAN: Tom walker testified when he was
28 there, all annual reviews were done by Diamond Generating

1 Corporation employees. There wasn't one that they provided us
2 for 2016.

3 THE COURT: Then you have Michael Delaney hired by DG
4 OPS, by DG OPS, who was hired by Sentinel. You believe the
5 corporate company was DG Corporation and again, we have them
6 removed at least two parties or at least one party from CPV
7 Sentinel, somehow though he's still, he's operating under the
8 belief that the main corporation here is DG Corporation.
9 Wayne Forsyth, a DG Corporate employee, the Court did come
10 across case law that having employees on the board of either
11 the parent -- not that either. But on both the parent and the
12 subsidiary itself does not pass or sorry, exceed mere incident
13 of ownership. And that goes to, there is Ms. Cubos here who
14 is the director of HR for both DG Corp. and DG Operations.
15 The record will reflect that the Court's not making it's
16 ruling strictly on that, that's one thing to consider, but
17 that is normal. But it is one thing to consider.

18 We did have deposition testimony of Thomas Walker
19 played where he testified to reviewing the LOTO policy before
20 March 6th of 2017. We'll point out for the record that the
21 plaintiffs expert Mr. Lane had no opinions regarding whether
22 -- no opinions regarding the duties of different corporations
23 regarding operations of a plant. So it wasn't particularly
24 helpful there.

25 The Court did find Mr. Lane's testimony helpful in
26 the technical aspects of the case as to the high pressure
27 mechanisms at play here and why it's important to have the
28 accurate safety procedures in place. Then going back to

1 Mr. Forsyth, on his redirect, must have been July 12th, my
2 notes indicate July 13th. July 13th, I know we broke early.
3 On his redirect that morning, he testified about prior plants
4 where DG Corporation has 100 percent ownership in,
5 specifically he acknowledged, again, I think this falls
6 within the parent subsidiary relationship, this is one more
7 thing to consider, the meetings would be held at DG
8 headquarters in Los Angeles, but that he specifically
9 testified that DG Corporation would update procedures, they
10 communicate with the DG Corporation. Well, they would
11 communicate with the asset manager for the plant. And I have
12 down that in my notes that DG Corporation would do audits of
13 the LOTOs.

14 MR. REID: There's been no evidence of that,
15 Your Honor, respectfully.

16 THE COURT: Do you know why my notes reflect that,
17 Mr. Sullivan.

18 MR. SULLIVAN: Yes, Mr. Forsyth said that on his
19 direct.

20 THE COURT: I have it down on my redirect.

21 MR. SULLIVAN: In the redirect, it was done by
22 Mr. Forsyth, it was the first time he examined him, he said he
23 reviewed the LOTO sheets.

24 THE COURT: So along -- the time he testified he
25 could recommend trainings but could not enforce them to be
26 had. The Court can't just look past the part, that it's not
27 just -- it's not DG Corporation over CPV Sentinel. It's DG
28 Corporation, almost jumping over CPV Sentinel, the

1 subsidiaries, and coming back directly involved with DG
2 Operations and then according to Mr. Forsyth, also with, I
3 guess, CPV Sentinel LLC with the asset manager as I mentioned
4 earlier, I know it's poor analogy, the tentacles are going
5 over and beyond one level of the subsidiary relationship based
6 on the evidence up to this point, I did hear you earlier,
7 Mr. Reid, I cannot consider that in terms of evidence that may
8 be forthcoming.

9 The Court is going to deny the motion for nonsuit. I
10 do appreciate the brief, and I did give this much thought and
11 wanted to look through the case law on this, candidly this is
12 a complex issue. So, hopefully you have your record before
13 you.

14 MR. REID: Thank you, Your Honor.

15 THE COURT: So motion for nonsuit is denied. Also,
16 I'll make clear, this will also take care of and address the
17 pending and remaining motion in limine issue as to the Privett
18 doctrine for the reasons mentioned quite a while ago, this
19 afternoon, the Court will not be instructing on Privett for
20 the reasons mentions, and we'll be proceeding under 450C
21 negligent undertaking. We'll, of course, go through and
22 finalize the jury instructions before, I won't just read them
23 without getting final input from both sides.

24 MR. REID: Thank you, Your Honor.

25 MR. BASILE: Thank you.

26 THE COURT: Thank you for your patience with me this
27 afternoon. If there's not anything else, we can bring the
28 jury in.

1 Mr. Reid, when we bring them in, you're up or
2 Mr. Schumann.

3 (Pause in the proceedings.)

4 THE COURT: We're back on the record in Collins
5 versus DG Corporation. All members of the jury are present.
6 It is now 2:15. My apologies to each of you. In cases there
7 are other procedural things that must be addressed first.
8 It's not the fault of counsel, it's strictly the Courts. We
9 were in here. We started about 1:18, and we've been at it
10 ever since. Madam Court Reporter was with us, so there's a
11 couple things we needed to do on our end in order to make a
12 record, legal issues, I'll leave it at that. So, we need to
13 make sure that we did not rush through those, but it's not
14 counsel, they came in early, and they've been ready to proceed
15 with witness testimony, you know, right at 1:30, but the Court
16 kept them here to make sure we had our ducks in a row. Okay.

17 That being said, plaintiffs are have rested their
18 case. It's now defense's case. Mr. Reid, when you're ready,
19 you have your witness?

20 MR. REID: DG Corp. calls Robert Ward, Your Honor.

21 THE COURT: Thank you, Mr. Reid.

22 THE CLERK: You do solemnly state that the evidence
23 you shall give in this matter shall be the truth, the whole
24 truth, and nothing but the truth, so help you God?

25 THE WITNESS: I do.

26 THE CLERK: Thank you. Please be seated. State your
27 first and last name and spell it for the record, please.

28 MR. REID: May I proceed, Your Honor?

1 THE COURT: Of course, when you're ready.

2 We have to swear in the witness.

3 THE CLERK: I did, Your Honor. If you can please
4 state and spell your first and last name for the record.

5 THE WITNESS: Robert Lucian Ward, R-o-b-e-r-t
6 L-u-c-i-a-n W-a-r-d.

7 THE CLERK: Thank you.

8 ROBERT LUCIAN WARD,
9 called as a witness by Defense, was sworn and testified as
10 follows:

11 DIRECT EXAMINATION

12 BY MR. REID:

13 Q. Good afternoon, Mr. Ward.

14 A. Good afternoon.

15 Q. How are you doing?

16 A. Okay.

17 Q. Tough day?

18 A. Yes.

19 Q. When did you first meet Dan Collins?

20 A. In the Navy, 2001.

21 Q. And how long did you serve in the Navy?

22 A. Ten years.

23 Q. Thank you for your service, sir.

24 How long did you serve with Mr. Collins?

25 A. Almost four years.

26 Q. Is he the person that helped you get the job at the
27 Sentinel facility?

28 A. Yes.

1 Q. How long did you work with him at the Sentinel
2 facility?

3 A. Four years.

4 Q. Would you consider Mr. Collins to be one of your best
5 friends?

6 A. Yes.

7 Q. This is a very difficult time for you to come and
8 testify in this case, is it not?

9 A. Yes.

10 Q. When did you first start working at the Sentinel
11 plant?

12 A. September of 2013.

13 Q. So that was shortly after the plant opened; is that
14 correct?

15 A. Correct.

16 Q. And prior to Mr. Collins incident, did you attend any
17 training at the Sentinel facility?

18 A. Repeat that.

19 Q. Sure. Prior to Mr. Collins's accident, did you
20 attend any training at the Sentinel plant?

21 A. Yes.

22 Q. What type of training did you attend?

23 A. Confine space, LOTO.

24 Q. I don't need an exhaustive list. Who conducted those
25 trainings?

26 A. Management. Either Tom Walker or Jason King.

27 Q. When you say "management," you mean DGC OPS
28 management, correct?

1 A. Correct.

2 Q. Okay. As part of your training at the facility, did
3 you shadow other gas turbine technicians?

4 A. Yes.

5 Q. Was Dan Collins one of the people you shadowed?

6 A. Yes.

7 Q. Who else did you shadow?

8 A. I shadowed Mike Knolls.

9 Q. Have you heard the term SMP-3 LOTO procedure before?

10 A. Yes.

11 Q. Are you familiar with that policy?

12 A. Yes.

13 Q. Did you receive annual training on that policy?

14 A. Yes.

15 Q. And was Mr. Collins in the same training that you
16 were?

17 A. Yes.

18 Q. How many outages do you estimate that you
19 participated in from the date of your hire until the date of
20 Mr. Collins's incident?

21 A. Between eight to ten.

22 Q. Okay. So slightly different question, the number of
23 times you actually performed the LOTO on the fuel filter skid
24 would have been eight to ten, correct?

25 A. Correct.

26 Q. If when I asked you how many outages you participated
27 in, I was talking about in any capacity authorizer, initiator,
28 doing general maintenance during the outage?

1 A. Eight.

2 Q. Okay. And maybe I'm not making myself clear, there
3 were probably 30 outages that were performed from 2013 until
4 the date of Mr. Collins's passing, you had some?

5 THE REPORTER: I didn't get that. I'm sorry.

6 THE WITNESS: No, I didn't say anything.

7 Q. BY MR. REID: You understand what I'm referring to
8 now?

9 A. Yes.

10 Q. So you participated in the majority of those 30
11 outages; is that fair?

12 A. Correct.

13 Q. And then specifically, you performed the Lock Out/Tag
14 Out procedure on the fuel filter skid eight to ten times, I
15 believe you said?

16 A. Correct.

17 Q. Were a number of those times you did that with
18 Mr. Collins?

19 A. Yes.

20 Q. All right. Were there a number of times you actually
21 performed the role of the installer?

22 A. Yes.

23 Q. And when you were doing the installer role, and it
24 came to venting the system, you opened the two vent valves,
25 correct?

26 A. Correct.

27 Q. What did you do while that process was going on?

28 A. I was listening, I was watching the pressure gauge.

1 Q. Okay. So you would actually walk around the fuel
2 filter skid and look at the pressure gauge and make sure it
3 went to zero; is that correct?

4 A. Correct.

5 Q. Is that something that was custom and practice among
6 the operators?

7 A. Yes.

8 Q. Is that something you observed Dan Collins do on
9 occasion?

10 A. Yes.

11 Q. Something he observed you do on occasion?

12 A. Yes.

13 Q. You saw Ernest Jones do it, a number of other
14 operators would look at that gauge as that pressure was being
15 vented, correct?

16 A. Correct.

17 Q. And the purpose of watching that gauge go to zero,
18 was that -- what was the purpose of that?

19 A. To ensure that that filter was actually empty and had
20 zero pressure before we close the final fuel filter or final
21 Lock Out.

22 Q. Isolation valve?

23 A. Correct.

24 Q. So giving your experience at the plant, participating
25 in approximately 30 outages, you were familiar with the sounds
26 that would occur during the outage?

27 A. Correct.

28 Q. At any point in time prior to the date of

1 Mr. Collins's accident, did you ever hear more than one gas
2 venting from the filter skid?

3 A. No.

4 Q. Exhibit 358, next to 349.

5 MR. REID: I believe these are both admitted,
6 Your Honor. The photograph, yeah. That one.

7 Q. BY MR. REID: Are you familiar with what is depicted
8 in that photograph?

9 A. Yes.

10 Q. Is that a fuel filter skid?

11 A. Yes.

12 Q. Are those three large red handles attached to the
13 isolation valve for the fuel filter skid?

14 A. Yes.

15 Q. I'm going to point, so see if I can find my pointer
16 here. Turn around and look at the screen for me. See this
17 first one here on the lower pipe?

18 A. Yes.

19 Q. That isolation valve Number 1?

20 A. Yes.

21 Q. And this is this isolation valve Number 2?

22 A. Yes.

23 Q. And this one up here on the top, that's isolation
24 valve Number 3, correct?

25 A. Correct.

26 Q. Looking at plaintiff's expert Mr. Lane's diagram
27 here, he identifies that isolation valve you just testified as
28 Number 3 as isolation valve Number 2, do you see that?

1 A. Yes.

2 Q. In all of your experience was that valve ever
3 identified as isolation valve Number 2?

4 A. No.

5 Q. Okay. And as the installer, participating in these
6 LOTOs of the fuel filter, you would have occasion to place a
7 tag on each of those valves as they were closed and tagged and
8 locked essentially, correct?

9 A. Correct.

10 Q. Did you ever place a tag on that upper isolation
11 valve prior to this incident?

12 A. No, I don't recall.

13 Q. Prior to the -- prior to the 2017 outage season, was
14 there a change made to the LOTO sheet?

15 A. Yes.

16 Q. What was that change?

17 A. Change the isolation, the final isolation to the -- I
18 change the tag order for the final isolation valve to be
19 placed at the end of the LOTO to ensure that was the final
20 valve shut so no gas would get trapped in between any systems.

21 Q. All right. When we refer to that isolation valve
22 Number 2, we're talking about the second one on the inlet
23 side, correct?

24 A. Correct.

25 Q. Okay. Who came up with the idea to make that change?

26 A. I did.

27 Q. And why did you want to make that change?

28 A. Because I felt that the current LOTO wasn't clear and

1 it could pose a possible danger because it wasn't, in my
2 opinion, in the right order.

3 Q. Did you seek approval from management? In other
4 words, Mr. King or Mr. Walker prior to making that change?

5 A. Yes.

6 Q. And they okayed the change?

7 A. Correct.

8 Q. Do you remember who it was who okayed the change?

9 A. Jason did.

10 Q. Once you had authority or approval to make that
11 change, did you discuss that change with the other gas turbine
12 technicians?

13 A. Yes.

14 Q. Did you discuss that change with Mr. Collins?

15 A. Yes.

16 Q. And did the other gas turbine technicians agree this
17 was a change that made sense?

18 MR. BASILE: Objection. That calls for hearsay, lack
19 of foundation.

20 MR. REID: Did you ask?

21 THE COURT: Sorry, Mr. Reid, one moment.

22 MR. REID: I apologize, Your Honor.

23 THE COURT: That's fine. Sustained. If you can be
24 more specific, Mr. Reid.

25 MR. REID: Sure.

26 Q. BY MR. REID: Did Mr. Collins agree that was a change
27 that needed to be made?

28 A. Yes.

1 Q. Did the other gas turbine technicians agree that that
2 was a change that needed to be made?

3 A. Yes.

4 Q. Exhibit 264, please, page 256. You recognize this
5 sheet?

6 A. Yes.

7 Q. What is this sheet?

8 A. It is the annual outage LOTO for unit 7.

9 Q. And scroll down a little bit for me. And that LOTO
10 was performed on January 30th of 2017, correct?

11 A. Correct.

12 Q. Okay. So it was installed at least on that date?

13 A. Correct.

14 Q. Okay. Scroll down a little for me. Stop. So tag
15 Number 2, isolation valve Number 1, that was the first
16 isolation valve that we talked about a little bit ago on the
17 inlet side?

18 A. Correct.

19 Q. Tags 3 and 4 are the vent valves that we talked
20 about, correct?

21 A. Correct.

22 Q. And scroll down to the second page, tag number --
23 step 23, isolation valve Number 2, that's that second
24 isolation valve on the inlet side, correct?

25 A. Correct.

26 Q. And you moved it further, they are down into the
27 sheet because you wanted to make sure that was one of the last
28 valves closed, correct?

1 A. Correct.

2 Q. Did you participate in this LOTO -- back up to the
3 top page, please, all the way up. Sorry.

4 A. I prepared it.

5 Q. It looks like you prepared two to three days before
6 it was done, correct?

7 A. Correct.

8 Q. Do you recall if you were at the site on the date
9 this LOTO was installed?

10 A. I do not recall.

11 Q. Okay. Did you hear anything from anyone that there
12 were any unusual gas ventings on this date?

13 A. No.

14 Q. To your knowledge was anyone injured on the date of
15 this LOTO?

16 A. No.

17 Q. To your knowledge was fuel filter assembly isolated
18 and depressurized without incident?

19 A. As far as I'm concerned, yes.

20 Q. Page 262, the same exhibit. And this is another LOTO
21 sheet, correct?

22 A. Correct.

23 Q. And this is for the unit 3 annual outage, correct?

24 A. Correct.

25 Q. And you were again the initiator and the authorizer,
26 correct?

27 A. Correct.

28 Q. Jason King listed as work supervisor, correct?

1 A. Correct.

2 Q. Scroll down a little, second page for me. Well,
3 right there. Do you recognize the DC initials in this
4 document?

5 A. Yes.

6 Q. Who's initials are those?

7 A. Dan Collins.

8 Q. And it appears that Dan may have done a couple of the
9 install steps specifically Number 1 and Number 6, you see
10 those?

11 A. Yes.

12 Q. And it looks like he acted as verifier for the rest
13 of the procedure, correct?

14 A. Correct.

15 Q. Scroll down to page 2, just so you can take a look at
16 the whole thing. And do you recognize the other initials?

17 A. Yes.

18 Q. Who's are those?

19 A. Mike Delaney.

20 Q. Okay. To your knowledge on this date were there any
21 unusual fuel ventings?

22 A. No.

23 Q. To your knowledge -- I asked a bad question. I
24 apologize. On this date, were there any unusual fuel
25 ventings?

26 A. Not that I know of.

27 Q. To your knowledge on the this day was the fuel filter
28 isolated and depressurized without incident?

1 A. Yes.

2 Q. Can I have page 264, please, middle of first page.

3 Yeah. All right. You see about halfway downward --

4 A. Yes.

5 Q. That an indication that you were there on that date
6 of that LOTO installation?

7 A. Yes.

8 Q. Okay. Page 272, please. What's this document?

9 A. Annual audit times for unit four LOTO.

10 Q. Okay. Again, you were the initiator and the
11 authorizer, correct?

12 A. Correct.

13 Q. And scroll down a little bit. It appears that this
14 LOTO was installed on February 13th of 2017; is that correct?

15 A. Correct.

16 Q. Do you recognize those initials as the installer?

17 A. Yes.

18 Q. Who's initials are those?

19 A. Mine.

20 Q. So you participated in the LOTO on this date,
21 correct?

22 A. Yes.

23 Q. And who was your partner on that date?

24 A. Ernest Jones.

25 Q. He was acting as verifier; is that correct?

26 A. Correct.

27 Q. And on this date, you closed and locked and tagged
28 the isolation valve Number 3; is that correct?

1 A. Correct.

2 Q. And then you opened the final vent valves in steps 4
3 and 5 and tagged and locked those also?

4 A. Yes.

5 Q. Mr. Ward, when you did this LOTO with Mr. Jones, did
6 you do the steps in order?

7 A. Yes.

8 Q. Why is it important to do the steps in order?

9 A. So you don't neither miss anything or a valve is not
10 closed or opened unintentionally.

11 Q. Or in the wrong order, correct?

12 A. Correct. It's for safety.

13 Q. On this date when you opened the final filter vent
14 valves 1 and 2, in steps 4 and 5, did you watch the gauge go
15 to zero?

16 A. Yes.

17 Q. Were there any unusual gas ventings on that date?

18 A. No.

19 Q. To your knowledge was the fuel filter isolated and
20 depressurized without incident?

21 A. Yes.

22 Q. Was anyone injured as a result of pressure on that
23 date?

24 A. No.

25 Q. Page 283, the same exhibit, please. What are we
26 looking at here?

27 A. Annual LOTO for unit 6.

28 Q. And you were the initiator and the authorizer again?

1 A. Yes.

2 Q. Mr. King was the work supervisor, correct?

3 A. Correct.

4 Q. Going back to February 13th, for just a moment, once
5 the LOTO had been hung, did someone notify Mr. King that the
6 LOTO had been hung and that he should lock it down?

7 A. I do not remember.

8 Q. Okay. Is that what normally would occur either you
9 or the verifier?

10 A. Yeah, or the control room operator at the time.

11 Q. Okay. But once the LOTO is hung and it was in the
12 control room, someone would have notified Mr. King that he
13 needed to walk the LOTO down, correct?

14 A. Yes.

15 Q. Unit 6 annual outage control. Scroll down a little
16 bit for me. Appears that this was installed on February 20th
17 of 2017; is that correct?

18 A. Correct.

19 Q. And who was the installer on that date?

20 A. Ernest Jones.

21 Q. Who was the verifier on that date?

22 A. I was.

23 Q. And did you perform the steps in LOTO in sequence?

24 A. Yes.

25 Q. Okay. So in other words, exactly as they appear on
26 the sheet?

27 A. Yes.

28 Q. Okay. To your -- well, strike that. Did Mr. Jones

1 close and lock and tag isolation valve Number 1, tag 3?

2 A. Yes.

3 Q. And how do you know that?

4 A. Because the lock was hung and the valve was shut.

5 Q. Okay. How do you know it was Mr. Jones that did it?

6 A. Because he's the one that initiated it and got it

7 done. He's was going to go install and I was going to go

8 verify.

9 Q. Did you verify this separately from Mr. Jones doing
10 the installation?

11 A. Yes.

12 Q. Okay. So you came along after he did and did the
13 verification, correct?

14 A. Correct.

15 Q. Okay. And another indication that this was done by
16 Mr. Jones is that the fact that he initialed the LOTO sheet,
17 correct?

18 A. Correct.

19 Q. Did you observe Mr. Jones watch the gauge on the fuel
20 filter go to zero on this one?

21 A. No.

22 Q. Because you were there, correct?

23 A. Correct.

24 Q. You came along afterwards, correct?

25 A. Correct.

26 Q. As part of your job as verifier, did you check the
27 gauge to make sure it was at zero?

28 A. Yes.

1 Q. On the date of the incident, March 6th, 2017 -- I
2 understand this is hard. Okay. If you need to get a tissue
3 or anything, it's fine. Did you attend the morning meeting
4 that morning?

5 A. Yes.

6 Q. And was Daniel Collins present for that meeting?

7 A. Yes.

8 Q. After that morning meeting, did you say something to
9 Mr. Collins?

10 A. Yes.

11 Q. What did you tell him?

12 A. I was letting him know that if they were going to do
13 that LOTO, it had been changed, you know, to make sure that
14 team -- remember that it was, that tag had been moved down to
15 the bottom.

16 Q. Specifically, you're referring to isolation valve
17 Number 2, correct?

18 A. Correct.

19 Q. Did you see Mr. Collins take the LOTO sheet and the
20 tags and locks for the LOTO, for the fuel filter skid?

21 A. Yes.

22 Q. At some point during the morning, did you go to the
23 fuel unit 5 filter skid?

24 A. I was around the area, yes.

25 Q. Did Mr. Collins call you over with a question?

26 A. Yes.

27 Q. What did he ask you?

28 A. He said I was missing a tag.

1 Q. What tag was he referring to?

2 A. Isolation valve Number 2.

3 Q. What did you tell him?

4 A. That it was there. It was just moved down further in
5 the list.

6 Q. Did you show him specifically where it was in the
7 list?

8 A. Yes.

9 Q. So that was the second time you reminded him that day
10 that that LOTO sheet had been changed, correct?

11 A. Correct.

12 Q. On that morning, did you hear any unusual gas
13 ventings?

14 A. Yes.

15 Q. Which gas vent -- strike that. Let me ask it a
16 different way. Normally, when that fuel filter skid or any of
17 the fuel filter skids at the plant are vented, how long does
18 it take for that venting?

19 A. Could take, you know, depending how fast they are
20 venting it, it could be 5, 6, 7 minutes or longer.

21 Q. Could be longer?

22 A. Or longer.

23 Q. Did you hear that initial gas venting?

24 A. Yes.

25 Q. And is it your understanding -- strike that. What is
26 your understanding of Albert Palalay's role that morning?

27 A. He was the verifier.

28 Q. And is it your understanding that Albert Palalay

1 initially opened those vent valves?

2 A. I was not there to see him do that.

3 Q. Okay. Did you hear after the fact that he opened
4 those vent valves?

5 A. Yes.

6 Q. Did you hear after the fact that he closed them
7 before the venting was complete?

8 A. No.

9 Q. Did you hear more than one gas venting?

10 A. Yes.

11 Q. How many did you hear?

12 A. Two.

13 Q. And the second venting, where were you?

14 A. I was on the other side of the units.

15 Q. Okay. So --

16 A. On the south side of the unit.

17 Q. Okay. So you were actually on the other side of the
18 what they call the Emolo (phonetic)?

19 A. The Emolo OPS skid, I was on the other side of the
20 package.

21 Q. When that second venting occurred, what did you do?

22 A. I came around to the front of the package where the
23 fuel system was to kind of see what it was because it was a
24 quick vent.

25 Q. Did you have communication or conversation with
26 anyone?

27 A. No.

28 Q. Did you talk to Mr. Ju Kim?

1 A. I saw him, we exchanged non verbal communication. I
2 was just like, what was that, kind of, you know, look.

3 Q. So that was something that was unusual that second
4 venting, correct?

5 A. Yes.

6 Q. And on that morning did you see the LOTO sheet and
7 the LOTO box back in the control room?

8 A. Yes.

9 Q. And do you know about what time that was?

10 A. 6:30, 6:40ish maybe.

11 Q. Okay. Did that second venting occur after you saw
12 the LOTO box back in the control room?

13 A. Yes.

14 Q. And the LOTO sheet and the LOTO box being in the
15 control room, how is that significant?

16 A. That means the LOTO has been hung and verified. That
17 you're okay to start working on it if you need to work on it.

18 Q. If the LOTO has been hung and verified, would you
19 expect there to be additional gas venting?

20 A. No.

21 Q. And the fact that there was additional gas venting
22 that indication that there was some kind of problem?

23 A. Yes.

24 Q. Other than that non verbal communication you had with
25 Mr. Kim, did you have a conversation with Mr. Collins?

26 A. No.

27 Q. Were you carrying a walkie-talkie that day?

28 A. Yes.

1 Q. Do you recall Mr. Kim making a call over the radio to
2 Mr. Collins?

3 A. Yes.

4 Q. What was Mr. Kim asking?

5 A. If it was okay to go ahead and disconnect the
6 controllers, that if the system was LOTO'd out.

7 Q. So when you say LOTO'd out, that means LOTO hung, the
8 system depressurized and the LOTO sheet and box are in the
9 control room, correct?

10 A. Correct.

11 Q. So Mr. Kim was basically asking Mr. Collins if it was
12 safe to proceed with work, correct?

13 A. Correct.

14 Q. What did Mr. Collins respond?

15 A. Yes.

16 Q. Yes, it was safe to go do the work?

17 A. Yes, go ahead.

18 Q. Exhibit 489, please. The native for the date of the
19 incident March 6th. Mr. Ward are you familiar with the
20 control room at the Sentinel facility?

21 A. Yes, I am.

22 Q. Are you aware that there is a system that records the
23 pressure in the gas filter skid?

24 A. Yes, I do.

25 Q. And the turbine package?

26 A. Yes, I do.

27 Q. Have you ever seen a printout like this from that PI
28 historian?

1 A. Yes, I have.

2 Q. Okay. Let's scroll down, please, to the first
3 highlighted, do we have a highlighted. There it is. There it
4 is. So on March 6th, 2017, at 6:10 a.m., there's a pressure
5 increase, correct?

6 A. Correct.

7 Q. What does that indicate?

8 A. That we have other units running in the plant.

9 Q. Okay. Scroll down, please. Top at 6:32 a.m. to
10 6:38 a.m., there's a partial venting of gas in the system?

11 A. It appears so, yes.

12 Q. So from looking at this, you can see that gas
13 pressure was not completely vented from the system, correct?

14 A. Correct.

15 Q. Okay. Scroll back up to the top for a moment,
16 please. The column on the left or middle, excuse me. Gas
17 pressure at the filter skid, the one on the right, gas
18 pressure at the turbine. Are you aware that there are
19 pressure transducers at each location?

20 A. Yes.

21 Q. Scroll down, a little farther. Okay. On the LOTO
22 sheet that day, there is a tag for the manual or package
23 manual isolation valve, correct?

24 A. Correct.

25 Q. There are two vent valves or maintenance valves
26 inside the package, correct?

27 A. Correct.

28 Q. So when that package isolation valve is closed, and

1 then the maintenance valves are opened, should there be
2 another gas venting?

3 A. Yes.

4 Q. And why do you say that, if the system has been
5 completely depressurized?

6 A. Because you're taking it from the -- not from the
7 skid but from the inside the turbine itself. So that's what
8 the isolation valve for the turbine, because you're isolating
9 gas going into the engine itself, so venting, you have to vent
10 off the excess gas that is in the engine itself.

11 Q. Can we go back up to 489, please. No. Strike that.
12 Let me go back up to page 283, please. It would be
13 Exhibit 264, page 283, my apologies. All right. Scroll down
14 for me.

15 In this LOTO, for February 20th of 2017, isolation
16 valve Number 3, step 3 isolation valve Number 1 is closed,
17 correct?

18 A. Correct.

19 Q. And then the final filter vent valves are opened,
20 correct?

21 A. Correct.

22 Q. And then if you look at step 9, that's the closing of
23 that package manual fuel isolation valve, correct?

24 A. Correct.

25 Q. If that package manual fuel isolation valve is closed
26 after the two vents are opened, should there still be gas in
27 the turbine package?

28 A. There might be because of check valves.

1 Q. Okay. There might be some residual in there?

2 A. Correct.

3 Q. All right. If we can go back to 489, please. If you
4 scroll down. Stop. So at 7:10 a.m. on the morning of the
5 incident, the pressure transducer in the turbine package is
6 reading zero?

7 A. Correct.

8 Q. Pressure transducer at the fuel filter skid still
9 showing pressure, correct?

10 A. Correct.

11 Q. Now, when you see that signal go from digital read to
12 bad, what is that an indication of?

13 A. That either the controller has been disconnected or
14 that the power going to that controller has been removed.

15 Q. All right. And is that what Mr. Kim was doing that
16 morning?

17 A. Correct.

18 Q. Okay. So that second venting you heard would have
19 occurred at 7:10 when that package -- the power was taken
20 down?

21 A. Correct.

22 Q. And prior to that 7:10 you did see the LOTO sheet and
23 the LOTO box in the control room, correct?

24 A. Correct.

25 Q. On the date of Mr. Collins's accident, were the steps
26 on the LOTO done in order?

27 MR. BASILE: Objection. Lack of foundation. Calls
28 for speculation or lack of personal knowledge.

1 MR. REID: If you know.

2 THE WITNESS: I don't know.

3 THE COURT: One moment.

4 MR. REID: Strike that. I apologize, Your Honor.

5 MR. BASILE: We'll let the answer stand.

6 THE COURT: Overruled.

7 Q. BY MR. REID: Do you believe that isolation valve
8 Number 2 was closed out of sequence?

9 MR. BASILE: Objection. Same objection. Lack of
10 personal knowledge. Lack of foundation. Lack of personal
11 knowledge.

12 THE COURT: Overruled. If he knows.

13 THE WITNESS: Can you restate the question. I'm
14 sorry.

15 Q. BY MR. REID: Sure. I can repeat that. Was
16 isolation valve Number 2 closed out of order on the date of
17 Mr. Collins's accident?

18 MR. BASILE: Same objection.

19 THE WITNESS: Yes.

20 Q. BY MR. REID: If you had been helping Dan Collins
21 hang a LOTO that day, would we be sitting here today?

22 A. No.

23 Q. And if the steps in the LOTO had been done in order,
24 Mr. Collins would not have been killed; is that correct?

25 A. Correct.

26 Q. After this incident occurred and -- strike that. Let
27 me ask it another way. How close were you to Mr. Collins when
28 this accident occurred?

1 A. From here to the door.

2 Q. And after this incident occurred, did you have to go
3 to the hospital?

4 A. Yes.

5 Q. Why was that?

6 A. I got high blood pressure.

7 Q. Would it be fair to say you were so upset about
8 losing your best friend that you needed to be hospitalized?

9 A. Yes. Yes.

10 MR. REID: That's all the questions I have on direct,
11 Your Honor.

12 THE COURT: Thank you, Mr. Reid.

13 Mr. Basile, when you're ready.

14 CROSS-EXAMINATION

15 BY MR. BASILE:

16 Q. Mr. Ward, it's hard for you, huh?

17 A. Yes.

18 Q. The reason it's hard for you is because that was a
19 screwed up system there, wasn't it?

20 A. The fuel system?

21 Q. No, the whole safety system of everybody doing
22 something different all the time?

23 A. No.

24 Q. Well, in hindsight, Mr. Ward, looking back, there
25 should have been a separate energy control procedure; isn't
26 that true?

27 A. I wasn't aware of any energy control procedures until
28 after the fact.

1 Q. Right. Knowing what you know now, there should have
2 been a separate energy control procedure for that fuel filter
3 skid?

4 MR. REID: Objection. Subsequent remedial measures.

5 THE COURT: One moment. The question is based on
6 what he knows now, should there be a separate energy control
7 procedure? I don't know if that's been done or not but that's
8 not what that question is going to, so the objection is
9 overruled.

10 MR. REID: All right. Your Honor, further objection,
11 lacks foundation, calls for expert opinion.

12 THE COURT: Overruled.

13 MR. BASILE: All right.

14 THE WITNESS: Yes there should have been.

15 Q. BY MR. BASILE: There should have been. And there
16 should have been clearly marked valves, too?

17 MR. REID: Same objections, Your Honor.

18 THE COURT: Overruled.

19 THE WITNESS: Correct.

20 Q. BY MR. BASILE: Exhibit 9 beside 255, please, James.
21 Now, in the LOTO sheets that you guys were using out there,
22 they covered multiple systems; isn't that true?

23 A. Correct.

24 Q. It wasn't just one that focused on just that fuel
25 filter skid; isn't that true?

26 A. Correct.

27 Q. And what was covered on those sheets that day
28 required people that were trying to follow this LOTO sheet to

1 go to different areas to do the different steps; isn't that
2 true?

3 A. Correct.

4 Q. And so one might have to be over here? You can look
5 up on the screen, if you want to.

6 A. I can see. Thank you.

7 Q. One could be over here by the fuel filter skid, some
8 steps there, some steps might be over here by the control, by
9 the turbine panel, right?

10 A. Correct.

11 Q. Some steps might be back over here, right?

12 A. Correct.

13 Q. And on the days of these shutdowns, it's busy days,
14 isn't it?

15 A. Yes, it is.

16 Q. There's 20, 25 outside contractors waiting to come
17 on?

18 A. Correct.

19 Q. There's a schedule of 200 things that have to get
20 done in about five days?

21 A. Correct.

22 Q. You guys are shooting when you do these things to try
23 to get it done by Friday?

24 A. Correct.

25 Q. There was also in fact a bonus program for unit
26 availability?

27 A. I was not aware of that.

28 Q. You knew Mike Delaney though, didn't you?

1 A. Yes.

2 Q. Did you know Mike Delaney came in here and testified
3 that he didn't know how the system worked or what valve was
4 what, were you aware of that?

5 A. No.

6 Q. And did you know Juan also known, you guys called him
7 Tony Gonzalez?

8 A. Yes.

9 Q. Do you remember Tony?

10 A. Yes.

11 Q. You know Tony had a near miss that happened in 2014
12 almost just like Daniel Collins?

13 A. No.

14 Q. You know what a near miss is, don't you?

15 A. Yes.

16 Q. That's like someone about to take the lid off while
17 there is still pressure in the tank, someone stops them, that
18 would be a near miss, right?

19 A. Correct.

20 Q. If that happens, there should be analysis how these
21 sheets are done and safety procedures, right?

22 A. Correct.

23 Q. Now, there should be, if you have an energy control
24 procedure or a LOTO sheet, there should be one single
25 installer that installs the steps, right?

26 A. Correct.

27 Q. And it should be one single verifier that goes after
28 the installer has done all the steps, right?

1 A. Correct.

2 Q. Now, that procedure wasn't being followed leading up
3 until the time Daniel Collins was killed; isn't that true?

4 A. Not to my knowledge, not when I did it, no.

5 Q. Well, okay. Not when you did it, but you're aware
6 that these -- that there were multiple installers on some of
7 these sheets, right?

8 A. Yes.

9 Q. Multiple verifiers on some of these sheets?

10 A. Yes.

11 Q. That's not how it's supposed to be done?

12 A. Just because one person starts the LOTO on certain
13 steps, doesn't mean that one person has to do the entire
14 isolation or one person has to do the entire verification.

15 Q. Sir, the SMP-3 requires that there be a single
16 installer; isn't that true?

17 A. Correct.

18 Q. The SMP-3 requires that there's a single verifier;
19 isn't that true?

20 A. Correct.

21 Q. All right. 259, please. Now, see this sheet on the
22 left there, sir?

23 A. Yes.

24 Q. That was before 2017, right?

25 A. Yes.

26 Q. And then, the sheet on the right was after starting
27 in January of 2017 or February 2017, right?

28 A. Correct.

1 Q. Now, isn't it true that you don't even know when the
2 tag was moved from where it was in 2017 to where it was after
3 2017?

4 MR. REID: Objection. Argumentative. Misstates the
5 testimony.

6 THE COURT: Hold on. Overruled, the misstates the
7 testimony, if you can clarify, please.

8 MR. REID: Can we have the answer.

9 THE WITNESS: I'm sorry.

10 Q. BY MR. BASILE: You don't remember when the tag was
11 moved, do you?

12 A. I'm the one who moved it.

13 MR. BASILE: I would like to read from his deposition
14 page 34, lines 6 and 7.

15 THE COURT: One moment.

16 MR. BASILE: Or actually 634, lines 1 -- so it's in
17 context, 1 through 13.

18 THE COURT: This is Robert Ward, not Jason Ward King.

19 MR. BASILE: Yes, sir.

20 MR. BASILE: Thirty-four, lines 1 through 13.

21 THE COURT: Mr. Reid, lines 1 through 13 on page 34.

22 MR. REID: We're getting there, Your Honor. Sorry.

23 That's fine, Your Honor. Thank you.

24 THE COURT: Mr. Basile, would you like to just read
25 it or do you have a video ready to play?

26 MR. BASILE: I'll just read it. I'll lay a little
27 foundation first about the deposition.

28 THE COURT: Briefly.

1 Q. BY MR. BASILE: Do you remember your deposition was
2 taken?

3 A. Yes.

4 Q. At that time, you were represented by Mr. Reid?

5 A. Correct.

6 Q. And I believe Mr. Sullivan asked you questions?

7 A. Yes.

8 Q. You swore to tell the truth?

9 A. Yes.

10 Q. Just like the oath you took here?

11 A. Yes.

12 Q. Let me read from your deposition.

13 "What did you and Daniel talk about?"

14 "Answer: He asked -- he asked me if a tag was
15 missing from the LOTO, and the tag in question. I said, no,
16 it's been moved to one of the last tags, its right here. And
17 I showed him on the LOTO sheet."

18 "And do you remember what tag number that was?"

19 "Answer: No."

20 "Do you know when that tag number was moved?"

21 "Answer: Can you rephrase the question?"

22 "Question: You said that one of the tags had husband
23 been moved in the order on the LOTO sheet. Do you remember
24 when that -- when that tag was moved?"

25 "Answer: No, I don't remember."

26 MR. BASILE: 617, please.

27 THE COURT: Mr. Basile, were you moving on to a
28 different line of questioning.

1 MR. BASILE: Yes.

2 THE COURT: From the moving of the LOTO sheet or tag,
3 sorry.

4 MR. BASILE: You want to take a break, I only have a
5 few more, if you want to take a break.

6 THE COURT: I didn't want to interrupt you. If
7 you're going to change subjects, we'll break now.

8 MR. BASILE: Thank you, Your Honor.

9 THE COURT: Thank you, Mr. Basile. Okay. Members of
10 the jury, it's time for your requested break at 3:00 o'clock.
11 If you please come back at 3:10, we'll conclude for the
12 afternoon. Thank you. Please do not discuss the facts of the
13 case or any parties involved with each other or anyone else.

14 We are in recess.

15 (Brief Recess.)

16 THE COURT: We're back on the matter of Collins
17 versus DG Corp. All members of the jury are present.

18 Mr. Basile.

19 MR. BASILE: Thank you.

20 Q. BY MR. BASILE: Mr. Ward, you said you had a number
21 of conversations with Daniel Collins the day this happened,
22 right?

23 A. Correct.

24 Q. And you really just had a brief conversation in the
25 morning; isn't that true?

26 A. We go over the days what's going on for the day.

27 Q. But you only really had a brief conversation, it was
28 just hi, how are you doing? Those conversations you had that

1 day, right?

2 A. No.

3 MR. BASILE: Your Honor, I'd like to read from his
4 deposition. Page 35, lines 16 through 21.

5 THE COURT: Mr. Reid.

6 MR. REID: That's fine, Your Honor.

7 THE COURT: Okay. Mr. Basile, you may proceed.

8 MR. BASILE: Thank you.

9 Q. BY MR. BASILE: "Question: Other than the brief
10 conversations you had with Daniel sometime around 6:30 to
11 6:45, did you have any other conversations with him that
12 morning before the incident happened?"

13 "Answer: Just general hi, how are you doing? Wasn't
14 really work related."

15 Let's look at 617, please. You testified you had
16 some training on that SMP-3, right?

17 A. Correct.

18 Q. That was back in March of 2013?

19 A. I don't remember exactly.

20 Q. But it was early on shortly after you were hired,
21 right?

22 A. Oh, yes.

23 Q. And you had two training sessions, the other one was
24 around March 20th or so in 2013, you had two training sessions
25 on the SMP-13, right?

26 A. Correct.

27 Q. And when you have these training sessions, there
28 would be a sign in sheet to show you had the training, right?

1 A. Correct.

2 Q. 267, please. Zoom in at the top. This training you
3 see was for SMP-3, you see there are subjects covered?

4 A. Yes.

5 Q. Lock Out/Tag Out program?

6 A. Correct.

7 Q. 328. All right. Pull that up, lets enlarge the sign
8 in sheet. Can you show me your name on there, Mr. Ward?

9 A. It's not there.

10 Q. Okay. 268. You see this record of training Lock
11 Out/Tag Out training, you see that, sir?

12 A. Yes.

13 Q. Monthly safety meeting, right?

14 A. Correct.

15 Q. And let's go to the sign in sheet, do you see your
16 name anywhere there?

17 A. No, because I wasn't even hired yet.

18 Q. Okay. Well, your name is not on there, right?

19 A. Because I wasn't there, no.

20 Q. How about the earlier one? If you go back to it.
21 Let me just simplify it. Are you aware of any training sign
22 in sheet that has your name on it for the SMP-3?

23 A. Yes.

24 Q. Okay. I haven't seen one.

25 MR. REID: Argumentative, Your Honor.

26 THE COURT: Sustained.

27 Q. BY MR. BASILE: Could we have Exhibit 358 beside 361.
28 And while we're waiting for that, Mr. Ward, how much time have

1 you spent with these lawyers preparing for your testimony?

2 MR. REID: Objection. Relevance. Argumentative.

3 THE COURT: Sustained on both grounds.

4 Q. BY MR. BASILE: 358 besides 361. Just go ahead and
5 click through for me. Yeah. You see on the left here,
6 Mr. Ward?

7 A. Yes.

8 Q. And this is pretty fair and accurate representation
9 of how gas couples into the fuel filter and then comes out of
10 the fuel filter, right?

11 A. Correct.

12 Q. It's usually very high pressure, right?

13 A. Yes.

14 Q. You would agree that if you close that valve here,
15 close that valve up here, then open these two vents, that that
16 could clear this whole area, right?

17 A. Correct.

18 Q. Okay. Now, on the other side, if you close the valve
19 here that I'm showing, and the valve that you're showing and
20 open the vents, that would only clear this area right here,
21 right?

22 A. Correct.

23 Q. 259 again, please. You pointed out on the sheet that
24 ISO valve two was moved down here, right, to Daniel Collins?

25 A. Yes.

26 Q. That's all you pointed out to him, right?

27 A. Yes.

28 Q. Okay. You can take that down. Couple more questions

1 about Tony Gonzales. You knew him, right?

2 A. Yes.

3 Q. He no longer works at Sentinel, right?

4 A. Correct.

5 Q. Were you aware that he testified that he was never
6 told of this change?

7 A. No.

8 Q. Now, you said you were nearby when this happened,
9 right?

10 A. Correct.

11 Q. Daniel's helmet actually hit you, right?

12 A. Part of it, yes.

13 Q. And you've been trying to forget that day ever since?

14 A. Yes.

15 Q. So you agree that some of the stuff you testified to
16 is really kind of foggy?

17 MR. REID: Objection. Argumentative.

18 THE COURT: Sustained.

19 Q. BY MR. BASILE: You've been trying to forget all the
20 details of that day, since it happened?

21 A. Try, but it's not going to happen.

22 MR. BASILE: That's all I have.

23 THE COURT: Mr. Reid, any redirect?

24 MR. REID: Yes, Your Honor. And if I could take a
25 look again at page 33, line 23 through line 5 on 34.

26 THE COURT: Proper purpose, please take that down.

27 MR. REID: Just want to rehabilitate the witness,
28 Your Honor, regarding a conversation with Mr. Collins.

1 THE COURT: Okay. If you want to begin and then we
2 can revisit.

3 MR. REID: Absolutely, Your Honor.

4 Thank you, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. REID:

7 Q. Your testimony here today has been you had several
8 conversations with Mr. Collins, correct?

9 A. Correct.

10 Q. And one of them was before he left the control room?

11 A. Correct.

12 Q. And then the another one was at the fuel filter skid
13 when he called you over, correct?

14 A. Correct.

15 Q. All right. How long was that conversation at the
16 fuel filter skid?

17 A. Three or four minutes, give or take.

18 Q. Okay.

19 MR. REID: I don't need to read the testimony, Your
20 Honor.

21 THE COURT: Okay. You can tell me which page it was.

22 MR. BASILE: He said he didn't.

23 MR. REID: I don't need to read it, Your Honor.

24 Thank you.

25 Q. BY MR. REID: If I can go back up to 358 or excuse
26 me. Exhibit 358, again, if you can put that back up.
27 Plaintiff's counsel just showed you this and clicked through
28 the slides. Again, I just want to reiterate with you that

1 valve, isolation valve on the outlet side was never labeled
2 isolation valve Number 2; is that correct?

3 A. Correct.

4 MR. REID: That's all I have, Your Honor.

5 THE COURT: Mr. Basile, any recross on just that
6 limited inquiry?

7 RECROSS EXAMINATION

8 BY MR. BASILE:

9 Q. Okay. 259.

10 MR. REID: It's beyond the scope of redirect,
11 Your Honor, I didn't ask about this.

12 MR. BASILE: Your Honor, if I'm done.

13 THE COURT: Is this going to the labelling of valve
14 Number 2?

15 MR. BASILE: Yes, it is.

16 THE COURT: It is, you have some leeway.

17 MR. BASILE: I might as well do it then. 259.

18 THE COURT: Overruled.

19 MR. REID: Thank you, Your Honor.

20 Q. BY MR. BASILE: So before 2017, ISO valve Number 2
21 was like I demonstrated when I was clicking through it.

22 MR. REID: Misstates the testimony. Argumentative.

23 THE COURT: I don't think he was referring to any
24 testimony. He just was referring to questions earlier.
25 Mr. Basile please pose a question.

26 MR. BASILE: Okay.

27 Q. BY MR. BASILE: Put 358 next to 361, please. So
28 before we get to that, different workers did the LOTOs in

1 different order, before Daniel was killed; isn't that true?

2 MR. REID: Beyond the scope of redirect, Your Honor.

3 THE COURT: Sustained.

4 THE WITNESS: I don't understand.

5 THE COURT: No sustained.

6 Q. BY MR. BASILE: Okay. So, back to these two here.

7 It was at least mentioned back when SMP-3 was trained on, that
8 the steps of the LOTO should be done in order, right?

9 MR. REID: Also beyond the scope, Your Honor.

10 MR. BASILE: Foundational for this, Your Honor.

11 THE COURT: Overruled.

12 Q. BY MR. BASILE: Back then in 2013, that they should
13 be done in order, right?

14 A. Correct.

15 Q. And we've already talked about what kind of training
16 it was up until this happened. So if those steps were done in
17 order, and ISO valve 2 over here was always ISO valve 2 and
18 closed and this closed, done close in order like that, like we
19 showed on that sheet before 2017, this is what would result,
20 isn't it?

21 MR. REID: Calls for speculation. Calls for expert
22 opinion.

23 THE COURT: Overruled.

24 THE WITNESS: We're looking at the one on the right,
25 correct?

26 Q. BY MR. BASILE: Yes. If you did them in order, you
27 closed ISO valve 1, ISO valve 2 and opened those vents, this
28 is what you would have, right?

1 A. According to this drawing, yes.

2 Q. Well, according to the sheet, if you did it in order,
3 ISO valve 1, ISO valve 2 and then open the vents, right?

4 A. Correct.

5 Q. If people were doing it that way, would you get up
6 the top of that tank then?

7 MR. REID: Argumentative.

8 THE COURT: Sustained.

9 Q. BY MR. BASILE: So it was still so --

10 THE COURT: I apologize, Mr. Basile, but we're going
11 past the scope of redirect. The last question on redirect
12 regarding the valves had to do with the labeling of them.

13 MR. BASILE: All right. So I'll just leave it at
14 that, Your Honor. I'm done.

15 That's fine. Thank you.

16 THE COURT: Thank you, Mr. Basile.

17 Mr. Reid.

18 MR. REID: Just one question.

19 FURTHER REDIRECT EXAMINATION

20 BY MR. REID:

21 Q. You said you didn't remember exactly when the
22 procedure was changed?

23 A. Correct.

24 Q. But it was before the 2017 LOTO season, correct?

25 A. Correct.

26 MR. REID: Thank you.

27 MR. BASILE: No questions.

28 THE COURT: The last part was 2017 LOTO season?

1 MR. REID: Outage season, excuse me, Your Honor.

2 THE COURT: Mr. Basile, any follow up?

3 MR. BASILE: No, nothing, Your Honor.

4 THE COURT: Thank you, Mr. Ward. Subject to recall?

5 MR. REID: Yes, Your Honor.

6 THE COURT: Okay. Thank you.

7 Mr. Ward, please communicate with counsel. They'll
8 let you know if we need you to come back. Okay.

9 THE WITNESS: Okay. Thank you.

10 THE COURT: Thank you for your time this afternoon.

11 MR. REID: Your Honor, we're very close to the end of
12 the time. Mr. Stanley is only available this afternoon. We
13 got maybe 20 minutes, and --

14 We have to set up the Zoom call real quick.

15 THE COURT: Okay. Let me inquire.

16 MR. REID: Thank you, Your Honor.

17 THE COURT: Members of the jury, again, you hold the
18 power to a certain extent. Just raise your hand if you
19 cannot, I do not want you to miss appointments or anything
20 that you plan based on the schedule we've given. May we go to
21 five minutes to 4:00 today? Don't feel bad, if you have
22 something. Okay. I see no hands. Okay. Mr. Reid.

23 MR. REID: Thank you, Your Honor. If we can take
24 five minutes, may not even be that long.

25 THE COURT: Okay. Members of the jury, just want to
26 stand and stretch, you can. That way as soon as we're ready
27 we're going to get started.

28 (Pause in the proceedings.)

1 THE COURT: Okay. We're back on the record. Call
2 Collins versus DG Corp. Thank you for our patience. Our
3 courtroom supervisor has experience with this every morning
4 doing login of 10 to 40 attorneys on Zoom when they call in
5 for our morning calendar. She suggests something, we should
6 all listen. Now, I do have a couple questions, just to make
7 -- just for the record, Mr. Reid.

8 MR. REID: Yes, Your Honor.

9 THE COURT: Is Mr. Stanley ready?

10 MR. REID: I believe so.

11 THE COURT: Okay.

12 MR. REID: Yes.

13 THE WITNESS: Yes.

14 THE COURT: Good afternoon, Mr. Stanley.

15 THE WITNESS: Good afternoon.

16 THE COURT: Can you tell us where you are.

17 THE WITNESS: Yes. I'm in my home in Warwick, New
18 York.

19 THE COURT: What type of room are you in?

20 THE WITNESS: I'm in my basement.

21 THE COURT: Okay. Is there anyone else with you in
22 your basement?

23 THE WITNESS: No.

24 THE COURT: Do you have your phone, I know you're
25 using it for audio. Do you have it turned over so there's no
26 electronic communication.

27 THE WITNESS: Yes. Everything is off.

28 THE COURT: Okay. And you have no other computers on

1 or other screens open in your presence?

2 THE WITNESS: Only the screens that are connected to
3 my current computer.

4 THE COURT: Only thing that should be on your screen,
5 though is the Zoom app for this testimony here. We just want
6 to make sure you're not looking at any other devices while
7 you're testifying here.

8 THE WITNESS: I'll not look at any other device.

9 THE COURT: Okay. Thank you. We're going to swear
10 you in here in a moment, then you can begin with your
11 testimony.

12 THE WITNESS: Okay.

13 THE CLERK: Please raise your right hand. You do
14 solemnly state that the evidence you shall give in this matter
15 shall be the truth, the whole truth, and nothing but the
16 truth, so help you God?

17 THE WITNESS: I do.

18 THE CLERK: Please state and spell your first and
19 last name for the record.

20 THE WITNESS: Ben Stanley. Benjamin Stanley.
21 B-e-n-j-a-m-i-n S-t-a-n-l-e-y.

22 THE CLERK: Thank you.

23 THE COURT: Mr. Reid, when you're ready.

24 MR. REID: Thank you, Your Honor. And I'm going to
25 stay seated so he can see me, if that's all right.

26 THE COURT: Of course.

27 MR. REID: Thank you, Your Honor.

28 BENJAMIN STANLEY,

1 called as a witness by Defense, was sworn and testified as
2 follows:

3 DIRECT EXAMINATION

4 BY MR. REID:

5 Q. Good afternoon, Mr. Stanley.

6 A. Good afternoon.

7 Q. How are you doing?

8 A. Good.

9 Q. Jump right in. When I say DG Corp. you're going to
10 understand I'm referring to Diamond Generating Corporation,
11 correct?

12 A. Yes.

13 Q. When I say OPS, you understand I'm referring to DGC
14 Operations, LLC, correct?

15 A. Yes.

16 Q. Exhibit 176, please. Technology is not my friend.
17 Do you recognize this document, Mr. Stanley?

18 A. I do.

19 Q. This is like Lock Out/Tag Out procedure used in the
20 plant on the date of the incident?

21 A. Yes.

22 Q. And to your knowledge, was this policy in place prior
23 to the opening of the plant for commercial operation?

24 A. Yes, to my knowledge.

25 Q. And you reviewed this -- let me go back. You
26 conducted a route cause analysis for the incident that
27 occurred on March 6th, 2017; is that correct?

28 A. Yes.

1 Q. How did you first learn that there had been an
2 incident?

3 A. I received a phone call from Adam Cristodoulou, he
4 was my supervisor at the time.

5 Q. Okay. And at the time of this incident was Adam
6 Cristodoulou also Tom Walker's supervisor?

7 A. Yes.

8 MR. BASILE: Objection. Calls for speculation. Lack
9 of foundation.

10 THE COURT: Overruled.

11 MR. REID: Did you get the answer, Madam Reporter?

12 THE REPORTER: Yes.

13 Q. BY MR. REID: Was Tom Walker the plant manager at
14 Sentinel?

15 A. Yes.

16 Q. And at the time of this incident were you the plant
17 manager at the Valley Energy Center in New York?

18 A. Yes.

19 Q. On that first phone call, what did Mr. Cristodoulou
20 ask you to do?

21 A. He asked me to do an immediate safety stand down
22 meeting with personnel at the site because there had been an
23 incident at Sentinel, and he wasn't able to share all the
24 details at the time, but that's what he told me to do.

25 Q. Did you have a second phone call with
26 Mr. Cristodoulou?

27 A. Yes.

28 Q. And what was the subject of that second phone call?

1 A. That was him asking me to come out to help them with
2 the route cause analysis at the site.

3 Q. And was he farm with your experience doing route
4 cause analysis?

5 A. Yes.

6 Q. In your deposition, you testified that Paul Shepard
7 sent you to Sentinel, what did you mean by that?

8 A. I was -- well, shortly after the phone call with
9 Mr. Cristodoulou, there was, you know, e-mail conversation,
10 things like that, you know, with direction to do the RCA.

11 Q. Okay. Scroll down a little bit on the exhibit,
12 please. Oops. Strike it. Let's go to Exhibit 34. I
13 apologize. This is a copy of the document that resulted from
14 your route cause analysis investigation; is that correct?

15 A. Yes.

16 Q. And to your knowledge -- strike that. Up in the
17 right hand corner, DGC Operations LLC, Sentinel Energy Center,
18 this was a document and -- strike that. This was an
19 investigation that was done on behalf of DGC Operations, LLC,
20 at the Sentinel Energy Center, correct?

21 A. Correct.

22 Q. And this was a result of an employee fatality on
23 March 6th, 2017, correct?

24 A. Correct.

25 Q. To your knowledge is this document the official OPS
26 report of the incident?

27 A. To my knowledge, yes.

28 Q. Okay. Page 2, please. Highlight investigation team.

1 Who were the people that assisted you in conducting this
2 investigation?

3 A. Mostly it was Dennis Johnson and Adam Cristodoulou
4 and with some support from Tom Walker.

5 Q. And page 3 please, personnel involved in the
6 incident. Several employees were involved in the immediate
7 incident, Dan Collins, gas turbine technician; Mike Delaney,
8 gas turbine technician; Albert Palalay, site maintenance
9 mechanic; Robert Ward, gas turbine technician; and Jason King
10 the O and M manager. Were those the people that were involved
11 in this incident?

12 A. Yes.

13 Q. Was there anyone else involved in this incident?

14 A. Not directly. There was an ICE tech, his name
15 actually escapes me right now.

16 Q. Mr. Kim?

17 A. Mr. Kim.

18 Q. Was there anyone from DG Corp. involved in this
19 incident?

20 A. No.

21 Q. Page 5 please. Causal factors and supporting
22 comments. Causal factors are equipment and front line
23 personnel, performance gaps that led to the incident or made
24 the consequences of the incident more severe, do you agree
25 with that statement?

26 A. Yes.

27 Q. All right. And then, the next heading, the existing
28 LOTO procedure was not followed. Was that your overall cause

1 of the incident?

2 A. Yes.

3 Q. All right. First bullet point, page 20, section 6.
4 States -- this is referral to the SMP-3 procedure; is that
5 correct?

6 A. Yes.

7 Q. Okay. "Installer shall install the LOTO in the order
8 components are listed on the equipment Lock Out/Tag Out sheet.
9 From the interviews with employees, it appears the installer
10 Collins did not properly follow the steps to isolate the
11 equipment in the order listed on the Lock Out/Tag Out sheet,
12 equipment Lock Out/Tag Out sheet. The employees indicated the
13 isolation procedure had been previously used in order safely
14 and effectively." Was that also one of your conclusions?

15 A. Yes.

16 Q. Next paragraph, "The LOTO validation check as defined
17 on page 5, section D was not performed by someone different
18 than the person posting and locking the equipment. In fact
19 the verification and isolation was being performed at the same
20 time by multiple employees. As a result the verification was
21 performed improperly." Was that also one of your conclusions?

22 A. Yes.

23 Q. When I'm reviewing these conclusions with you, if any
24 of your opinions regarding the cause of the incident changed,
25 in the time since you first prepared this document?

26 A. No.

27 Q. Page 16, section 2D, states, "At no time shall LOTO
28 work be performed while a component is under high pressure or

1 temperature. According to the DCS data screen the vessel in
2 question was pressurized at over 700 PSI," is that also one of
3 your conclusions?

4 A. Yes.

5 Q. Related to that conclusion -- strike that. Page 16,
6 2F states, "Before the issuance of the LOTO --"

7 THE REPORTER: Can you slow down and repeat that.

8 Q. BY MR. REID: Page 16, section 2F states, "Before the
9 issuance of a LOTO, systems and components shall be drained,
10 deactivated and depressurized before work begins. Two valve
11 isolation of the work area shall be used when ever possible."
12 And then your conclusion is, "The vessel was not properly
13 drained and vented and furthermore, was only double blocked
14 and bled on the inlet side"; is that correct?

15 A. Yes.

16 Q. And it was noted during the investigation that the
17 bypass line to the filter was only single blocked protection
18 and needed to be corrected; is that also one of your
19 conclusions?

20 A. Yes.

21 Q. Page 21, section 16, of the SMP-3 procedure, says
22 states, "The work supervisor shall walk out the LOTO prior to
23 the acceptance to verify all danger tags are in the proper
24 location and position, and to verify the system is drained,
25 depressurized, deactivated and to also verify components
26 de-energized by the LOTO. No such action took place as
27 evidenced by the review -- by review of the tags, LOTO forms
28 and through interviews," is that also one of your conclusions?

1 A. Yes.

2 Q. And the work supervisor on that date was Jason King;
3 is that correct?

4 A. That was my understanding, yes.

5 Q. And did you speak to Mr. King with regard to this
6 incident?

7 A. I did.

8 Q. And what did Mr. King tell you about whether or not
9 he walked down the LOTO?

10 A. To my recollection, I do not think he walked down the
11 LOTO.

12 Q. And would that have been a violation of the SMP-3
13 procedure?

14 A. Yes.

15 Q. Page 8, section R, defines LOTO verifier as any
16 qualified employee who verifies a Lock Out/Tag Out has been
17 installed correctly?

18 MR. BASILE: Excuse me, Your Honor. I'm just
19 objecting, this is cumulative, already admitted into evidence.
20 This has already been testified to by other people, and it's
21 cumulative. And that's already admitted into evidence, the
22 whole report we're just reading from.

23 THE COURT: Thank you, Mr. Basile. Defense has the
24 right to present their case with full force if necessary.
25 Mr. Reid, however, you're coming up on your time here. You
26 mentioned Mr. Stanley is not available after today. I do want
27 to leave a few minutes for Mr. Basile's for cross-examination
28 so please be mindful of that.

1 MR. REID: Yes. Thank you, Your Honor.

2 THE COURT: You may proceed.

3 Q. BY MR. REID: We'll skip to the last sentence, both
4 Palalay and Delaney were involved with verifying the LOTO
5 performed by Collins, he didn't perform the verification
6 correctly, is that an accurate statement?

7 A. Yes.

8 Q. BY MR. REID: Page 8. Highlight number 6, please.
9 This is a section you evaluated personnel organization issues,
10 Daniel Collins, during the interviews, it was noted by several
11 employees including management and supervision that Dan
12 Collins' approach to work was aggressive in nature; is that an
13 accurate statement?

14 A. Yes.

15 Q. And did you learn that from interviewing Tom Walker
16 and Jason King?

17 A. Yes. Mostly by Jason King, yeah.

18 Q. And did you also learn that the plant manager O and M
19 manager noted this was discussed with Collins on several
20 occasions that Collins took some steps towards improvement but
21 additional care was needed?

22 A. Yes.

23 Q. Page 9, please. Questioning, attitude and avoiding
24 complacency should be encouraged. First sentence of that
25 second paragraph, "After reviewing documentation and
26 interviewing the team members at Sentinel, it was clear that
27 complacency is a systematic issue at the facility," what did
28 you mean by that statement?

1 A. Yes.

2 Q. And you had correspondence with him asking for
3 certain items, remember went back and forth with those things
4 at the deposition, the items you were asking Mr. Shepard?

5 A. Yes.

6 Q. And you actually -- before you did your final report,
7 sat down with Mr. Shepard and discussed what was going to --
8 how things were going to be worded, what went into the report,
9 you had a discussion with him about that?

10 MR. REID: Objection, Your Honor, calls for
11 attorney-client privilege.

12 THE COURT: Did you say Mr. Shepard?

13 MR. BASILE: Mr. Shepard.

14 MR. REID: There was attorneys present for that
15 meeting, Your Honor, I believe.

16 THE COURT: Overruled, only as to if anything was
17 provided to him by Mr. Shepard.

18 MR. BASILE: Go ahead.

19 Q. BY MR. BASILE: So you discussed your report with
20 Mr. Shepard before it was final?

21 A. I did.

22 Q. Okay. And in your investigation, one of the things
23 you found is the employees expressed their confusion on the
24 day this happened as to which valve was which; isn't that
25 true?

26 A. Yes.

27 Q. And you testified when I was out there in New York
28 that it was a systems failure that contributed to the death of

1 Daniel Collins; isn't that true?

2 A. I'm not sure if I said it that way, but if that's
3 what my testimony said, I don't know if I classified it solely
4 as a systems failure.

5 Q. But there was a number of failures including all the
6 red flags you went through and lack of training and the
7 confusion on the day, and the LOTO sheets containing more than
8 one system and there was no energy control procedure, remember
9 we went through all those things, right?

10 MR. REID: Objection. Compound.

11 THE COURT: It was. I was counting, Mr. Basile, it
12 was compound. Sustained.

13 Q. BY MR. BASILE: All those things I just mentioned, do
14 you remember we went over those in your testimony?

15 MR. REID: Same objection, Your Honor.

16 THE COURT: Sustained.

17 Q. BY MR. BASILE: There was a -- you said -- well,
18 let's just make it this simple, Your Honor, the report that
19 you prepared, the root cause analysis, you don't want to make
20 any changes in that as you testified today, right?

21 A. No.

22 Q. Okay. And your testimony, when you were out there,
23 do you remember I said all these things that we've discussed
24 in your report, Mr. Shepard, they contributed to the death of
25 Daniel Collins, do you remember me asking you that?

26 A. Yes.

27 Q. And you agreed?

28 A. Yes.

1 MR. BASILE: That's all I have.

2 THE COURT: Anything further?

3 MR. REID: Just quickly, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. REID:

6 Q. You were just asked about a system failure regarding
7 this incident, do you recall that testimony?

8 A. Yes.

9 Q. And that system failure was at the plant, correct?

10 A. Yes.

11 Q. That was not a system failure at some other place,
12 correct?

13 A. Correct.

14 MR. REID: That's all I have, Your Honor.

15 MR. BASILE: One question.

16 RECROSS EXAMINATION

17 BY MR. BASILE:

18 Q. Safety starts at the top; isn't that true?

19 MR. REID: Argumentative, Your Honor.

20 THE COURT: Beyond the scope. That's sustained.

21 MR. BASILE: Nothing further.

22 THE COURT: Thank you, Mr. Basile.

23 MR. REID: Thank you, Mr. Stanley.

24 THE WITNESS: You're welcome.

25 THE COURT: Mr. Reid.

26 MR. REID: Yes, Your Honor.

27 THE COURT: We have a few minutes. I'm not going to
28 put you on the spot. Should we break for the day, you'll

1 resume in the morning?

2 MR. REID: Yes, Your Honor.

3 THE COURT: Thank you. Thank you members of jury for
4 allowing for that, that really helps so.

5 MR. REID: Thank you very much.

6 THE COURT: Okay. You're five minutes early from
7 what the time we promised. We'll see everyone tomorrow
8 morning 9:59 a.m. Thank you. And fingers crossed we'll see
9 you then. 9:59 a.m.

10 Please do not discuss the facts of the case or any
11 parties involved with each other or anyone else. Have a good
12 evening.

13 (Pause in the proceedings.)

14 THE COURT: We're outside the presence of the jury.
15 They've gone home for the evening. Mr. Reid, who do we have
16 for tomorrow?

17 MR. REID: Sorry, Your Honor. Let me grab my list.
18 Jason King, Your Honor.

19 THE COURT: Okay.

20 MR. REID: Mark McDaniels, and then defense expert
21 David Krauss in the afternoon. That's the plan.

22 THE COURT: I'm sorry, the last one was.

23 MR. REID: Expert David Krauss, Your Honor.

24 THE COURT: David Krauss. Thank you.

25 MR. SCHUMANN: I was going to ask if it's possible we
26 might run a little early because depending how long Mr. Krauss
27 goes, I don't know how long he's going to go.

28 THE COURT: You mean you might conclude early.

1 MR. SCHUMANN: We have another expert, can't be here.
2 He flies tomorrow. He's here Tuesday morning -- I mean
3 Wednesday morning.

4 MR. REID: Wednesday morning.

5 THE COURT: How many witnesses do you have after
6 David Krauss? I was under the impression that was your last
7 witness.

8 MR. REID: We plan on resting on Wednesday,
9 Your Honor. So tomorrow Tuesday, we've got Mr. King,
10 Mr. McDaniels and Mr. Krauss, those three witnesses should
11 take most of the day. If for some reason Mr. Krauss is a
12 little short or the cross-examination is not what we expect,
13 then on Wednesday morning, and we're not giving away the story
14 here, we plan on having Mr. Mason, who's another defense
15 expert, to testify, and then Mr. Johnson.

16 MR. BASILE: What about Held?

17 MR. REID: If they want Mr. Held to come in, we can
18 do that.

19 MR. BASILE: Yes, we do.

20 THE COURT: Thirty seconds ago, I thought we had
21 three witnesses left. Let me go back to your witness list.

22 Jason King.

23 MR. REID: Yes, Your Honor.

24 THE COURT: You have time estimate for about two
25 hours of that witness.

26 MR. REID: That's probably closer to an hour and a
27 half.

28 THE COURT: Okay. McDaniels, Mark.

1 MR. REID: Limited to half an hour with the Court,
2 Your Honor.

3 THE COURT: This one is not on the witness list. I
4 remember this conversation now. Thank you for that,
5 Mr. Basile. The issue with Mark McDaniels, is this what I
6 heard you mention a couple times this can be resolved by
7 stipulation?

8 MR. REID: No, Your Honor.

9 THE COURT: You want to have next David Krauss.

10 MR. REID: There were two animations prepared, Your
11 Honor. Mr. Held is the person who prepared the animations.
12 He was out to the plant, he conducted laser scanning. He's
13 just basically laying the foundation for the photographs and
14 the environment that the animation is in.

15 THE COURT: I recall, these are the ones that
16 Mr. Schumann, I think, kind of --

17 MR. REID: First one was used in the opening. We
18 haven't used the second one.

19 THE COURT: We didn't get the full effect. He went
20 through it too quickly.

21 MR. SCHUMANN: It was four minutes long.

22 THE COURT: Are those the ones you're mentioning?

23 MR. REID: Yes, Your Honor.

24 THE COURT: Okay.

25 MR. REID: Then, Mr. Held is simply going to testify
26 in addition to documenting the environment, he spoke with
27 Mr. Johnson who is going to lay foundation for the rest of it.
28 Mr. Johnson is going to explain exactly --

1 What actually is occurring and what's the basis for
2 what's occurring.

3 THE COURT: And Held is just a colleague of Johnson
4 probably.

5 MR. REID: He's not a colleague. He's the animator.
6 So we designated him as an expert, and they deposed him.

7 THE COURT: Held essentially used the data provided
8 to him by Johnson and the others?

9 MR. REID: Yes, Your Honor.

10 THE COURT: Okay. You don't have to tell me now,
11 Mr. Basile, you and Mr. Sullivan can discuss it. If that's
12 something that will help shorten things, you're close to
13 losing your jury. So anything we can do to save time, would
14 be welcomed. Then Mason.

15 MR. READ: If they are going to insist on Mr. Held,
16 it will be Mason, Mr. Held and then Dennis Johnson.

17 THE COURT: Whatever order you're picking up, I'm
18 going to hold you to your case is going to be done this week.
19 So.

20 MR. REID: That's our plan, Your Honor.

21 THE COURT: Because we did commit to Juror Number 9
22 that we will not be in session next Monday.

23 MR. REID: We were hoping to get done and get an
24 early start on the instruction process.

25 THE COURT: He's not here on Thursday either.

26 MR. REID: Wednesday, I'm sorry, Your Honor.

27 THE COURT: If we get done early, maybe we can start
28 the instruction process. We have to talk about the

1 instructions first.

2 MR. BASILE: Monday.

3 THE COURT: Let's see how the week plays out, worse
4 case, jurors aren't here on Monday. We can finish up
5 housekeeping here on Monday with each other. Then Tuesday
6 we'll be ready for them when they come back. Okay. But if
7 there's time to discuss the jury instructions, I think there's
8 a few still in dispute. Also I need to talk to you about the
9 verdict forms. If you want to review those again, based on
10 the Court's ruling and determination on that last MIL. So if
11 that's certainly going to effect the verdict form we use.

12 MR. REID: Yes, Your Honor.

13 THE COURT: Anything else, Mr. Basile?

14 MR. BASILE: Nothing further.

15 MR. REID: Yes, are we going to go through exhibits?

16 MR. BASILE: May I be excused? Mr. Sullivan is here
17 to discuss.

18 THE COURT: Have a good evening, Mr. Basile. Take
19 care.

20 MR. SULLIVAN: Before we get started with those other
21 ones, I have a transcript for the scavenger hunt.

22 THE COURT: We'll talk about that here in a moment.

23 MR. SULLIVAN: All right.

24 THE COURT: So let's do first 351, 352 and 353. Have
25 they been introduced?

26 MR. REID: No objection, Your Honor.

27 MR. SULLIVAN: I have the actual certified copy here
28 that I can give to the clerk, Your Honor. It's copies of

1 certified copies that are in the notebook, but I have one with
2 the official tags, if the Court requires that.

3 THE COURT: Mr. Reid, any objection if we use
4 those as long as you've seen them, there's been no
5 altercations to them.

6 MR. REID: We're fine, Your Honor.

7 THE COURT: We'll keep those. We've actually already
8 marked them.

9 MR. SULLIVAN: She's going to use the ones in the
10 notebook?

11 THE COURT: Yes.

12 MR. SULLIVAN: Perfect.

13 THE COURT: Next we have Exhibit 191.

14 Did you remember Mr. Shepard's testimony there was
15 four individuals. Any objection, Mr. Reid?

16 MR. REID: No, Your Honor.

17 THE COURT: Admitted. Next 389, CVP Sentinel
18 ownership structure, organization chart of some sorts.

19 MR. REID: No objection, Your Honor.

20 THE COURT: That will be admitted.

21 MR. SULLIVAN: We only want to seek admission of page
22 Number 3, which is one that was published, Your Honor, for
23 clarification purposes.

24 THE COURT: How many pages is the document?

25 MR. SULLIVAN: Three-page document.

26 MR. REID: Total of three. The last one is the
27 relevant one for the time periods.

28 THE COURT: Any reason you want one or two in there?

1 MR. REID: No, Your Honor.

2 THE COURT: Only be page 3. I'm going to read the
3 following exhibits. These will all be admitted, these were
4 previously discussed on the record. When we were here last
5 Wednesday, when we sent the jurors home early, any objections
6 have been reserved they are on the record from that morning.

7 MR. REID: These are the damage exhibits, Your Honor.

8 THE COURT: I'm going to read them so we can check
9 them.

10 MR. REID: Thank you.

11 THE COURT: Already been discussed on the record,
12 324, 317, 312, 321.

13 Yes, Mr. Reid.

14 MR. REID: I'm sorry, Your Honor. 321 on the sheet
15 that we got was described as mud run photo.

16 THE COURT: Correct.

17 MR. REID: Did we -- that was going to be excluded,
18 Your Honor.

19 MR. SULLIVAN: That was wrong Number. 321 is the
20 scavenger hunt video.

21 MR. REID: There we go. Thank you.

22 THE COURT: Yes. That work sheet we were given last
23 week riddled with typos. So we addressed it. 321 is the
24 video of the scavenger hunt. Mr. Sullivan, have we been
25 provided the DVD and transcript as required by the Rules of
26 the Court?

27 MR. SULLIVAN: Yes. The DVD is already in the
28 possession. I have the transcript in front of me, Your Honor.

1 THE COURT: Okay. I think we discussed this last
2 week. We played this last week. That was prior to us
3 discussing it. Was it turned in subsequently?

4 MR. SULLIVAN: It was included with a thumb drive
5 that was given to the Court at the very beginning of the
6 proceedings.

7 We can burn another copy, Your Honor.

8 THE COURT: Okay. If you can please provide another
9 copy.

10 MR. SULLIVAN: Thank you.

11 What's easier for Madam Clerk, CD or thumb drive?

12 THE COURT: CD would be preferable. Thank you.

13 MR. SULLIVAN: Hold off on giving the transcript to
14 the clerk until we get the CD and give them all at once.

15 THE COURT: 321 and 321A will be the transcript.

16 Next we have 276, 322, 332, 280, 320, 291, and 298.
17 Or 298. Do you have that on CD and the transcript.

18 THE CLERK: I have a transcript, Your Honor.

19 THE COURT: We have a transcript. We just need a CD
20 from the audio of that phone call.

21 MR. SULLIVAN: We'll get the audio. Is it all right
22 if we put them both on the same?

23 THE CLERK: Separate, please.

24 THE COURT: Okay. So everything I just read 324 all
25 the way to the last one I read, 298, those will all be
26 admitted. I don't have any additional new exhibits that were
27 introduced. Let me see. No. Mr. Reid, was there anything
28 new or are you just referring to previous introduced and

1 admitted?

2 MR. REID: Previously introduced and admitted.

3 THE COURT: That's what I have. That's why we go
4 through this each day, make sure the Court's not missing
5 anything. Okay. That concludes our discussion on exhibits.
6 We'll do the final verification with you before the case goes
7 to the jury. So we'll have a final list of the exhibits.
8 Anything further?

9 MR. REID: Yes, Your Honor. Just on the subject of
10 Ms. Cubos, Mr. Basile of course mentioned that she was not
11 here during his examination. She has tested negative several
12 times now. She's willing to come in and wear a mask. What's
13 the Court's preference.

14 THE COURT: She's welcome to come in. I'm not going
15 to make an order she has to wear a mask. If she's like to
16 wear one in an abundance of caution, that would be better. So
17 that's fine.

18 MR. REID: Thank you, Your Honor.

19 THE COURT: I appreciate you asking, but if she
20 hasn't tested positive.

21 MR. REID: No. She's A symptomatic and has not
22 tested positive.

23 THE COURT: Has she testified?

24 MR. REID: Tested negative several times.

25 THE COURT: We've all been exposed at this point in
26 this courtroom so.

27 Okay. Is there anything further.

28 MR. REID: No, Your Honor. Thank you.

1 THE COURT: Again, thank you for your patience today.
2 And we'll see you tomorrow morning. We'll try and open up as
3 soon as we're done with the morning calendar, just be ready
4 about 9:45. We'll let you in, so you can set up. Have a good
5 evening.

6 (Proceedings adjourned.)

7 (Next Volume and Page number is Volume 12, Page 2001.)

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REPORTER'S CERTIFICATE

DENISE COLLINS; CHRISTOPHER COLLINS,)	
)	
Plaintiffs,)	
)	
vs	)	Case No. PSC1901096
)	
CPV SENTINEL ENERGY CENTER, LLC,)	
MOTT MACDONALD, LLC, GEMMA POWER)	
SYSTEMS, LLC, and DOES 1 to)	
15, Inclusive,)	
)	
Defendants.)	
)	

I, Demetria Bischoff, Certified Shorthand Reporter No. 12602, hereby certify:

On July 18, 2022, in the county of Riverside, state of California, I took in stenotype a true and correct report of the testimony given and proceedings had in the above-entitled case, pages 1806 - 1967, and that the foregoing is a true and accurate transcription of my stenotype notes and is the whole thereof.

DATED: Palm Springs, California, April 12, 2023.



Demetria Bischoff, CSR NO. 12602

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COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT - DIVISION TWO
APPEAL FROM THE SUPERIOR COURT OF RIVERSIDE COUNTY

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DENISE COLLINS and CHRISTOPHER) DCA No. E080233
COLLINS,)
)
Plaintiffs/Respondents,) Superior Court
) Case No. PSC1901096
vs.)
)
DIAMOND GENERATING CORPORATION,) Volume 12 of 19
) Pages 2001 - 2119
Defendants/Appellant.) (2120 - 2200 Blocked)
)

REPORTER'S TRANSCRIPT ON APPEAL

BEFORE THE HONORABLE MANUEL BUSTAMANTE - DEPARTMENT PS2

July 19, 2022

APPEARANCES:

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Reported by: DEMETRIA BISCHOFF, CSR 12602

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SUPERIOR COURT - STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

-o0o-

DENISE COLLINS; CHRISTOPHER)
COLLINS,)
Plaintiffs,) Case No. PSC1901096
vs.)
CPV SENTINEL ENERGY CENTER, LLC,)
MOTT MACDONALD, LLC, GEMMA POWER)
SYSTEMS, LLC, and DOES 1 to 15,)
Inclusive,)
Defendants.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE MANUEL BUSTAMANTE - Department PS2

July 19, 2022

APPEARANCES:

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1 JULY 19, 2022 - MORNING SESSION

2 BEFORE THE HONORABLE MANUEL BUSTAMANTE

3 THE COURT: Good morning. Let's formally call the
4 matter of Collins versus DG Corporation. Let record reflect
5 that it is 9:59 a.m., and we're all here. So we're going to
6 resume with Defense case this morning.

7 Mr. Reid, I believe we are going to start with your
8 witness here.

9 MR. REID: Yes, Your Honor. DG Corp. would like to
10 call Jason King.

11 THE COURT: Thank you, Mr. Reid.

12 MR. REID: I spoke to him a minute ago. He was a few
13 minutes out, so hopefully he's here.

14 THE CLERK: You do solemnly state that the evidence
15 you shall give in this matter now pending before this court
16 shall be the truth, the whole truth, and nothing but the
17 truth, so help you God?

18 THE WITNESS: Yes.

19 THE CLERK: Thank you. You may be seated.

20 Please state and spell your first last name for the
21 record.

22 THE WITNESS: Jason King. J-a-s-o-n K-i-n-g.

23 THE CLERK: Thank you so much.

24 JASON KING,

25 called as a witness by the Defense, was sworn and testified as
26 follows:

27 DIRECT EXAMINATION

28 BY MR. REID:

1 Q. Good morning, Mr. King.

2 A. Good morning.

3 Q. Thank you for being here this morning.

4 You're here to testify about an incident that
5 occurred at the Sentinel facility involving Daniels Collins,
6 correct?

7 A. That is correct.

8 Q. Just a little bit of your background. Did you serve
9 in the military?

10 A. I did, of the United States Marine Corps.

11 Q. How long were you in the Marine Corps?

12 A. Five good long years.

13 Q. Thank you for your service, sir.

14 While you were in the Marine Corps, what was your
15 job?

16 A. Gas turbine mechanic for the CH-53 helicopter.

17 Q. And after you got out of the Marine Corps, what did
18 you do?

19 A. I was fortunate enough to get into the power
20 generation business.

21 Q. And what was your first job in the power generation
22 business?

23 A. My first job was an operator for a simple cycle,
24 facility located here in Palm Springs.

25 Q. What was name of that facility?

26 A. Indigo Generation.

27 Q. And at the time you started with Indigo Generation,
28 was that owned by DG Corporation?

1 A. No. Diamond or DGC Operations whom I work for
2 acquired it, I think, October of '04, maybe.

3 Q. '04?

4 A. 2004, somewhere around there.

5 Q. Okay. So in 2004, you became an employee of DGC
6 Operations; is that correct?

7 A. That is correct.

8 Q. Pursuant to DG Corp. purchasing the Indigo facility,
9 correct?

10 A. That's my understanding, yes.

11 Q. And how long did you stay at the Indigo facility?

12 A. I believe I -- I served there until September of
13 2012, I think.

14 Q. Okay. And while you were at the Indigo facility, did
15 you receive a promotion?

16 A. I did.

17 Q. And what were you promoted to?

18 A. Initially I was promoted to operations and
19 maintenance manager, which was, essentially, a plant manager.
20 And then ultimately, I believe my title changed to plant
21 manager at some point.

22 Q. Okay. And in September of 2012, did you move from
23 Indigo over to the Sentinel facility?

24 A. I did. I did.

25 Q. And what was your job title at the Sentinel facility?

26 A. That was manager for -- or operations and manager,
27 for clarity, for CPV Sentinel.

28 Q. Okay. And CPV Sentinel was name of the plant at the

1 time?

2 A. Yes, I believe that's correct, yeah.

3 Q. Okay. And that's since changed to Sentinel Energy
4 Center, correct?

5 A. I think that's the case, yeah.

6 Q. Okay. From 2004 and until 2017 when you left the
7 employment with DGC Operations, were you always a DGC
8 Operations employee?

9 A. Yes, I was always an operations employee.

10 Q. Did you ever work for DG Corp.?

11 A. I did not report directly to DGC -- or DG Corp.

12 Q. Okay. And let me just clear it up. We've been using
13 some abbreviations --

14 A. Right.

15 Q. -- in the trial.

16 When we refer to Diamond Generating Corporation,
17 we're calling them DG Corp. --

18 A. Okay.

19 Q. -- fair enough?

20 A. Fair enough.

21 Q. And then DGC Operations, LLC, we're referring to them
22 as OPS?

23 A. Right, which OPS, which is whom I work for.

24 Q. Okay. All right.

25 Were you hired at the Sentinel facility prior to the
26 plant beginning commercial operations?

27 A. Yes, we were there for start-up, which is commonly
28 referred to as "commissioning of the facility."

1 Q. And Gemma Power Systems was company that built the
2 plant; is that correct?

3 A. Yes.

4 Q. And during that start-up phase, the construction
5 phase, if you will, were you getting materials from Gemma
6 Power Systems regarding operations of plans and maintenance
7 manuals, that type of thing?

8 A. Yes. They had a someone who was supporting that
9 effort, yeah.

10 Q. And prior to the plant beginning commercial
11 operations, did you assist or -- excuse me. Did you prepare
12 policies -- safety policies/procedures including the SMP-3
13 Procedure?

14 A. I was part of the team that developed some of that,
15 yes.

16 Q. And who was the team that developed that?

17 A. Well, it was myself. Tom Walker was the plant
18 manager. There was some support through some of the safety
19 folks like Wayne Forsyth.

20 Q. Okay. And did Wayne Forsyth provide you some sample
21 policies to work with?

22 A. We did have some sample policies, not 100 percent of
23 their origin.

24 Q. And those sample policies, did they have to be
25 modified for use at the Sentinel facility?

26 A. There was some modifications, yes.

27 Q. And is that because different plants or different
28 systems and the same policies can't all be used?

1 A. You really try to tailor things to suit the needs of
2 the operation that your at, yeah.

3 Q. And those initials policies and procedures, were
4 those reviewed by the asset manager, Mark McDaniels?

5 A. I'm not -- I don't know.

6 Q. Not sure?

7 A. Not sure.

8 Q. Exhibit 176, please, and this is the Sentinel Energy
9 Center Project Lock Out/Tag Out procedure. Is this the
10 document that you drafted?

11 A. I certainly worked within this document to update it,
12 yes. I did not draft it in its entirety.

13 Q. So this is one of samples procedures that you
14 customized for use at the Sentinel facility?

15 A. That's correct.

16 Q. All right. And the date of this document is
17 April 17th, 2013, and that was before commercial operations
18 began, correct?

19 A. I believe that is correct, yeah.

20 Q. Okay. If I told you that commercial operations began
21 in August of 2013, would that refresh your recollection?

22 A. Yes, it would.

23 Q. Thank you.

24 You testified in your deposition that this document
25 was kind of based off of a procedure that you brought over
26 from Indigo; is that correct?

27 A. There's a lot of similarities for sure, yes.

28 Q. And did Tom Walker also bring a procedure from where

1 you used to work?

2 A. I'm not aware of him bringing over procedure.

3 Q. Okay. But in any event, you customized this for the
4 Sentinel facility?

5 A. Absolutely, yes.

6 Q. Page one, please. I'm sorry.

7 All right. Up in the left-hand corner, you've got
8 the DGC Operations, LLC, logo, correct?

9 A. Yes.

10 Q. All right. Would you just scroll through this one
11 page at a time, focusing on that logo? Stop. Back up one.

12 All right. So 26 pages is the main body of the
13 document; is that correct?

14 A. That's what it looks like, yeah.

15 Q. And each of those pages had the DGC Operations, LLC,
16 logo on it?

17 A. That's -- yes.

18 Q. And the title of the document on each of those pages
19 is the Sentinel Energy Project Lock Out/Tag Out procedure;
20 correct?

21 A. That is correct.

22 Q. Would you agree that this is a DGC Operations
23 document specifically for the Sentinel facility?

24 A. Yes, I would.

25 Q. Okay. Let's go to the next page, please, 27. All
26 right. Let's show the whole page, please.

27 And this is an exhibit to the Lock Out/Tag Out
28 procedure. It has the Diamond Generating Corporation logo on

1 it, correct?

2 A. I see that, yeah.

3 Q. And it also says up in the upper right-hand corner,
4 Sentinel Energy Center or "Sentinel Energy, LLC," correct?

5 A. Yes, it does.

6 Q. Can you tell me how the Diamond Generating
7 Corporation logo got on this particular document?

8 A. It certainly wasn't intentional.

9 Q. Okay. Mr. Walker has testified that he just thought
10 this was a good-looking logo, and that's why it was included
11 on the document. Is that fair?

12 A. That's certainly fair. And at first glance, they
13 look very similar.

14 Q. Did you ask anyone at DG Corp. permission to put this
15 logo on this document?

16 A. No, I did not.

17 Q. Okay. And did you intend that the logo on this
18 document would imply that this document was a DG Corp.
19 document?

20 MR. BASILE: Objection. Lack of foundation as to
21 whether he had authority for that or not.

22 THE COURT: I'm sorry, Mr. Reid. Could you repeat
23 the question.

24 Q. BY MR. REID: Did you, by putting the Diamond
25 Generating Corporation logo on this document, intend that it
26 should be a Diamond Generating Corporation document?

27 A. No, I did not.

28 THE COURT: It was sustained on foundation. I'm just

1 going back two questions there. I recall him testifying that
2 he doesn't know how the logo ended up on there, so how did
3 he --

4 MR. REID: I'll withdraw the question, Your Honor.

5 THE COURT: Okay.

6 Q. BY MR. REID: Was this document a blank template for
7 the LOTO procedures at the plant?

8 A. It appears to be a blank template for the time, yeah.

9 Q. And the steps for the LOTO, whether it's the fuel
10 system LOTO or some other document, those had to be added to
11 this template, correct?

12 A. Yes, they did.

13 Q. And those additions for the various steps were done
14 at the Sentinel plant, correct?

15 A. Absolutely.

16 Q. And at any point in time, did Diamond Generating
17 Corporation or any of its employees have any part in putting
18 those steps onto these pages?

19 A. No. No.

20 Q. Let's go to page 8, please.

21 Again, as you drafted this document. You're very
22 familiar with the document, correct?

23 A. Yeah, I'm very familiar with it.

24 Q. Okay. So let's highlight the LOTO installer; enlarge
25 that, please.

26 Who is the installer with regard to a LOTO?

27 A. The installer would be a qualified employee pursuant
28 to the procedure or procedure that has been trained in the

1 LOTO program and is familiar with the facility.

2 Q. Okay. And that installer, with reference to, at
3 least, the fuel filter system, was required to isolate, lock
4 out, and tag out the components; drain, depressurize, and/or
5 deactivate the components; hang the locks and the lockout tags
6 and then sign all the lockout tags; and then the installer
7 will also sign the Lock Out/Tag Out sheet to acknowledge
8 they've accomplished that task, correct?

9 A. That is correct.

10 Q. On the date of the incident where Mr. Collins was
11 killed, who was the installer?

12 A. My -- immediately I don't recall who the installer
13 was.

14 Q. Okay. Let's go to page 589 or Exhibit 589, excuse
15 me. And we'll come back to this. Enlarge the top portion for
16 me. All right. This is the -- well, strike that.

17 What is this document?

18 A. This is Lock Out/Tag Out sheet that was filled out.
19 And for the process of installing the Lock Out/Tag Out,
20 unifies gases -- or it actually unifies the main outage job.

21 Q. And do you recognize the date 3/6/17?

22 A. I do.

23 Q. That's date of incident?

24 A. Yes, it is.

25 Q. This would have been the Lock Out/Tag Out sheet for
26 the main outage, which would have included depressurizing the
27 fuel system, correct?

28 A. That is correct.

1 Q. Scroll down. Stop.

2 And you see the "install by" column?

3 A. I do. I do see it.

4 Q. Do you see initials there?

5 A. I do.

6 Q. And whose initials are those?

7 A. Those are Dan Collins's initials.

8 Q. All right. And then next to that, "verified by"
9 column, whose initials are those, at least for the first three
10 steps?

11 A. I believe that is Albert Palalay.

12 Q. All right. And then steps 4 and 5, do you recognize
13 the initial and the verifier?

14 A. I must say I don't recognize the initials.

15 Q. If I said Mike Delaney, would that refresh your
16 recollection?

17 MR. BASILE: Objection. Leading.

18 THE COURT: Sustained.

19 Q. BY MR. REID: Do you know if Mike Delaney was
20 involved in the Lock Out/Tag Out on the date of the incident?

21 A. Yes, he was.

22 Q. All right. Let's go back to 176, please.

23 So my question was who was the installer on the date
24 of incident?

25 A. Dan Collins was the installer.

26 Q. Thank you.

27 Let's highlight the next section, the verifier, what
28 is the verifier's job, for lack of a better way of asking?

1 A. Well, the verifier verifies that the job was
2 completed per the procedure.

3 Q. So the verifier makes sure that each valve was opened
4 or closed and then makes sure that the lock and the tag is
5 placed and then initials the tag and then initials the LOTO
6 sheet; is that correct?

7 A. That is correct, yes.

8 Q. All right. And second line there, "The verifier
9 shall walk out the Lock Out/Tag Out and verify all components
10 have been properly isolated, tagged, drained, depressurized,
11 and/or deactivated," correct?

12 A. That is correct.

13 Q. And we've already said -- strike that.

14 Who was the verifier that day?

15 A. Albert Palalay and Michael Delaney. I don't recall
16 which steps they were.

17 Q. And we'll go through that.

18 Do you remember what Albert Palalay's job description
19 was at the time of this incident?

20 A. I don't remember the exact title, but it's
21 maintenance mechanic or something along those lines.

22 Q. So he was not an operator on the date of this
23 incident, correct?

24 A. No, he was not.

25 Q. Did you assign Albert Palalay to assist Dan Collins
26 with this?

27 A. I document know that I assigned him.

28 Q. Did you assign Dan Collins to do the Lock Out/Tag Out

1 on the fuel skid that morning?

2 A. As I recall, the morning of the installation of the
3 lockout or Lock Out/Tag Out, Dan made reference to, Hey, I've
4 got Unit 5's main lock. And I said, Okay, or something along
5 those lines.

6 Q. Okay. Was Dan Collins qualified for the job of
7 installer on the date of the incident?

8 A. Yes.

9 Q. And why would you say that?

10 A. Well, he had been through many rounds of training in
11 regards to Lock Out/Tag Out, certainly initially/annually, and
12 then -- my apologies. And then he's, you know, been through,
13 and I've walk through him installing LOTOs specific to this
14 and others, you know, over the course of my time working with
15 Dan.

16 Q. Okay. Page 9, please. Highlight the work
17 supervisor.

18 What was the work supervisor's responsibility with
19 regard to the LOTO?

20 A. Well, he's responsible for work activities and that
21 kind of thing.

22 Q. About a third of the way down starting with the word,
23 "Supervisor verifies the isolation and de-energizing of the
24 component equipment prior to the start of the job and jobs
25 lasting for more than one shift, start of each shift" -- is
26 that the basic description of what the work supervisor is
27 supposed to do?

28 A. That would be one of functions, yeah.

1 Q. Is one of functions of work supervisors also to walk
2 down the LOTO after it's been completed?

3 A. Yes.

4 Q. And what does that walk-down include?

5 A. It would be a review of the entire LOTO step by step.

6 Q. Okay. So would you -- if you were performing the job
7 of the work supervisor, would you take the LOTO sheet and go
8 out to the piece of equipment and check each tag, each valve
9 position?

10 A. Yes.

11 Q. In the case of fuel filter skid, would that also
12 involve checking the pressure gauge on the fuel filter tank?

13 A. Yes, it would.

14 Q. And you are making sure that that fuel pressure is at
15 zero, correct?

16 A. That is correct.

17 Q. As part of that walk-down, would you also go into the
18 control room and check the pressure reading on the system in
19 there?

20 A. That would be good practice, yeah.

21 Q. Okay. On the date of the incident, were you the work
22 supervisor for this LOTO?

23 A. I was.

24 Q. Okay. And was it also your responsibility to make
25 sure the fuel filter skid had been isolated and depressurized?

26 A. That certainly would have been one of functions of my
27 job.

28 Q. On the day of the incident -- strike that.

1 Prior to this incident, you had been the work
2 supervisor on other LOTOs at the fuel filter skid, correct?

3 A. That is correct.

4 Q. And after the LOTO had been hung -- is the term, I
5 believe -- would you be notified that the LOTO been hung so
6 that you can do your job as the work supervisor?

7 A. Yes.

8 Q. And prior to this incident on any LOTO that you were
9 the work supervisor, were you -- let me ask it a different
10 way. Strike the question.

11 Prior to this incident, were you not notified that
12 the LOTO had been hung?

13 A. I don't recall not being notified.

14 Q. And to your knowledge, each of the times that you
15 performed the role of the work supervisor, you walked down the
16 system, correct?

17 A. Yes.

18 Q. You made sure that the system was completely
19 depressurized and isolated, correct?

20 A. Yes.

21 Q. And is that a job you can hurry through?

22 A. Certainly you don't want to hurry through, no.

23 Q. And why is it important to not hurry through that
24 job?

25 A. To ensure the safety of folks that are working on the
26 equipment.

27 Q. And in the case of fuel filter system, the pressure
28 in that system, can it be anywhere from 700 to 900 pounds per

1 square inch, correct?

2 A. Yes.

3 Q. That's a very dangerous system, correct?

4 A. Yes, it is.

5 Q. So again, it's very important to make sure it's
6 completely depressurized, correct?

7 A. It would be very important.

8 Q. On the day of this incident, did anyone tell you that
9 the LOTO had been completed.

10 A. Not that LOTO.

11 Q. You were told other LOTOs had been completed?

12 A. That is correct.

13 Q. But no one told you that the LOTO in the fuel filter
14 skid had been completed and you needed to do your walk-down,
15 correct?

16 A. That is correct.

17 Q. What was the normal way that you were told that the
18 LOTO had been hung, and you needed to walk it down?

19 A. The way? The means?

20 Q. Yes.

21 A. Face-to-face, via radio -- those were the two primary
22 ways. I didn't receive phone calls because these are radios.

23 Q. So on the date of the incident, you were carrying a
24 walkie-talkie, correct.

25 A. As I did every day.

26 Q. And all of the employees of DGC Operations who were
27 working on the LOTO also carried walkie-talkies, correct?

28 A. Yes. It would be odd to not have one. I can't say

1 everyone had one that day.

2 Q. Prior to this incident, would the installer come and
3 tell you the LOTO had been hung or let you know over the
4 radio?

5 A. Yeah. Possibly, yeah, the installer. I mean, yeah,
6 certainly the installer. But, you know, it could come from
7 somewhere else too, someone else working, "Yeah, that's ready.
8 You might want to check with so and so, make sure it's good to
9 go." I mean, we were a close group.

10 Q. Is it also possible the verifier would have been the
11 one tell you?

12 A. It's possible.

13 Q. And sometimes did you get that call from the control
14 room operator?

15 A. That's certainly possible too.

16 Q. And on that morning, you didn't get a radio call.
17 You didn't get a face-to-face. You didn't get any
18 notification that that LOTO was ready to be walked down?

19 A. Not specific to the LOTO in question.

20 Q. And The LOTO in question, we're talking about fuel
21 filter skid?

22 A. Yes.

23 Q. That was installed by Daniel Collins and verified by
24 Albert Palalay and Mike Delaney?

25 A. That is correct.

26 Q. On that morning, did you hear gas venting from the
27 LOTO -- or not the LOTO, excuse me -- the filter and turbine
28 assembly?

1 A. I did.

2 Q. Did you hear more than one gas venting?

3 A. I did.

4 Q. The first gas venting that you heard that morning,
5 was that unusual?

6 A. It seemed -- it seemed odd in timing, and it seemed
7 odd in sound. I must admit it just seemed odd.

8 Q. Okay. And when you say "odd in timing," are you
9 referring to duration of the venting?

10 A. The duration of the venting, kind of where it's
11 vented in the sequence. Because I know our guys are out
12 working, and it just seemed at an odd time in the morning that
13 -- you know, I knew they were working on LOTO as they were
14 working on other LOTOs, and it just -- the timing, duration,
15 the sounds just seemed out of place, I guess, is probably
16 better.

17 Q. Okay. Can I have Exhibit 489, please, from the date
18 of the incident. I need the native file. All right. So the
19 two -- or excuse me.

20 The pressure readings in the control room are stored
21 in a system called the PI Historian; is that correct?

22 A. Plant Information System.

23 Q. And I'll represent to you that this is an Excel
24 spreadsheet that was prepared by Dennis Johnson based on the
25 date of the incident. Does that make sense to you?

26 A. It does.

27 Q. And there's two pressure sensors on the fuel system,
28 correct?

1 A. Yeah, at least two, but there may be a couple more.
2 Q. So there were two being recorded in the control room?
3 A. Yeah. That seems what I recollect, yeah.
4 Q. And it's been a while since you were at this plant,
5 correct?
6 A. It has been a while.
7 Q. So you left DGC OPS in May of 2017, correct?
8 A. Yeah.
9 Q. Okay. So just refresh your recollection, the first
10 column, the gas pressure at the filter skid; and the second
11 column, the gas pressure at gas turbine --
12 A. I understand those exact locations.
13 Q. Scroll down. First highlight.
14 At 6:10 that morning, the pressure is increased from
15 764 or so up to 913. Was is that an indication of?
16 A. As I recall, we were starting up one or more units
17 that morning.
18 Q. Okay. So outside of Unit 5, which was in outage for
19 maintenance --
20 A. That's right.
21 Q. -- you were running one or two of the other eight
22 units?
23 A. I don't remember how many that day, but it was at
24 least two, maybe more.
25 Q. Scroll down, please. Stop.
26 At 6:32 a.m., there's an initial gas venting on the
27 system. Do you see that?
28 A. I do.

1 Q. Is that a normal venting process?
2 A. No, it isn't.
3 Q. Why is that not normal?
4 A. Because it didn't go to zero.
5 Q. So under a normal situation, LOTOs -- prior to the
6 date of the incident, when that first venting occurs, it goes
7 all -- both of these gauges go all the way to zero, correct?
8 A. Yes, that is correct.
9 Q. And the duration here from 6:32 to 6:38, 6 minutes.
10 That's short for a venting, correct?
11 A. I never timed this, but it's -- it just seems odd.
12 Q. Something was off?
13 A. Something was off.
14 Q. Okay.
15 A. And this does seem like a shorter duration.
16 Q. Okay. Just in timing and --
17 A. Intuitive almost. If you do it enough, you kind of
18 now how it vents.
19 Q. And at some point in time, you heard --
20 You can take this down, please.
21 And that first venting was at approximately 6:30?
22 A. Yeah, that's what time stamp looks to be.
23 Q. And you heard another venting at some point in time,
24 correct?
25 A. Some point later in the morning, I did.
26 Q. Okay. And do you know approximately how long it was
27 between the two?
28 A. It may have been 45 minutes, 30.

1 Q. And is it unusual to have a second venting of gas?

2 A. It's -- yes, it would have been abnormal.

3 Q. And was that an indication that there was still
4 pressure in the system somewhere?

5 A. Or pressure was relieving somewhere in the system,
6 yeah.

7 MR. BASILE: Objection --

8 Q. BY MR. REID: Did you have a conversation with Dan
9 Collins about this second venting?

10 A. I did.

11 Q. And what was that conversation -- in fact, did you
12 have more than one conversation?

13 A. I had several conversations in regards to gas and
14 pressure and the lockout that morning with Dan Collins --

15 Q. Okay.

16 A. -- specific to venting.

17 Q. Tell us about the first conversation.

18 A. During the first vent, I was doing other things in
19 the plant, and I heard it. I wasn't immediately near the
20 unit, but these things are allowed. And I can hear it from
21 where I was in the plant, and I called on the radio to Dan and
22 I met the gentlemen -- Hey, guys. That vent didn't sound
23 right. Check it out, something along those lines.

24 Q. Okay. Did Dan Collins respond to you?

25 A. I believe Dan was -- yes. Dan was the one who
26 responded, said, We're still in process, or something along
27 the lines of that, which I thought, "Okay. Well, maybe
28 something came up. You know? Whatever. We'll get to that at

1 some point."

2 Q. Did you have a second conversation with Dan Collins
3 after that second venting occurred?

4 A. I did.

5 Q. Was that a face-to-face conversation?

6 A. I believe that, yes. Either that one or the third
7 one was a face-to-face. I remember three distinct
8 conversations.

9 Q. The second conversation, you don't recall if it was
10 face to face or not. When did you ask Mr. Collins about that
11 venting?

12 A. "Did we figure out what happened with the venting on
13 the Unit 5?" And the reply was, Jason, we got it, or
14 something along those lines, yet again, reassuring me that the
15 job was being handled.

16 Q. And then you said you believe you had a third
17 conversation with Mr. Collins that morning?

18 A. I know I had a face-to-face conversation with him in
19 close proximity to Unit 5 and the gassing.

20 Q. What was gist of that conversation?

21 A. The gist of that conversation was that it's all under
22 control. The system is being depressurized. We got it.

23 Q. Did you specifically ask Dan Collins to make sure the
24 system had been depressurized --

25 A. I did.

26 Q. You've gotta let me finish my question for the court
27 reporter.

28 A. I'm sorry.

1 Q. And again, Dan Collins assured you that the pressure
2 in the system had been vented, correct?

3 A. Yes, he did.

4 Q. Do you remember if Dan Collins had the LOTO sheet in
5 his hand when you talked to him face to face?

6 A. I can't say that I remember him with it in his hand
7 during that conversation, but I know he had it in his hand
8 multiple times during that morning. I see them working.

9 Q. Did you have any other conversations between Dan --
10 with Dan Collins between that face-to-face and the time of the
11 incident?

12 A. I had one more brief conversation with him.

13 Q. About what?

14 A. He'd improved an area of the --

15 (Reporter clarification.)

16 THE WITNESS: He had improved an area of the plant.
17 We had some gear that needed to be stowed. And Dan had taken
18 it on himself to kind of be the lead on it, and I had happened
19 to be in that area at some point during that morning. And as
20 I was -- we were passing at Unit 5, I was walking south. He
21 was walking in, and I just told him, "Hey, you did a great job
22 with the storage area," and that was last conversation that I
23 had.

24 Q. BY MR. REID: After that conversation face to face
25 with Mr. Collins where you were asking him about the pressure
26 and whether the system had been depressurized, were you in the
27 control room at any point in time?

28 A. I was in and out of control room all day -- or yeah,

1 all morning.

2 Q. And at any point in time, did you see the Lock
3 Out/Tag Out box and the Lock Out/Tag Out sheet for the fuel
4 skid in the control room?

5 A. I don't recall seeing it.

6 Q. As part of walking down the LOTO, once you've walked
7 down the LOTO, you need to place your lock on the Lock Out/Tag
8 Out box, correct?

9 A. That is correct.

10 Q. Why do you need to place a lock on the Lock Out/Tag
11 Out box?

12 A. To ensure that it is secured.

13 Q. Are the keys for the locks on the fuel filter skid in
14 that Lock Out/Tag Out box?

15 A. For the locks that are ensuring the device staying
16 open or closed -- or the key is in that locks box, yes.

17 Q. So the idea is that no one can get to that key
18 without going through you first, correct?

19 A. Yes.

20 Q. On the date of the incident, did you put your lock on
21 the Lock Out/Tag Out box?

22 A. No, I did not.

23 Q. Any idea who did?

24 A. I do not.

25 Q. Exhibit 176, again, please, page 12. If you can
26 highlight the box that says "Caution."

27 At any point during a LOTO, a reaccumulation of
28 stored energy presents itself. The work supervisor is to

1 immediately remove all workers from the LOTO work area and
2 notify --

3 (Reporter clarification.)

4 Q. BY MR. REID: To remove all workers from the LOTO
5 work area and notify the qualified employees, authorized
6 users, and the plant manager and the O and M manager.

7 Based on the fact that there were abnormal ventings
8 that day, did you feel that there was a reason to pull the
9 workers off the LOTO?

10 A. I did not.

11 Q. Would that have been your responsibility?

12 A. Yes, it would have been.

13 Q. You would have been the one to make that call,
14 correct?

15 A. Yes.

16 Q. Page 12, please, section 5.0. On the date of this
17 incident -- well, strike that.

18 From the time you were hired at the Sentinel plant
19 until date of this incident, who was the plant manager?

20 A. Tom Walker.

21 Q. And under the SMP-3 Procedure, Tom Walker had a
22 number of duties, correct?

23 A. That is correct.

24 Q. Was he the person -- let's just read this here: The
25 plant manager is responsible for the administration of the
26 Lock Out/Tag Out program. The plant manager shall ensure that
27 all DGC OPS personnel are trained on and comply with the Lock
28 Out/Tag Out procedure and the SCE station transmission line

1 isolation procedures when applicable.

2 So based on this policy, Mr. Walker was responsible
3 for administrating this Lock Out/Tag Out program, correct?

4 A. Yes.

5 Q. And he was responsible to make sure that all DGC OPS
6 personnel were trained on the LOTO program, correct?

7 A. That is correct.

8 Q. Page 13, please.

9 The plant manager is responsible for performing an
10 annual review/audit with the current previously issued LOTOs
11 in Lock Out/Tag Out program. Again, this would have been Tom
12 Walker's responsibility, correct?

13 A. Yes.

14 Q. To your knowledge, did Tom Walker ever conduct an
15 annual review of current and previously issued LOTOs?

16 A. I never saw him do it. I wasn't in his office when
17 he was doing it, but I'd seen, you know, documentation where
18 he had done it.

19 Q. Okay. Was he also responsible for conducting monthly
20 audits of the LOTOs?

21 A. I don't think he was responsible for conducting
22 monthly audits. He was responsible for those who, by
23 direction, to have audits completed?

24 Q. So that was something he could have assigned to other
25 qualified personnel, correct?

26 A. As I recall in the procedure, it allowed for that,
27 yes.

28 Q. Let's see the original the document. Let's go back

1 up to 5-B. Sorry. Yeah, there we go. The plant manager is
2 responsible for monthly review audit of the current and
3 previously issued LOTOs in the Lock Out/Tag Out program.

4 Does that refresh your recollection that it was his
5 responsibility to conduct those monthly audits?

6 A. Yes, it does.

7 Q. Okay. And it also says that he can delegate that
8 task to a qualified employee, correct?

9 A. Yes.

10 Q. Did you -- beginning in 2013 after the employees that
11 were going to operate the plant had been hired -- did you
12 conduct LOTO training?

13 A. I did.

14 Q. All right. And when there was LOTO training done,
15 there was a sign-in sheet for the employees to sign off,
16 correct?

17 A. Absolutely.

18 Q. Okay. Was that done every time? In other words, was
19 the sign-in sheet provided every time?

20 A. Yes. A sign-in sheet was provided every time. There
21 may have been off incidents where we did some kind of training
22 and, you know, maybe the paperwork wasn't immediately there.
23 I mean, it wasn't very -- it wasn't just so regimented that --
24 so is it possible we did some training and someone didn't sign
25 on? That's possible.

26 Q. Did you conduct annual training on the LOTO SMP-3?

27 A. We did.

28 Q. Did that include classroom training?

1 A. It was mostly classroom training.

2 Q. And when you were conducting that classroom training,
3 did you project the SMP-3 up on the screen?

4 A. We did. Certainly the installation template.

5 Q. When you say "installation template" --

6 A. A sign-off sheet.

7 Q. Okay. And maybe I'm getting mixed up.

8 When you were conducting the annual LOTO training on
9 the SMP-3 Procedure, did you go through the procedure with the
10 employees?

11 A. Yes, we did.

12 Q. Okay. And how did you go through that? Did you hand
13 them a copy of the procedure? Something else?

14 A. We could have handed out copies. We could have
15 presented on the projector. Some times we would kind of read
16 through it and talk through it.

17 Q. Okay. Was there also an online training program that
18 was used?

19 A. I don't want to misstate this because I've worked
20 multiple facilities, and I don't remember exactly with the CP
21 -- or the Sentinel plant if we did online training specific to
22 this LOTO. I don't recall that.

23 Have I in the past with other facilities, yes. And I
24 don't want to misstate.

25 Q. Okay. Was Dan Collins a participant in the annual
26 LOTO training that you conducted?

27 A. Absolutely, yes.

28 Q. Was Dan Collins one of most experienced operators at

1 the plant?

2 A. He was hired with the initial hiring of the plant
3 owners, the original hirees -- or the employees, rather.

4 Q. So my question was was he an experienced operator?

5 A. He was good.

6 Q. Okay. Was he one of most experienced operators at
7 the plant on the date of the incident?

8 A. He was.

9 Q. Was he a lead operator?

10 A. We didn't really have lead operators.

11 Q. Did you have teams?

12 A. We did. We did.

13 Q. Okay. And at the time of this incident, do you know
14 who Dan Collins's team member was?

15 A. I believe it was Robert Ward at the time.

16 Q. So at some point in time, Dan Collins and Robert Ward
17 were paired up, correct?

18 A. That is correct.

19 Q. As far as hands-on training, in other words, going
20 out to the fuel skid and showing how it should be done -- did
21 that ever occur?

22 A. Yes, that did occur.

23 Q. Is that something you did?

24 A. I was involved with it, yes.

25 Q. Was Dan Collins involved in that type of hands-on
26 training?

27 A. Yes, he was.

28 Q. Was that something that would have had a sign-in

1 sheet?

2 A. That sounds like something we would have signed at
3 training.

4 Q. As we sit here today, it's your recollection that you
5 provided Dan Collins hands-on training regarding how to do
6 this fuel filter LOTO, correct?

7 A. 100 percent.

8 Q. And forgive me if I'm asking a question that we've
9 already covered.

10 As a Sentinel operations and maintenance manager,
11 were you the number two person at the plant?

12 A. That would be one way to look at it. Yes, I was
13 second in command.

14 Q. And you were very familiar with the fuel filter skids
15 at this plant, correct?

16 A. I would like to think so, yes.

17 Q. And, again, your very familiar with the Lock Out/Tag
18 Out procedure for draining, depressurizing the natural gas,
19 and skids; correct?

20 A. That is correct.

21 Q. Had you ever been the installer for any of the LOTOs?

22 A. I'm certainly in my career I've been an installer a
23 time or two.

24 Q. And had you ever been the installer at the Sentinel
25 plant for any of the outages?

26 A. That wouldn't have been a common place.

27 Q. Same thing for the verifier, you would not have been
28 the verifier for any of the fuel filter LOTOs?

1 A. Not as a common place.

2 Q. How many times prior to this incident had you been
3 the work supervisor for the fuel system LOTO?

4 A. Multiple times.

5 Q. Can you estimate for me?

6 A. Oh, at least a dozen, maybe.

7 Q. 358, please.

8 This is a PowerPoint presentation that was prepared
9 by plaintiffs' experts Mr. Christopher Lane. It's a
10 representation of fuel filter skid. It's kind of simplified.
11 There's a inlet side on the bottom line, correct?

12 A. That's what it looks like. Yeah, I'm familiar with
13 it.

14 Q. Sure. Let me back up a little bit.

15 Can I have Exhibit 349 next to this one, please.

16 Do you recognize this as a picture the fuel filter
17 skid?

18 A. That looks like the fuel filter skid.

19 Q. Excuse me. Let me grab my pointer here. If you can
20 turn it around for me.

21 There's long red handles. There's three of them,
22 right?

23 A. That's right.

24 Q. See those?

25 A. Yeah.

26 Q. This first one, is that the first isolation valve on
27 the inlet side of skid?

28 A. I believe that is the inlet side, yes, in the first

1 isolation valve is what it looks like.

2 Q. All right. So the inlet side is the lower pipe,
3 correct?

4 A. That's what my memory recalls.

5 Q. This is the filter assembly?

6 A. That is correct.

7 Q. Okay. So if we're looking over here at Mr. Lane's
8 exemplar or demonstrative?

9 A. Yep.

10 Q. This is the inlet side. That's the first isolation
11 valve --

12 A. Yes.

13 Q. -- correct?

14 A. Yes.

15 Q. And then the second one here on the inlet side, do
16 you see that one?

17 A. I see it.

18 Q. That's represented here.

19 A. Yes.

20 Q. It makes sense to you?

21 A. It makes sense.

22 Q. And then on the top, the outlet side of the fuel
23 filter skid, there's a third isolation valve, correct?

24 A. That's correct.

25 Q. Then this line goes to the turbine package as is
26 represented in the document?

27 A. That's correct.

28 Q. Okay. Do you recall how each of these isolation

1 valves in this diagram were labeled -- or not "labeled," but
2 identified?

3 A. Inlet Valve 1 and 2, or something like that.

4 Q. Okay. So this first one was identified as Isolation
5 Valve Number 1?

6 A. Uh-huh.

7 Q. And that's how it was referred to in the LOTO
8 procedure, correct?

9 A. That's what I recall.

10 Q. And this second one on the inlet side would have been
11 Isolation Valve Number 2; is that correct?

12 A. Yes.

13 Q. And then this would have been Isolation Valve Number
14 3, correct?

15 A. That's right.

16 Q. All right. Mr. Lane has theorized that prior to the
17 2017 outage season; in other words, 2016, before, that this
18 valve on the outlet side was identified as Isolation Valve
19 Number 2; is that correct?

20 A. I don't have a recollection of that.

21 Q. You don't recall?

22 A. I don't recall the -- what the names were.

23 Q. Okay. All right. Take those down. Thank you.
24 Exhibit 589, please.

25 We're back to the LOTO sheet for the day of the
26 incident, correct?

27 A. Yes.

28 Q. All right. And you scroll down for me.

1 Do you recall there being a change in where Isolation
2 Valve Number 2 was closed in the LOTO sheets?

3 A. I don't remember the change specific to that too. I
4 remember there being a change shortly before this outage --
5 the outage season of 2013.

6 Q. Okay. Do you remember who requested the change?

7 A. I don't remember specifically who.

8 Q. Mr. Ward was here yesterday and testified. And he
9 stated that -- or testified that he recommended that the step
10 for Isolation Valve Number 2 be moved down in the LOTO sheet.
11 Does that refresh your recollection?

12 A. That seems like -- like he could have been one of the
13 ones to recommend that. I mean, it was a group of people.

14 Q. Okay. And when you say "group of people" --

15 A. Qualified employees.

16 Q. Qualified employees. And that would have included
17 Dan Collins, correct?

18 A. Yes, specifically Dan Collins.

19 Q. Okay. So do you recall Dan Collins being involved in
20 the change that was made to the LOTO sheet?

21 A. 100 percent he was involved with that change.

22 Q. Okay. And did you give permission for that change to
23 be made?

24 A. I did.

25 Q. So prior to the 2017 outage season, which is the
26 outages for the eight systems, correct?

27 A. Yes.

28 Q. That change was implemented? It was authorized?

1 A. Yes. And I think I said 2013 earlier. That was a
2 misstatement. It was 2017.

3 Q. 2017. And Dan Collins was aware of the change,
4 correct?

5 MR. BASILE: Objection. Calls for speculation. Lack
6 of foundation. Asked and answered.

7 THE COURT: Overruled. If he knows. Don't
8 speculate.

9 Q. BY MR. REID: My question was was Dan Collins aware
10 of the change?

11 A. Yes, he was.

12 Q. Exhibit 264, please, page 256. Okay. Zoom in on the
13 upper part. All right. That's fine.

14 What is this document?

15 A. It's like the Lock Out/Tag Out sheet for Unit 7's
16 annual outage. It appears --

17 Q. Scroll down a little bit for me.

18 Okay. And this Lock Out/Tag Out would have been
19 performed on January 30th of 2017, correct?

20 A. That appears to be when it was installed, yes.

21 Q. Scroll back up for me.

22 And you're listed as the work supervisor for this
23 LOTO?

24 A. That is correct.

25 Q. Scroll down just a little bit.

26 Work supervisor's final release, is that your
27 signature?

28 A. That is my signature.

1 Q. What does that mean, "work supervisor final release"?

2 A. It's not highlighted. That is not my signature.

3 Q. No, not that one. Sorry. The top of that stack
4 right there.

5 A. That is my signature.

6 Q. Okay. What does that "work supervisor final release"
7 indicate?

8 A. "Final release," meaning that all of the work has
9 been completed.

10 Q. Okay. So this is the end of the process you sign
11 off, correct?

12 A. Yes.

13 Q. Okay. Scroll down for me just a little. Stop.
14 So Step Number 2, Isolation Valve's Final Fuel Filter
15 Number 1. That's that isolation valve on the inlet side we
16 were talking about?

17 A. Uh-huh.

18 Q. Steps 3 and 4 are the final filter vents. Where are
19 those located?

20 A. Just beyond the Isolation Valve 1.

21 Q. Okay. So if we were looking at that photograph
22 again, there's Isolation Valve Number 1 on the left.
23 Isolation Valve Number 2 on the right. Then there's a pipe
24 you can't see which goes off of that -- it Ts off of that
25 space in between the two pipes; is that correct?

26 A. That's correct.

27 Q. And that's where those two vent valves are?

28 A. Yes.

1 Q. And when those vent valves are opened, what's
2 supposed to happen is the entire system is depressurized,
3 correct?

4 A. That is correct.

5 Q. Looking at this first page, do you see anything that
6 mentions final -- or excuse me. Isolation Valve Number 3?

7 A. I do not see Isolation Valve Number 3 on this LOTO.

8 Q. The second page, please. Same thing. Anything there
9 about Isolation Valve Number 3?

10 Is that an indication to you that Isolation Valve
11 Number 3 was not used with respect to this LOTO?

12 A. It doesn't appear to be.

13 Q. Step Number 23, Isolation Valve Final Fuel Filter.
14 That's where that step was moved down on the page, correct?

15 A. Yes.

16 Q. Did Mr. Ward -- Mr. Ward testified here yesterday
17 that he wanted to move that isolation valve down the page so
18 that it was the last valve closed in the LOTO. Does that make
19 sense?

20 A. That makes sense.

21 Q. And he testified that he wanted to make the procedure
22 safer. That's why he recommend this change. Does that make
23 sense?

24 A. It does make sense.

25 Q. Do you recall him telling you that when he asked
26 about making the change?

27 A. Yeah.

28 Q. Okay. You can go back to the original document one

1 page up. Yeah, there we go.

2 On January 30th -- January 30, 2017, this Lock
3 Out/Tag Out was performed without incident; is that correct?

4 A. There were no incidents that I'm aware of.

5 Q. And to your knowledge, the system was completely
6 drained and depressurized, correct?

7 A. Yeah, to my knowledge.

8 Q. And to your knowledge, you were notified that the
9 LOTO had been hung; is that correct?

10 A. That is correct.

11 Q. And you walked down this LOTO, correct?

12 A. Yes, I did.

13 Q. You made sure the system was completely
14 depressurized, correct?

15 A. Yes, I did.

16 Q. And you did that by looking at the gauge on the fuel
17 filter, correct?

18 A. Yes.

19 THE COURT: Mr. Reid, we're going take our morning
20 recess.

21 MR. REID: Thank you, Your Honor.

22 THE COURT: Thank you.

23 Mr. Members of the jury, we're going take our
24 11:00 a.m. recess. Please return at 11:15. Thank you.

25 (Proceedings outside the presence of the jury as follows:)

26 THE COURT: We're outside presence of jury. We'll
27 recess until 11:15.

28 MR. REID: Thank you, Your Honor.

1 THE COURT: We're in recess.

2 (Recess.)

3 (Proceedings in the presence of the jury as follows:)

4 THE COURT: Back on the record in the Collins versus
5 DG Corp. All members of the jury are present.

6 You may proceed.

7 MR. REID: Thank you, Your Honor.

8 Q. BY MR. REID: Exhibit 262 or page 262 of Exhibit 264,
9 the top part of it, please. Thank you.

10 What's this document, Mr. King?

11 A. It's a Lock Out/Tag Out sheet it looks like for Unit
12 3's annual outage.

13 Q. Scroll down for me.

14 And based on date installed, this was for
15 February 6th of 217, correct?

16 A. That's what it looks like, yes.

17 Q. And this would have been the second outage for 2017?

18 A. I think so, yeah.

19 Q. Okay. Great. And can you identify the initials for
20 the air switch? Installed by?

21 A. Installed by it looks like Dan Collins.

22 Q. Okay. You can see his initials throughout the
23 document, correct?

24 A. That's right.

25 Q. One of the things -- well, strike that.

26 It's important to go in order for these steps?

27 A. It is.

28 Q. Why is it important to go in order?

1 A. Because it ensures the sequence for things to be
2 placed in a maintenance condition.

3 Q. Okay. And if things are done out of sequence, it can
4 cause problems, correct?

5 A. It certainly can.

6 Q. Do you know if on the date of incident the steps in
7 the LOTO were done in sequence?

8 A. Were they done in sequence?

9 Q. Yes.

10 A. I wouldn't -- I would expect them to be done in
11 sequence.

12 Q. Do you know one way or the other from the date of
13 incident?

14 A. I didn't hang the LOTO, so there's no way I can say
15 without question what sequence was followed.

16 Q. Fair enough.

17 Scroll back to the top for me, please.

18 A. Again, you were the work supervisor for this LOTO,
19 correct?

20 A. That is correct.

21 Q. And scroll back down.

22 Work supervisor final release, that's your signature;
23 is that correct?

24 A. Yes, it is.

25 Q. And, again, that's an indication that you signed off
26 when the job was completely done, correct?

27 A. That is correct.

28 Q. Did you walk down this LOTO once it was completed?

1 A. Yes, I would have walked that LOTO down.

2 Q. Were you notified that the LOTO was ready for a
3 walk-down?

4 A. Yes. By all counts, yes.

5 Q. And is this another instance where there were no
6 incidents?

7 A. I am not aware of any incidents during the course of
8 this outage.

9 Q. And to your knowledge, this system was completely
10 isolate and depressurized, correct?

11 A. Yes, to my knowledge.

12 Q. And as part of your walk-down, you would have checked
13 gauge on the fuel filter tank, made sure it was empty,
14 correct?

15 A. Yes, I would.

16 Q. Page 272 of Exhibit 264, top part again. What's this
17 document?

18 A. This looks like the Lock Out/Tag Out sheet for Unit
19 4's annual outage.

20 Q. Again, you're the work supervisor?

21 A. That's correct.

22 Q. Scroll down a little for me.

23 And work supervisor final release, that's your
24 signature?

25 A. Yes, it is.

26 Q. Are there instances where the original work
27 supervisor is substituted?

28 A. There's a provision for that in a policy, as I

1 recall, for the procedure, as I recall.

2 Q. But this is an indication that you were the work
3 supervisor throughout the outage for this unit, correct?

4 A. That is correct.

5 Q. Scroll down a little bit more for me. Right there is
6 good.

7 The date installed is February 13th of 2017, correct?

8 A. Yes.

9 Q. And do you recognize the initials under the
10 "installed by"?

11 A. That appears to be Robert Ward.

12 Q. How about the initials under the verifier?

13 A. That's possibly Albert Palalay.

14 Q. Okay. If I said Ernest Jones, would that refresh
15 your recollection?

16 A. Maybe Ernie Jones's signature or initials. It's hard
17 to --

18 Q. But your sure Robert Ward installed this one,
19 correct?

20 A. I recognize Robert's more naturally, I guess, his
21 initials.

22 Q. Were there any unusual ventings for this LOTO?

23 A. None that stand out.

24 Q. Okay. So you don't recall there being anything but
25 one venting for this LOTO, correct?

26 A. That's exactly what I recall.

27 Q. And for the January 30th, 2017, LOTO, is that also
28 your recollection -- one venting?

1 A. Yes.

2 Q. And for the February 6th LOTO, one venting?

3 A. I don't recall any other ventings.

4 Q. Okay. In fact, in the entire time you were at the
5 plant, from the first outage that was done in 2014 until the
6 day of the incident, did you ever hear more than one venting?

7 A. During the course of hanging a LOTO?

8 Q. Yes.

9 A. I don't recall hearing abnormal venting.

10 Q. So two ventings would have been unusual?

11 A. It was abnormal.

12 Q. Okay. Page 283 of Exhibit 264. What do we have
13 here?

14 A. That's looks like Unit 6's outage in February of '17.

15 Q. And you were, again, the work supervisor, correct?

16 A. That is correct.

17 Q. Scroll down for me.

18 That's your signature on the LOTO work supervisor
19 final release?

20 A. Yes, it is.

21 Q. Scroll down for me.

22 And based on the date installed, this was hung on
23 February --

24 A. It looks like 20.

25 Q. 20th, 2017.

26 And do you recognize the initials for the installer?

27 A. That may be Ernie Jones.

28 Q. And then for the verifier?

1 A. That looks like Robert Ward.

2 Q. And you would have been notified when this LOTO was
3 walked down, correct?

4 A. That is correct.

5 Q. Or not "walked down." Excuse me. Strike that.
6 You would have been notified when this LOTO was
7 completed so you could walk it down, correct?

8 A. Correct.

9 Q. And you did walk this LOTO down, correct?

10 A. Yes, I did.

11 Q. And you made sure that there was no pressure in the
12 tank, correct?

13 A. Correct.

14 Q. That was by looking at the gauge on the tank?

15 A. Yes, it was.

16 Q. Okay. Anyone injured on this date?

17 A. No.

18 Q. On the morning of the incident, did you conduct a
19 morning meeting?

20 A. I did.

21 Q. Did you go over what was going to be happening that
22 day?

23 A. I did.

24 Q. Did you emphasize that everyone should be safe?

25 A. Several times.

26 Q. Was Mr. Walker also present for that meeting?

27 A. Yes, he was.

28 Q. Did he also emphasize everyone should be safe?

1 A. Yes, he did.

2 Q. Based on your experience, do you have any idea why
3 this incident occurred?

4 MR. BASILE: Objection. Lack of foundation. Calls
5 for speculation.

6 THE COURT: Overruled.

7 Q. BY MR. REID: Do you have an understanding of why
8 this incident occurred?

9 A. Based on my experience?

10 Q. Yes.

11 A. I believe the Lock Out/Tag Out procedure wasn't
12 followed.

13 MR. REID: That's all questions I have for now,
14 Your Honor.

15 THE COURT: Thank you, Mr. Reid.

16 MR. REID: Thank you, Your Honor.

17 THE COURT: Mr. Basile, cross-examination.

18 MR. BASILE: Thank you, Your Honor.

19 THE COURT: When you're ready.

20 MR. BASILE: Thank you.

21 CROSS-EXAMINATION

22 BY MR. BASILE:

23 Q. Mr. -- I forgot your name.

24 A. Jason King.

25 Q. Mr. King, you talked about this venting on the date
26 that this happened, right?

27 A. Yes.

28 Q. So that was unusual for that day, right?

1 A. Yes, it was.

2 Q. Now, this is a pretty serious operation when you're
3 shutting down one of those skids, isn't it?

4 A. Yes, it is.

5 Q. Because it's a lot of high-pressure gas, right?

6 A. That is correct.

7 Q. In high-pressure gas, then if something goes wrong,
8 it could be catastrophic, right?

9 A. Clearly.

10 Q. Whenever there was this unusual venting, you as the
11 supervisor didn't step in and say, Hey, stop this whole thing.
12 Let's check it out, did you?

13 A. I believe you'll see for the record that I questioned
14 it with the qualified members.

15 Q. My question to you, sir, is you were the O and M
16 manager at the plant, right?

17 A. Yes.

18 Q. The question is simply this: You did not step in and
19 say, Stop. I as the O and M manager, I want to go check out
20 what's going on here. You never did that, did you?

21 A. I did not do that.

22 Q. Thank you.

23 Now, when there was a safety procedure that you
24 wanted to implement at the Sentinel Energy Center, Mr. Forsyth
25 would be your contact to review the procedure; isn't that
26 true?

27 MR. REID: Objection. Lacks foundation.

28 THE COURT: Overruled.

1 THE WITNESS: No. I didn't report to Wayne Forsyth.

2 MR. BASILE: Your Honor, I'd like read from his
3 deposition, page 30, line 25 through 31, line 4.

4 THE COURT: One moment.

5 MR. BASILE: 30, 25 to 31, 4.

6 THE COURT: Thank you, Mr. Basile. One moment.

7 Mr. Reid?

8 MR. REID: Just a moment, Your Honor.

9 Go ahead.

10 THE COURT: Thank you.

11 Mr. Basile, let me know when you're ready what you'd
12 like to read. Again, it looks like it starts at --

13 MR. BASILE: 3025.

14 THE COURT: Yes, page 30 -- actually, if you'd like
15 to start at line 21.

16 MR. BASILE: Yes, sir. Just a little foundation,
17 Your Honor.

18 Q. BY MR. BASILE: You had your deposition taken in this
19 case?

20 A. Yes.

21 Q. Okay. And at your deposition, Mr. Reid was there?

22 A. Yes.

23 Q. And he was representing you at your deposition just
24 as he's representing you today?

25 A. That is correct.

26 Q. And the oath you took at that deposition was the same
27 oath that was administered by the clerk to you today to tell
28 truth, right.

1 A. Yes.

2 Q. Okay. I'd like to read: Did Mr. Forsyth -- question
3 from your deposition.

4 "Did Mr. Forsyth from time to time recommend to you
5 topics for safety presentations that would be given to DGC OPS
6 employees?

7 "Answer, periodically we talked safety a bit, yes.

8 "Question: If there was a safety procedure that you
9 wanted to implement at the DGC or at the Sentinel plant, would
10 Wayne Forsyth be the contact at corporate who would review
11 those procedures?

12 "Answer: Yes."

13 Exhibit 617, please.

14 Now, you've testified that -- I think you said on
15 almost all occasions when there was training, there would be a
16 sign-in sheet; is that true?

17 A. That's true.

18 Q. Okay. Now, what we're looking at up here in 617,
19 which would be admitted into evidence, is all the documents
20 that have been presented in this case concerning LOTO
21 training. Okay? It's just foundational. All right?

22 A. Okay.

23 Q. So there was initial training back in March 23rd of
24 2013, 75-minute training on 29 different policies; isn't that
25 true?

26 A. That appears to be true.

27 Q. Then there was training in 2013 that involved the
28 SMP-3, right?

1 A. They were both in 2013.

2 Q. Right. Was there ever any documented training going
3 over that SMP-3 training after 2013?

4 MR. REID: Calls for speculation.

5 THE COURT: Overruled. If he knows.

6 THE WITNESS: There were certainly trainings after
7 2013.

8 Q. BY MR. BASILE: On the SMP-3?

9 A. Yes.

10 Q. Do you know why it's not showing up in any of the
11 documents that have been produced?

12 MR. REID: Calls for speculation. Argumentative.

13 THE COURT: Sustained as phrased, Mr. Basile.

14 Q. BY MR. BASILE: Are you aware of any documented
15 training after 2013 on the SMP-3?

16 A. Yes.

17 Q. Are you aware of any documents that indicate that
18 there was training on the SMP-3 after April of 2013?

19 A. Yes.

20 Q. Where are they?

21 MR. REID: Calls for speculation. Argumentative.

22 MR. BASILE: I laid the foundation, Your Honor.

23 THE COURT: Overruled.

24 THE WITNESS: I don't know.

25 Q. BY MR. BASILE: There's a requirement to document
26 training; isn't that true?

27 A. Yes, there is.

28 Q. Exhibit 258, please.

1 This is the fuel filter skid before and after, right?

2 A. That is the fuel filter skid, yes.

3 Q. And none of these valves had any labels on them that
4 said Iso Valve 1 or Iso Valve 2, Iso Valve 3; or Vent Valve 1
5 or Vent Valve 2. None of them were labeled; isn't that true?

6 A. I believe the labelling was not on the valve.

7 Q. Now, you're familiar with what is sometimes referred
8 to as an "energy control procedure"?

9 A. I've heard that term, yes.

10 Q. And that's when you're trying to isolate and drain
11 hazardous energy?

12 A. Yes.

13 Q. There was no separate energy control procedure for
14 this fuel filter skid when Daniel Collins was killed; isn't
15 that true?

16 A. That is true.

17 Q. Exhibit 255 beside 259, please.

18 These are the two LOTOs that were used. The one on
19 the left, Exhibit 259, is this: It shows the two LOTOs. The
20 one before 2017 and then after 2017. Do you follow me?

21 A. I'm following you. I cannot read them, but I'm
22 following you.

23 Q. Okay. This is the skid here, right?

24 A. Which skid?

25 Q. Five, Unit 5.

26 A. That is Unit 5's turbine block, yes.

27 Q. Right. Now, the LOTOs that were being used during
28 this time covered multiple systems; isn't that true?

1 A. That is correct.

2 Q. And it requires the people involved in those LOTOs to
3 go to different areas of this skid, to do that LOTO?

4 A. Absolutely, yes.

5 Q. There was no LOTO or energy control procedure that
6 just would focus the workers on the fuel filters skid; isn't
7 that true?

8 A. It was not written to focus specifically on the fuel
9 skid itself. It was for the unit.

10 Q. Right. Thank you.

11 Exhibit 141, please. Now, when -- hold on a second,
12 James.

13 On the days of these outages, they are busy days,
14 right?

15 A. They are busy.

16 Q. There's outside contractors that are going to come on
17 the property, right?

18 A. That's typical, yes.

19 Q. To do a lot of maintenance work on the whole skid,
20 right?

21 A. That's right.

22 Q. And there are outside contractors that are waiting to
23 come on until somebody gives the okay that it's all right to
24 come on, right?

25 A. Come onto the site?

26 Q. Come on to do there work. Someone has to say, Okay.
27 It's all safe. You guys, come on, right?

28 A. Right, yes.

1 Q. And then once someone says that it's all safe. You
2 guys can come on, they sign onto a sheet, don't they? Isn't
3 it called a Lock Out/Tag Out sheet? And they say, Okay. You
4 told me it's okay to come on. I'm going sign on this sheet,
5 and here's the time I'm coming on -- right? -- do my work?

6 A. They are also required to take other steps, but yes.

7 Q. But they are required to watch an orientation slide
8 show before they begin, right?

9 A. That would be one step.

10 Q. Okay. We're going to get to that. But my point is
11 someone has to give the okay that it's now safe to do your
12 maintenance work. And then they sign onto to a sheet and say,
13 Okay. I'm coming on to the maintenance work, right?

14 A. That would be the last step before they do there
15 work.

16 Q. And that would be after you or the work supervisor
17 says, All right. I've walked this LOTO. I've checked the
18 gauges. Everything is safe. You guys can come on, right?

19 A. Yes.

20 Q. All right. Now, let's look at Exhibit 141, please.
21 Wait. That's not the one -- 144. I jumped ahead of myself
22 here, just the top.

23 Okay. This is what we're talking about the Lock
24 Out/Tag Out sign-on sheet, right?

25 A. That's right.

26 Q. And this is when those outside contractors have to
27 sign on. Someone says it's okay to come on, and then they
28 sign it, right?

1 A. Right.

2 Q. All right. And on this date, the date this happened
3 -- 3/6/17. You see that up is there, right?

4 A. Yes.

5 Q. And you're the work supervisor, right?

6 A. Yes.

7 Q. And before anyone can come on, the work supervisor is
8 supposed to walk that LOTO, check the gauges, check the tags,
9 make sure everything is safe before anyone signs on this
10 sheet; isn't that true?

11 A. That is correct, true.

12 Q. All right. Let's see what happened that day. Let's
13 look at signatures, please. Let's get to the top so we know
14 what columns they are, James.

15 Now, this is the sign-on sheet, right?

16 A. It looks like it, yeah.

17 Q. And there were people from GS2. Do you know what
18 company that is?

19 A. It's Granite Services.

20 Q. And they were signing onto this at 7:42 in the
21 morning -- isn't that true? -- according to the sheet?

22 A. According to the sheet.

23 Q. And EPI workers were signing on in the morning?

24 A. According to the sheet.

25 Q. And these other companies too were signing on, right?
26 And they had to review a slide show before this,
27 right?

28 A. That's right.

1 Q. Let's look at 141, please. This is the slide show --
2 right? -- one of these orientation slide shows that these
3 outside contractors would be shown before they come on, right?

4 A. That appears to be the entry page.

5 Q. Let's go to page 27.

6 So they would be shown this slide show. And on the
7 slides, it has the Diamond Generating Corporation logo at the
8 bottom there. Do you see that?

9 A. Yeah, I do see that.

10 Q. And this is one of the slides they would be shown,
11 right?

12 A. Yes.

13 Q. And these outside contractors, the first thing they
14 were told on this slide: All authorized users must walk down
15 and review the locked out system and sign the sign-in form
16 attached to the LOTO sheet.

17 Do you see that, sir?

18 A. I do.

19 Q. And that's the form we've been looking at.

20 Go back to it, James -- 144.

21 So everybody that's coming on is supposed to walk
22 that LOTO and check the gauge and look at everything before
23 they work, right?

24 A. That's right.

25 Q. So then according to this sheet, all these people
26 that day walked that LOTO and, just like Dan Collins, believed
27 it was safe to work in that fuel filter skid. Isn't that what
28 this indicates?

1 A. That's what it indicates.

2 Q. So it wasn't just Dan Collins that was believing that
3 fuel filter skid was safe that day; isn't that true?

4 MR. REID: Objection. Calls for speculation.

5 THE COURT: Sustained.

6 Q. BY MR. BASILE: Exhibit 259, please.

7 At no time, Mr. King -- and let me back up a second.

8 You knew Tony Gonzalez, right?

9 A. Yes, I did.

10 Q. And did Dennis Johnson tell you about the near miss
11 he had?

12 A. I heard about it.

13 Q. You heard about it when it happened too, didn't you,
14 shortly thereafter?

15 A. I don't recall the details of it.

16 Q. And it was almost same thing that happened to Daniel
17 Collins; isn't that true?

18 A. Based on what I was told, yeah.

19 Q. And at no time from when that happened up until the
20 date this happened when all those other people were walking
21 that LOTO was there ever a line placed on this, telling the
22 people to check the pressure gauge, and it must be zero on the
23 filter tank. At no time was a line added to the LOTO --

24 MR. REID: Argumentative.

25 THE COURT: Overruled.

26 Q. BY MR. BASILE: -- isn't that true?

27 A. I'm not aware of a line that was installed on the
28 LOTO sheet.

1 Q. At any time before this happened to Dan Collins.

2 A. On this sheet that I'm being looking at? Is that the
3 question?

4 Q. No. Are you aware of any time that there was a line
5 on any LOTO sheet involving this that said check the pressure
6 gauge. It must be zero before working on the filter tank.

7 A. Not as a line item on the sheet.

8 Q. All right. Now, you mentioned that you had been in
9 Mr. Walkers office and seen some of these annual audits. Is
10 that what your telling us?

11 A. I don't know that -- I wasn't in his office when he
12 was doing audits, that I recall.

13 Q. But you saw sheets that there were annual audits done
14 the LOTO system before Daniel Collins was killed?

15 A. I've seen him with the procedures and what period to
16 be him auditing.

17 Q. But that was you guessing what he was doing?

18 MR. REID: Objection.

19 THE WITNESS: We had a close relationship. I was in
20 and out of his office bit. We talked about business.

21 Q. BY MR. BASILE: Did you ever see him doing an annual
22 audit?

23 A. I can't say that I saw him specifically doing an
24 annual audit. Not like he told me, Hey, I'm doing an annual
25 audit today, that conversation.

26 Q. All I'm asking you is to tell this jury here is did
27 you ever see Mr. Walker doing an annual audit of the LOTO
28 procedure?

1 A. I cannot say that I saw him specifically doing one.

2 Q. Now, you know this lady over here in the red?

3 A. Yes, I do.

4 Q. Ms. Cubos works for the Diamond Generating
5 Corporation; isn't that true?

6 A. It's my understanding.

7 Q. And after this incident happened, Ms. Cubos spoke to
8 you about mutually parting ways because of what happened to
9 Daniel Collins; isn't that true?

10 A. That is correct.

11 Q. And you haven't worked there since April of 2017?

12 A. I have not.

13 MR. BASILE: Nothing further.

14 THE COURT: Mr. Reid, redirect?

15 MR. REID: Yes, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. REID:

18 Q. You were asked about Mr. Forsyth being your contact
19 at DG Corp. for reviewing policies, correct?

20 A. Yeah.

21 Q. And did he of review the SMP-3 procedure, to your
22 knowledge?

23 A. I can't speak to that. I don't know.

24 Q. Did you ever forward any policies to Mr. Forsyth for
25 review?

26 A. I don't remember.

27 Q. Exhibit 141, please.

28 This is that orientation slide show that we just

1 talked about where the plaintiffs counsel was just asking you
2 about. This was designed for use at the CPV Sentinel Energy
3 Project, correct?

4 A. That is right.

5 Q. The fact that the -- strike that.

6 Are you the one that placed the DG Diamond Generating
7 -- strike that.

8 I apologize, Your Honor.

9 Are you the one that placed the Diamond Generating
10 logo on this document?

11 A. I don't think so, no.

12 Q. Okay. Do you know if Mr. Walker did?

13 A. I don't think he did either, but I don't know.

14 Q. Is this a document that was taken from another
15 facility and updated or modified for use at the Sentinel
16 plant?

17 A. This was built in house in its entirety, to the best
18 of my knowledge.

19 MR. REID: Okay. Thank you.

20 That's all I have, Your Honor.

21 THE COURT: Mr. Basile, the limited redirect, any
22 follow-up?

23 MR. BASILE: No questions, Your Honor.

24 THE COURT: Thank you, Mr. Basile.

25 Thank you, Mr. King.

26 MR. KING: Thank you.

27 Thank you, everyone.

28 MR. REID: Thank you, Mr. King.

1 THE COURT: Mr. Reid, we have 15 minutes. If you'd
2 like to start with your next witness.

3 MR. SCHUMANN: Could we start after lunch,
4 Your Honor?

5 THE COURT: Sure. Was that going to be
6 Mr. McDaniels?

7 MR. REID: Yes, Your Honor.

8 THE COURT: Okay. It seems like it's a limited
9 amount of time.

10 MR. SCHUMANN: Yeah.

11 THE COURT: And then, Mr. Krauss, your time estimate
12 has -- I think you indicated yesterday it was going to be less
13 than estimated?

14 MR. SCHUMANN: Less than two hours.

15 MR. REID: Yeah.

16 THE COURT: Okay. That's fine. Then that means
17 we'll be on schedule.

18 MR. SCHUMANN: We will.

19 THE COURT: Okay. Members jury, when you're not
20 here, we do talk schedule, so we are on schedule. So for that
21 reason, the Court doesn't feel guilty excusing you 15 minutes
22 early for your lunch. So we will see everyone back at 1:30
23 this afternoon. Thank you.

24 Please do not discuss facts of case or any parties
25 involved with each other or anyone else.

26 (Proceedings outside of the presence of the jury as follows:)

27 THE COURT: Okay. We're outside of the presence of
28 jury. We'll open back up at about 1:15. The parties can come

1 back in.

2 Just a reminder, and I'll practice this by saying I'm
3 certainly guilty of this at times: Just, you know, we've had
4 lot of witness testimony, just be mindful of Madam Court
5 Reporter. There was a little bit -- some of it, obviously, is
6 part of witness. But let the witness finish their answer.
7 Ask the next question. There was a couple of times when you
8 were stepping over each other. So again, I'm guilty of that
9 as well. I wanted to remind the parties as I'm watching from
10 up here.

11 MR. REID: Thank you for reminder.

12 I apologize, Madam Reporter.

13 THE COURT: All right. Thank you. Enjoy your lunch.

14 MR. REID: Thank you, Your Honor.

15 (Lunch recess.)

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1 JULY 19, 2022 - AFTERNOON SESSION

2 THE COURT: We're back on the record in Collins
3 versus DG Corp. We have a question from juror Number 3 as
4 long as it's not case related.

5 TJ03: It's not case related. I'm wondering if the
6 trial will be over. I got another jury summons for
7 August 1st. Speed it up.

8 THE COURT: I can assure you, it doesn't have this
9 Court's personal signature on it. We'll review it and then
10 we'll get back to you, see if there's anything we can do to
11 assist you with that. It used to be, if you served, it was
12 you didn't have to serve again for two years. Then some point
13 it went down to 18 months. I think the current version is one
14 year. We'll certainly look into it. We'll let you know.
15 Thank you for bringing that to our attention. Okay. All
16 right.

17 All jurors are present for the record, and we are
18 going to start with the new witness. Is it Mr. Reid or
19 Mr. Schumann?

20 MR. SCHUMANN: Yes, Mr. McDaniels.

21 THE COURT: When you're ready. Thank you.

22 THE CLERK: You do solemnly state that the evidence
23 you shall give in this matter shall be the truth, the whole
24 truth, and nothing but the truth, so help you God?

25 THE WITNESS: I do.

26 THE CLERK: Thank you. Please be seated. Please
27 state and spell your first and last name for record.

28 THE WITNESS: Mark McDaniels, M-a-r-k

1 M-c-D-a-n-i-e-l-s.

2 THE CLERK: Thank you.

3 MARK MCDANIELS,

4 called as a witness by Defense, was sworn and testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. SCHUMANN:

8 Q. Good afternoon, sir.

9 A. Good afternoon.

10 Q. Mr. McDaniels, how long have you been in the power
11 business?

12 A. I've been a mechanical engineer --

13 THE REPORTER: Please slow down.

14 THE WITNESS: So mechanical engineer, 40 years of
15 experience in the power generation industry. Started off in
16 the Navy, graduated navy nuclear power training program. I
17 was responsible for operations and maintenance of nuclear
18 reactor assistance. From there I went to south Texas nuclear
19 project where I served in various roles in the operations and
20 maintenance departments. I also achieved my US nuclear
21 regulatory commission license while I was at south Texas
22 project. I went on to be plant manager at five different
23 power plants and served as lead asset manager on ten different
24 power projects. I have experience in coal, nuclear, gas,
25 wind, bio fuels, battery, all sorts of different technologies
26 on the power side.

27 Q. Okay. Thank you. At some point in time back in
28 2000s you were involved in a development of a power plant

1 called CPV Sentinel -- called Sentinel Power Plant?

2 A. That's correct.

3 Q. And you worked with CPV Sentinel at the time?

4 A. I was an employee of Competitive Power Ventures at
5 the time.

6 Q. What year did this Sentinel project start
7 approximately?

8 A. My involvement with Sentinel started in 2008, and it
9 was in late stages of the project development, so I was
10 responsible for permitting major contracts.

11 Q. Takes a long time to get permitting and everything
12 ready for the final opening of a power plant, doesn't it?

13 A. That's correct. This project Sentinel started
14 actually 2001, the original development of this project
15 leading up to construction started in 2011. Construction
16 completion was in 2013, approximately 12 years to go from
17 early development to completion.

18 Q. So you were part of the entire process from
19 permitting construction up until running the plant?

20 A. That's correct. My responsibility was, as I
21 mentioned, late stage development, the activities that go with
22 that as you mentioned, regulatory requirements, off take
23 agreement with Southern California Edison, turbine purchase
24 agreement with General Electric, also ownership, partner
25 matters, financing those types of activities. Then I was the
26 owners representative during construction, and then at the
27 completion of construction, I transitioned to lead asset
28 manager for Sentinel.

1 Q. Okay. So when -- I made a little chart here. Could
2 we turn that on.

3 THE REPORTER: Please keep your voice up,
4 Mr. Schumann.

5 Q. BY MR. SCHUMANN: All right. So if we have the plant
6 here in the middle, so that was developed and owned by CPV
7 Sentinel; is that correct?

8 A. Correct.

9 Q. It was built by GEMMA, designed by Mott McDonald?

10 A. GEMMA was engaged under an engineer, procure and
11 construct agreement. And Mott McDonald served as the engineer
12 reporting to GEMMA.

13 Q. As the plant was ready for operation, et cetera, CPV
14 Sentinel hired CPV Management Company to run and oversee the
15 plant, and the operators?

16 MR. BASILE: Objection. Leading, Your Honor.

17 THE COURT: You can have a little leeway here.

18 MR. SCHUMANN: I'm trying to speed it up a little.

19 THE COURT: Overruled.

20 THE WITNESS: That's correct. CPV Sentinel
21 Management was engaged under asset management agreement to
22 serve as owners representative for the project.

23 Q. BY MR. SCHUMANN: Okay. And CPV also hired DGC
24 Operations?

25 A. That's correct. Under a competitive bid process we
26 interviewed a number of potential operations companies for
27 this project in particular, and DGC Operations was selected as
28 the winning bidder.

1 THE REPORTER: Please slow down.

2 Q. BY MR. SCHUMANN: So there was a -- what we call it
3 an O and M agreement; is that correct?

4 A. That's correct.

5 Q. And then with the agreement between CPV Sentinel and
6 the management company for which you worked, there was an
7 asset management agreement?

8 A. That's correct.

9 Q. So the asset management agreement, then the O and M
10 agreement, they laid out the different roles for the two
11 entities that was supposed to run and oversee the running of
12 the plant?

13 A. That's correct.

14 Q. And the running of the plant would be DGC OPS, and
15 they would run it in accordance with the O and M agreement?

16 A. That's correct and accordance with the O and M
17 agreement, DGC Operations was tasked with the care and custody
18 and control of the asset which basically is just the
19 day-to-day operations and maintenance and compliance of the
20 project.

21 Q. Okay. And then you, as the head of the CPV
22 Management and running of it, through the asset management
23 agreement, you would oversee what DGC OPS did?

24 A. That's correct. The O and M agreement was one of a
25 number of significant agreements that I managed as the asset
26 manager for Sentinel.

27 Q. And you actually -- you were involved in drafting
28 both of these agreements?

1 A. That's correct.

2 Q. You also were deposed three times in this case,
3 correct?

4 A. Yes, I have been.

5 Q. There's a lot of lawyers, there's plaintiff's
6 counsels, lawyers for GEMMA and lawyers for Mott?

7 A. That's correct.

8 Q. And the company you worked for was also sued,
9 correct?

10 A. That's correct.

11 Q. And part of your -- part of the deposition process
12 and questioning was whether GEMMA built a very dangerous
13 plant?

14 MR. BASILE: Objection. Relevancy as to this case,
15 Your Honor.

16 THE COURT: Sustained.

17 Q. BY MR. SCHUMANN: So in terms of your -- so let's
18 see, the last year of construction between '12 and '13 -- let
19 me back up. The plant was finalized, ready for operation in
20 2013?

21 A. That's correct. Excuse me. That's correct, May of
22 2013.

23 Q. Within halfway through the construction, the operator
24 is brought in to get used to the project and work with the
25 construction company to find out, you know, what is this
26 project, what are all the turbines, how are they working, how
27 do we operate them. Tell us a little, tell the jury that
28 better than I just did.

1 A. Certainly. It's very typical in our industry during
2 construction of a power plant to engage the operator at about
3 50 percent construction complete. There's a couple reasons.
4 One is the most valuable, as you mentioned the operating gains
5 significant amount of experience following the contractor, in
6 this case GEMMA, during their commissioning and turn over
7 during the pieces of equipment to the owner. Also, you know,
8 it's also a benefit to the contractor, the EPC contractor,
9 GEMMA, to have the operations employees on board to help them
10 with commissioning the equipment so.

11 Q. So during this last year of construction, the
12 employees, the OPS employees work with GEMMA to learn the
13 plant and how it should be run and how it might operate and
14 how the turbines work or how the skids are going to work and
15 how the setup for the entire system is?

16 A. That's correct. As you can imagine, a power plant is
17 extremely complex. There's a number of systems, and as each
18 one of the systems is constructed, completed, they interphase,
19 called commissioning, where the system, the initial operations
20 of the systems, then the systems are brought online. During
21 all that period of time, the operations and employees are
22 involved in that process, and they gain valuable knowledge
23 during that process.

24 Q. We've heard of a near miss at the plant back in 2014,
25 you were at the plant during this timeframe?

26 A. That's correct, I was the lead asset manager for
27 Sentinel in 2014.

28 Q. You were there two or three times a week?

1 A. That's correct. I managed several other facilities
2 across the U.S., but I lived in southern California. So my
3 main office was at Sentinel. So I was at Sentinel at least
4 two to three days a week.

5 Q. And at no time was the near miss reported to you?

6 A. It was not.

7 Q. The plant manager didn't tell you about it?

8 A. He did not.

9 Q. And you would receive monthly operation reports from
10 OPS?

11 A. That's correct.

12 Q. If you saw something at the plant, that you had a
13 question about or concern, you would go to the plant manager?

14 A. Yes. It's typical in our industry that anyone on the
15 power plant site has what we called work stop authority from
16 the most junior employee, to operator, to contractors, to
17 anyone, if they see something and during the indoctrination
18 safety indoctrination for the site access there. It's
19 stressed they can stop any job at any time without question.

20 Q. So if an issue came up and it was brought to the
21 plant manager's attention, who's job was it to handle it?

22 A. The plant manager.

23 Q. And at the time of the incident, that we're here
24 about, it was 2017, do you remember who that was?

25 A. The plant manager was Tom Walker.

26 Q. Now, the ownership structure of CPV Sentinel started
27 way back in the early 2000s?

28 A. That's correct.

1 Q. There was a company that decided, we're going to
2 develop a power plant and ultimately cut a deal with GE, GE
3 became a co-owner, other investors became co-owners ad
4 eventually certain parts of the shares were sold to DG Corp.?

5 A. That's correct. Again typical, in our industry a
6 company, like Competitive Power Ventures that I worked for,
7 would do the initial development on the project like Sentinel.
8 They would, as the project progressed, they would seek outside
9 investors, whether they are private equity or fund types, you
10 know, investment type companies, to invest in the company, you
11 know, to build up equity. You then, you know, bring the
12 project to construction. Initially it was competitive power
13 ventures, then General Electric came on as a co-investor, then
14 eventually Diamond Generating Corporation.

15 Q. Couple of others remained investors as well at the
16 time?

17 A. Not at that time. Between construction, and the
18 incident in 2017, there was some ownership changes where
19 General Electric sold their portion of the project to
20 Guggenheim and CPV sold a portion of the project to Partner's
21 Group.

22 Q. And Guggenheim is the kind of investors in your 401K
23 maybe?

24 A. Exactly --

25 MR. BASILE: Objection.

26 THE COURT: We can move on from this shortly,
27 Mr. Schumann overruled.

28 MR. SCHUMANN: Okay. Go ahead, finish.

1 THE WITNESS: That's correct, again, typical in our
2 industry, it's a company that manages funds, that could be
3 pension funds, they could be, you know, wealthy individuals,
4 money that they want to invest, and that's how I would
5 characterize Guggenheim.

6 Q. Throughout the construction, throughout the work at
7 the plant, every time there was some job that needed to get
8 done, there was a job safety analysis?

9 A. That's correct. In our industry, power plants
10 perform literally hundreds of job safety analysis on an annual
11 basis, it's routine activity.

12 Q. And a group of people who were -- I keep hitting this
13 thing. A group people who were supposed to do the job will
14 meet and talk about what we're doing today, what the safety
15 concerns are, dangers, et cetera, is that kind of how the job
16 safety works?

17 A. That's correct. The personnel involved with the task
18 get together to discuss the hazards, the roles and
19 responsibilities of the task at hand. It's a very valuable
20 tool, not only for preparing the employees and allowing them
21 to understand the work that they are doing, hazards involved,
22 it's a very good training tool for the employees.

23 Q. There were over a hundred of these done in 2014?

24 MR. BASILE: Objection. Lack of foundation.
25 Relevancy.

26 THE COURT: Sustained.

27 Q. BY MR. SCHUMANN: Throughout your management of the
28 plant, are you aware that these were done almost dally?

1 A. In the -- they are tracked in monthly operation
2 reports, so I can see a number, and yeah.

3 Q. There was one done for the day of the incident?

4 A. Yes.

5 Q. For the specific job that --

6 A. That's correct.

7 Q. And you were on the site on the date of the loss?

8 A. Yes, I was.

9 Q. Okay. And you were in your office at the OPS, the
10 head quarter?

11 A. That's correct.

12 Q. And were you involved in the morning meeting for the
13 job safety analysis for this particular job?

14 A. No.

15 Q. Did you have any involvement in deciding how the LOTO
16 was being done by Mr. Collins was supposed to be performed?

17 A. No.

18 Q. Were you supervising any portion of the LOTO that
19 Mr. Collins was doing that day?

20 A. No.

21 Q. Did you instruct any of the OPS employees,
22 supervisors or managers or plant manager in how to perform
23 their job for this particular LOTO?

24 A. No.

25 Q. You oversaw the plant, but you ultimately let OPS run
26 the way OPS decided to run it?

27 A. That's correct. In accordance with the operations
28 and maintenance agreement, DGC Operations was responsible for

1 the day-to-day operations, maintenance and compliance of the
2 project.

3 Q. Okay. So the project as it was developed, DG Corp.,
4 my client, did not have any part to do with the development of
5 the project?

6 MR. BASILE: Objection. Lack of foundation.

7 THE COURT: Overruled.

8 Q. BY MR. SCHUMANN: You were part of the project
9 development?

10 A. That's correct. They did not have involvement in
11 project development, DGC Corporation.

12 Q. Let me show you these two exhibits. 414, please. So
13 you see this document?

14 A. Yes.

15 Q. Is this the operations and maintenance agreement that
16 the owner, CPV Sentinel, entered into with DGC OPS for this
17 plant?

18 A. From the title page, I would say yes.

19 Q. Okay. Scroll down. All right. Does that refresh
20 your recollection?

21 A. Yes.

22 Q. This just -- scroll down to the next page. Yeah,
23 next page. Next. Does this so far look like the documents?

24 A. Yes, it does.

25 Q. Okay. Let's go to the signature page. While we find
26 that, you were part of the drafting of this contract?

27 A. Yes, I was.

28 Q. Okay. And you were part of the negotiations between

1 CPV Sentinel and DGC OPS?

2 A. That's correct.

3 Q. Did you sign this contract?

4 A. Yes.

5 Q. Okay. I know it's a long document but got to
6 confirm, and who signed for CPV Sentinel?

7 A. Well, this is John Foster.

8 Q. Who is he?

9 A. He was an executive vice president with CPV Sentinel
10 LLC.

11 Q. Okay. I can't recall, did you sign one of the next
12 pages?

13 A. No. I was incorrect. I was not an authorized
14 representative with CPV Sentinel at this time, I believe.

15 Q. Okay.

16 A. I don't remember.

17 Q. Okay. But you were part of developing this
18 particular contract?

19 A. I was.

20 Q. You were part of overseeing this contract, you were
21 part of overseeing the handling of this contract by DGC OPS?

22 A. That's correct. It was one of the most important
23 agreements for the project, so, I served as -- part of my role
24 as asset manager to be contract administrator for contract
25 agreements for CPV Sentinel.

26 Q. Your job was to make sure they did their job?

27 A. That's correct.

28 Q. Let's just look at 481. This is the agreement

1 between CPV management and CPV Sentinel for the asset
2 management?

3 A. That's correct, from the title page, yes.

4 Q. Is this the contract that you signed, if you recall?

5 A. I don't recall.

6 Q. Well, let's find out. But you were involved again
7 with the drafting of this document?

8 A. That's correct.

9 Q. Whether or not you signed it?

10 A. That's correct.

11 Q. Good. This document outlined your job duty as asset
12 manager for the CPV Sentinel plant?

13 A. That's correct.

14 Q. This is basically an outline for everything you were
15 supposed to do in your job at the plant?

16 A. That's correct.

17 Q. Okay. CPV Sentinel and CPV manage Sentinel
18 Management entered into this agreement, whereby they made you
19 the asset manager for the oversight of the plant?

20 A. That's correct.

21 Q. You reviewed this contract and the O and M agreement
22 on countless occasions?

23 A. That's correct.

24 Q. When OPS was hired to run this plant, they were hired
25 because they already ran a bunch of other plants, correct?

26 A. That's correct. Part of our due diligence process
27 was selecting an operator was to review their experience. DGC
28 Operations had significant experience managing gas fired

1 peaking power plants in Southern California.

2 Q. As far as you know, there was not a new company that
3 was just set up for this particular plant?

4 A. To my knowledge, yes.

5 Q. It was not?

6 A. Yes, that's correct.

7 Q. Were there any warranty items needed to be handled
8 for the plant, OPS would work with GEMMA to handle those
9 warranty items; is that correct?

10 MR. BASILE: Objection. Relevancy.

11 THE COURT: Sustained.

12 Q. BY MR. SCHUMANN: Okay. You were there every day
13 during construction?

14 A. Yes.

15 Q. So you were there every day with DGC OPS employees
16 that last year before opening?

17 A. That's correct.

18 Q. You said there was a competitive bid process, meaning
19 it wasn't just given to OPS, it was put out to bid to other
20 companies?

21 A. That's correct. We interviewed several other
22 companies when making the selection for O and M provider at
23 Sentinel.

24 Q. The plant manuals for the entire project, those were
25 at the OPS offices at the facility, correct?

26 A. Correct.

27 Q. Those were created by GEMMA, correct?

28 MR. BASILE: Objection. Foundation. Relevancy.

1 THE COURT: Sustained as to foundation with GEMMA,
2 also relevancy.

3 Q. BY MR. SCHUMANN: Paul Shepard, he was not the asset
4 manager for this project, was he?

5 A. No, I was the asset manager.

6 Q. And the O and M manual was created by OPS, wasn't it?

7 A. Yes.

8 Q. The replacement skid for number five after the
9 incident, that was purchased and purchased by OPS, they were
10 in charge of the purchase too?

11 A. They were in charge of the purchasing, yes.

12 Q. OPS kept all the records related to the plant?

13 A. That's correct.

14 MR. BASILE: Objection. Vague as to ambiguous as to
15 all the records.

16 THE COURT: Overruled.

17 Q. BY MR. SCHUMANN: During the last phase of
18 construction, OPS had at least 10 to 12 employees at the plant
19 every day as it was finishing the build; is that correct?

20 A. To my knowledge yes.

21 Q. And as far as you saw, because you were there daily,
22 OPS was providing them with training pre-open?

23 A. That's correct. As mentioned, they received the
24 on-the-job training, the hands on phase of training while
25 assisting GEMMA while commissioning the commissioning of the
26 equipment. There was specific training requirements in the
27 engineer and procure and construct agreement with GEMMA, where
28 GEMMA and some of their subcontractors and equipment providers

1 had to provide operations personnel with training.

2 Q. As far as you recall Mr. Collins was hired in 2012
3 before it was opened, correct?

4 A. To my -- that's what I recall, yes.

5 Q. And Tom Walker was terminated for his involvement in
6 this incident, correct?

7 A. I don't know the circumstances to his termination. I
8 know he was terminated after the incident.

9 Q. California Energy Commission was also involved in the
10 construction, and they were there almost daily?

11 MR. BASILE: Objection. Relevancy.

12 THE COURT: Sustained. And Mr. Schumann.

13 MR. SCHUMANN: That's it. I was timing it.

14 THE COURT: Thank you, Mr. Schumann.

15 Mr. Basile, cross-examination.

16 CROSS-EXAMINATION

17 BY MR. BASILE:

18 Q. Yes. Thank you. Mr. McDaniels, all the time leading
19 up to when Daniel Collins was killed, you were an employee of
20 CPV Sentinel or who was it, what was it called Competitive
21 Power Ventures?

22 A. Competitive Power Ventures, correct.

23 Q. Now, since that time, you've been employed by Diamond
24 Generating Operations; isn't that true?

25 MR. REID: Objection. Relevance.

26 THE COURT: Overruled.

27 THE WITNESS: In 2020, I assumed the role of director
28 of operations and maintenance with DGC Operations.

1 Q. BY MR. BASILE: And you've been paid by them up until
2 today, right?

3 A. Correct.

4 Q. Now, is it your testimony that -- well, that plant
5 manager Tom Walker was aware that you were responsible for
6 safety at the plant?

7 A. DGC Operations was responsible for the day-to-day
8 implementation of programs required to stay in regulatory
9 compliance.

10 Q. That's not my question. My question, sir, is, is it
11 your testimony that Mr. Walker was aware that you were
12 responsible for safety at the plant?

13 A. He was aware that he reported to me as owners
14 representative of the project, yes.

15 Q. Is it your testimony that you would inquire of
16 Mr. Walker about safety at the plant?

17 A. That's correct, I felt that part of my duties as the
18 owner's representative was to make frequent tours and
19 observations in the field.

20 Q. It's your testimony that Mr. Walker was aware that
21 you were responsible for safety at the plant under that asset
22 agreement, correct?

23 A. Under the asset agreement, I was tasked with managing
24 all programs at the plant.

25 Q. Okay. Based on those answers, you're -- I would like
26 to play from Mr. Walker's deposition and have some follow-up
27 questions as part of my cross-examination on page 116 of
28 Mr. Walker's deposition, lines 11 through 20.

1 THE COURT: Okay. One moment.

2 Mr. Reid.

3 MR. SCHUMANN: No objection.

4 THE COURT: Mr. Basile, you're going to play it or
5 read it?

6 MR. BASILE: We're going to play it.

7 THE COURT: You may proceed.

8 (Video played; not reported.)

9 Q. BY MR. BASILE: Exhibit 209, please. Mr. McDaniels,
10 were you aware of safety procedures being reviewed by Michael
11 -- well, let me lay a little foundation. Do you know who
12 Michael Kromer, is?

13 A. Yes.

14 Q. He was the executive at Diamond Generating
15 Corporation, right?

16 A. I don't recall who he worked for. I believe he had
17 my position.

18 Q. Okay. I'm not going to put up 368. The jury already
19 seen it, but were you aware that in the fall of 2016, Michael
20 Kromer was reviewing safety procedures at the Sentinel Energy
21 Center?

22 A. I do not -- I do not recall that.

23 Q. You didn't review any, did you?

24 A. I did reviewed the safety procedures, yes.

25 Q. And you were not at this meeting in January of 2017,
26 on how to communicate changes in the procedures to workers,
27 you weren't at that meeting, were you?

28 A. I was not.

1 Q. That meeting was held at Diamond Generating Corporate
2 head quarters?

3 MR. REID: It calls for speculation.

4 MR. BASILE: If you know.

5 THE WITNESS: I do not know.

6 THE COURT: Overruled on the objection. The answer
7 will stand.

8 MR. BASILE: Thank you, Your Honor.

9 Q. BY MR. BASILE: Now, you said a few times -- can I
10 have the Elmo, please. You said a few times you used the term
11 that you were the lead asset manager at the plant, do you
12 remember saying that to us?

13 A. Yes.

14 Q. Now, there was another asset manager, wasn't there?

15 A. Not to my knowledge.

16 Q. Are you aware that plant manager Walker has testified
17 whenever he wanted to talk to an asset manager that he would
18 talk to Paul Shepard?

19 A. I'm not aware of that.

20 Q. Let's talk about what the plant -- the financial
21 interest in the plant. When Daniel Collins was killed, this
22 circle is the plant, 50 percent of the financial interest in
23 that plant was Diamond Generating Corporation; isn't that
24 true?

25 A. To my knowledge, yes.

26 Q. Diamond Generating Operation is a wholly owned
27 subsidiary of Diamond Generating Corporation at this time?

28 A. I don't recall the corporate structure.

1 Q. Now, you're being paid by Diamond Generating
2 Operations, right?

3 MR. REID: Objection.

4 MR. SCHUMANN: Objection. This is not the correct
5 name of the party.

6 THE COURT: I was trying to figure that out.

7 MR. SCHUMANN: It's DGC OPS.

8 THE COURT: Let's be clear, it's also -- it's CPV
9 Sentinel. I think before Mr. Shepard was distinguishing them
10 by management company as LLC. CPV Sentinel and CPV Sentinel
11 Management LLC. Be clear on that. The Court is keeping notes
12 but we're mixing these names.

13 Mr. Basile, so you can please correct that.

14 MR. BASILE: Okay. I'm going to try to do it as
15 simply as possible.

16 THE COURT: Thank you.

17 Q. BY MR. BASILE: At the time of this incident when
18 Daniel Collins was killed, your understanding, Mr. McDaniels,
19 was that Diamond Generating Corporation had a 50 percent
20 interest in the Sentinel Energy Center through various
21 corporations of layers?

22 A. That's correct.

23 Q. And I think you were testifying there were two other
24 investment groups?

25 A. That's correct.

26 Q. They each had 25 percent financial interest, right?

27 A. That's correct.

28 Q. As an asset manager, which you were, right?

1 A. Yes.

2 Q. You were a representative of the owner, right?

3 A. That's correct.

4 Q. And what that involved was managing purchasing,
5 right?

6 A. No, I did not. I was not directly involved in
7 purchasing. Other than approval of certain purchases that
8 exceeded the purchasing power per the O and M agreement, they
9 had limits in the O and M agreement and limited amount they
10 could spend and certain expenditures above a certain dollar
11 value.

12 Q. What's that threshold?

13 A. I don't recall.

14 Q. As asset manager, you were also involved like you're
15 saying if there was a large expense such as new turbine was
16 needed, right?

17 A. Large expenses, not budgeted, yes, I would be
18 involved.

19 Q. That was your function there?

20 A. One of them.

21 Q. You had no involvement in the day-to-day operations
22 of the facility; isn't that true?

23 A. I observed day-to-day operations and monitored.

24 Q. You had no involvement in the day-to-day operations;
25 isn't that true?

26 MR. SCHUMANN: Asked and answered.

27 THE COURT: Overruled.

28 THE WITNESS: Correct. I did not direct employees.

1 Q. BY MR. BASILE: Okay. You didn't have any authority
2 to direct employees; isn't that true?

3 A. Per the contract, I did not.

4 Q. You knew Wayne Forsyth?

5 A. Yes.

6 Q. And he, at this time, was the compliance manager of
7 Diamond Generating Corporation?

8 A. I knew that he was a compliance manager. I do not
9 know who he worked for, which affiliate.

10 Q. Are you aware that Mr. Forsyth has testified on that
11 witness stand you're in that Diamond Generating Corporation
12 was responsible for safety at the Sentinel Energy Center when
13 Daniel Collins was killed?

14 MR. SCHUMANN: Argumentative.

15 THE COURT: Overruled.

16 THE WITNESS: I'm not aware of that.

17 MR. BASILE: That's all I have, Your Honor.

18 THE COURT: Redirect, Mr. Schumann.

19 MR. SCHUMANN: Of course.

20 REDIRECT EXAMINATION

21 BY MR. SCHUMANN:

22 Q. Counsel asked that you never reviewed the safety
23 procedures, but that's not correct, you did review the safety
24 procedures?

25 A. You are correct. I did the initial review as part of
26 the operation and maintenance agreement as we were exiting
27 construction, prior to the transition from construction to
28 commercial operations, it was my responsibility to review all

1 procedures, business procedures, operations procedures, safety
2 regulatory compliance procedures, so yes, I did review all of
3 them.

4 Q. Just to clarify for the jury, you were the one and
5 only asset manager for this plant. That's correct for CPV
6 Sentinel, I was the only asset manager.

7 Thank you very much.

8 MR. SCHUMANN: Nothing further.

9 MR. BASILE: One question.

10 RE CROSS EXAMINATION

11 BY MR. BASILE:

12 Q. That review was done --

13 THE COURT: Redirect.

14 MR. BASILE: Yes, Your Honor. Gentleman that review
15 you did was in 2013 of those policies and procedures?

16 A. Approximately that time, yes.

17 Q. You never did it again, right?

18 A. Other than spot checks, as I mentioned earlier, part
19 of my due diligence of walking around and looking at
20 procedures and forms and witnessing work ongoing in the field.

21 Q. You were doing that at many other plants across the
22 country?

23 A. That's correct.

24 MR. BASILE: Nothing further.

25 THE COURT: Mr. Schumann.

26 MR. SCHUMANN: Yeah. Quick.

27 FURTHER REDIRECT EXAMINATION

28 BY MR. SCHUMANN:

1 Q. The oversight you just talked about, I think you were
2 there two or three times a week?

3 A. That's correct.

4 Q. That's when you do oversight and watch people see
5 what people did?

6 A. Yes, DGC Operations employees, contractors, visitors,
7 any kind of activity that was going on, I would go and watch.

8 MR. SCHUMANN: All right. Nothing further,
9 Your Honor.

10 MR. BASILE: Nothing.

11 THE COURT: Subject to recall?

12 MR. SCHUMANN: No, Your Honor.

13 THE COURT: Okay. Mr. McDaniels, thank you.
14 Mr. Reid, Mr. Schumann.

15 MR. SCHUMANN: Yes, Your Honor. We'll call David
16 Krauss.

17 THE CLERK: You do solemnly state that the evidence
18 you shall give in this matter shall be the truth, the whole
19 truth, and nothing but the truth, so help you God?

20 THE WITNESS: Yes.

21 THE CLERK: Thank you. Please be seated.

22 THE WITNESS: Thank you.

23 THE CLERK: Please state and spell your first and
24 last name for the record.

25 THE WITNESS: Yes. It's David Krauss, D-a-v-i-d
26 K-r-a-u-s-s.

27 THE CLERK: Thank you.

28 DAVID KRAUSS,

1 called as a witness by Defense, was sworn and testified as
2 follows:

3 DIRECT EXAMINATION

4 BY MR. SCHUMANN:

5 Q. Good afternoon, sir.

6 A. Good afternoon.

7 Q. Is it Dr. Krauss?

8 A. Yes.

9 Q. Okay. Dr. Krauss, what do you do for a living?

10 A. I'm -- my job title is principal scientist. I focus
11 in the field called human factors where I provide consulting
12 services in that field.

13 Q. What is human factors?

14 A. Study of how people take in information, process it
15 and respond to it. So pretty broad application. So, ranging
16 from things like this case, I'm specifically looking at the
17 behavior of the involved people or perception behavior, I
18 should say. Right up to -- a lot of my work is involving
19 automobile accidents. Driver behavior in an emergency for
20 example. Generally think of it as something happens in the
21 outside world, we perceive it and apply some sort of thought
22 to it and then respond in some way.

23 Q. Okay. What's your -- tell us about your education
24 and background?

25 A. Yes. I got a bachelor of science from the University
26 of Michigan with a major in bio psychology and cognitive
27 science. I have a masters and a Ph.D. At UCLA in a field
28 called cognitive neuro science.

1 Q. You did a doctoral dissertation in human visual
2 perception and reading?

3 A. I did, yes.

4 Q. That sounds convoluted. You have over 20 peer
5 reviewed publications analyzing the human behavior?

6 A. That's true.

7 Q. Anywhere from analysis of autonomous vehicles to
8 analysis of accident avoidance, safety climate, warning
9 compliance, safety engineering and industrial work settings,
10 up to whether people heed warning signs?

11 A. That is true.

12 Q. What is a peer review article?

13 A. Yes. A appear review is when you publish a paper and
14 the scientific world, typically you conduct some sort of
15 study, don't have to but often there's a study involved. You
16 write up a manuscript or effectively a draft of your paper.
17 You submit it typically to a journal or conference where you
18 want to present it. Then the peer review part is where the
19 editor of that publication will give it to people who have
20 appropriate background to evaluate it. So, for example, I am
21 a peer review -- excuse me. I am a peer reviewer. Every year
22 I review papers. A lot of time I look at the paper, I think,
23 that's not very good. So I reject it. Sometimes it is very
24 good and you assess it and effectively tell the editor, yes,
25 this is fit for publication.

26 Q. You have SAE publications?

27 A. I do.

28 Q. You have numeral publications for human factors

1 anomie society?

2 A. Yes.

3 Q. You publish with the world conference society for
4 industry and systems engineering?

5 A. Yes.

6 Q. And some with ASTM journal as well?

7 A. Yes.

8 Q. You had academic appointments with UCLA department of
9 psychology, both in lecturer and instructor?

10 A. Yes both within the actual psych department through
11 UCLA extension.

12 Q. You also work with product warnings?

13 A. I do.

14 Q. You conducted countless accident and prevention
15 analysis?

16 A. I have, that's what I do for a living.

17 Q. And the company you work for is called Exponent?

18 A. Yes.

19 Q. Public company?

20 A. Yes, sir.

21 Q. The company works for governments, private companies,
22 lawyers, U.S. military?

23 A. All of the above, yes.

24 Q. Anything science related, your company might be
25 involved?

26 A. Yeah. We just do scientific and engineering
27 consulting. If there's an issue whether it's related to
28 litigation like this or not, companies or individuals or

1 attorneys come to your our company when they have a technical
2 problem they need solved.

3 Q. You're familiar with the LOTO procedures?

4 A. I am.

5 Q. Okay. You don't create LOTO sheets?

6 A. That's correct.

7 Q. You also don't drive trucks or create autonomous
8 cars?

9 A. That's true.

10 Q. But within your field, you can analyze human behavior
11 within any area of incident?

12 A. Yeah. So again, my area is human behavior. So it's
13 often, I don't have the experience of every person or
14 individual or entity that I'm analyzing, but that's why it
15 takes time to look at all of the relevant variables, what's
16 the environment the event happened in, what machinery they
17 were surrounded by, what people they were surrounded by, based
18 on those variables, regardless of what that environment is.

19 Q. And in this case, you were hired by our office,
20 correct?

21 A. Yes.

22 Q. And what were you asked to do?

23 A. To assess the human factors surrounding this
24 accident.

25 Q. And did you review evidence and depositions?

26 A. I did.

27 Q. And you provided a lists of all these documents to
28 the opposing counsel when you were deposed?

1 A. Yes.

2 Q. That included LOTO sheets, inspection reports,
3 photos, depos, the root cause analysis, OSHA docs and many
4 other docs from the parties?

5 A. That is true, yes.

6 Q. And what do you do with all this information?

7 A. So once I review all the information, they're really,
8 in a case like this, I would take two main steps. One, is
9 collapse it all into a coherent story. This is a case where
10 we had really surprising consistent testimony about what
11 happened. I'm not an engineer. I don't need to figure out
12 how or why it happened, the way it did. But we had a very
13 general understanding as to what happened. Then it's a matter
14 again, like I said before, of looking at all of those
15 environmental pieces and synching it up with the science and
16 literature in my field, try to get an understanding for why
17 this mishap occurred.

18 Q. So after you do the analysis, you come to some
19 conclusions and opinions?

20 A. That's right.

21 Q. And you provided these opinions to counsel during a
22 deposition?

23 A. I did.

24 MR. SCHUMANN: If we can pull up Exhibit 5 from the
25 deposition.

26 MR. BASILE: Your Honor, objection. Not on the
27 exhibit list, Exhibit 5 from the deposition.

28 THE COURT: So just going to be for demonstrative

1 purposes?

2 MR. SCHUMANN: Yeah.

3 THE COURT: Just for Dr. Krauss to follow along.

4 MR. SCHUMANN: For his opinions.

5 MR. BASILE: That's fine, Your Honor.

6 THE COURT: This will not be admitted as an exhibit.

7 Q. BY MR. SCHUMANN: All right. So let's look at the
8 first one. What's your first opinion?

9 A. Yes. So, I guess I'll read it. We can all see it
10 but there is no reliable scientific evidence that the presence
11 of additional warnings or signage at the site of this accident
12 that would have effected Mr. Collins' behavior or prevented
13 this accident, especially in consideration of his professional
14 experience. Furthermore, the abnormal venting that multiple
15 witnesses testified about, would have provided a salient that
16 something was ary in the process that warning failed to effect
17 Mr. Collins' behavior.

18 Q. And what is the basis for that opinion?

19 A. Yes. So this is really about, there's believe it or
20 not, there's very extensive science behind when warnings are
21 going to be effective. Ultimately, and I won't spend too long
22 on this, I can talk for a very long time. I'll try not to.
23 But generally the purpose of a warning to change someone's
24 behavior to make a product, a task, an environment safer. So
25 identify a hazard so people can avoid it.

26 A lot of the things I highlight in this opinion are
27 factors that we know undermine that warning process. So the
28 first step, if you're going to respond to a warning, you have

1 to seek out the information. So if you're not looking for a
2 warning, you're not going to see it, right. So it's not like
3 there's somebody who's going to be there shoving in it in
4 front of your face, you have to seek out that information.

5 Some factors here with respect to Mr. Collins are
6 Number 1, he was experienced. We know he had done this
7 before. We know he had done it successfully before. He was
8 aware of the hazards, in fact his task was to alleviate the
9 hazard that he was ultimately exposed to, that undermines the
10 likelihood that he's going to look for it at all.

11 The second bit we have here is, the fact that there's
12 -- this is really what I would call really, I said here,
13 salient, very obvious warning this venting occurred when the
14 venting should not have been able to occur. And Mr. Collins
15 heard it. I think there were -- Mr. Delaney heard it, several
16 other folks heard this venting when there should have been no
17 more pressure. This is a direct timely warning that the
18 hazard was still present, that didn't change behavior. So to
19 suggest that some sort of passive warning that's printed
20 somewhere, I'm not really not sure where, would have changed
21 behavior. You have this very active timely warning that
22 really didn't suggest that, again, additional warnings would
23 not have mattered here.

24 Q. Counsel is claiming that if there had been a final
25 line item on the LOTO sheet, that would say, hey, look at the
26 gauge and confirm that it's at zero, what would your opinion
27 be?

28 A. Yeah. Same thing that I was just talking about. He

1 knew what his task was. His task specifically that he was
2 engaged in, was to Lockout the system with pressure down to
3 zero. That display was right next to him, that is the
4 pressure gauge was right next to him as he was climbing up the
5 ladder, telling him it was not at zero. He didn't capture
6 that information. So again, just adding one more layer, I
7 can't say with any certainty that putting something on the
8 LOTO sheet, which I'm not certain if it was with him at that
9 moment he was going up the ladder, would have effected
10 anything.

11 Q. Can we bring up 600. This is what you were referring
12 to?

13 A. Yeah. So this is exactly what I was talking about.
14 You can see there's the ladder to the left that he was
15 climbing up. Just to the right you can see the pressure gauge
16 right there. So that is the gauge which presumably he knew
17 exactly what it was for, giving him really the sole piece of
18 information that he needed, and he didn't get it. So again,
19 when you think about, what I said earlier about seeking out
20 information, well, here, the most important sole critical
21 piece of information was right there. He didn't get it.

22 Q. Let's go back to the opinions. Exhibit I to the
23 deposition. What's your second opinion?

24 A. Yes. The second one is attention is task driven. To
25 the extent Mr. Collins was predominantly focused on completing
26 his work, this focus on job completion, it's a likely culprit
27 for his failure to monitor the pressure system and would have
28 similar effects on reducing his information seeking behavior,

1 with respect to others safety information.

2 Q. That sounds a little convoluted to me. Can you break
3 that down for me. Attention is tasked driven?

4 A. Yeah.

5 Q. What does that mean?

6 A. Again, this is very rich field of study, but when you
7 have something very specific that you're doing or attending to
8 or goal that you're trying to achieve, things that happened
9 around you that are not going to aid you in achieving that
10 goal, can be missed. So in fact, one of the papers that I
11 cite here talks about it, it's a very famous study of where
12 people are showing a video of people in black shirts and white
13 shirts. They are dribbling and passing basketballs and
14 subjects are told to count the number of passes for the people
15 in the white shirts or count the number of the passes for the
16 people in the black shirts. Right in the middle of the video
17 a guy in gorilla suit walks in the middle of the screen,
18 pounds his chest and walks off the screen. When the study
19 ends, they say to people how many passes did you see. They
20 tell them how many passes they counted. Did you see anything
21 else? About 60 percent of people don't see the gorilla.
22 Literally missing the gorilla in the room. That's because
23 their task was not related to the gorilla. It was related to
24 counting the passes. Here it's a little different, right,
25 because that gauge we just saw is immensely related to the
26 task here. But what we also have is this evidence that
27 Mr. Collins was trying to set a speed record and trying to get
28 done as quickly as possible and he had kind of a track record

1 for doing that. So again, to the extent he's focused on, I
2 don't know if efficiency is the right word, efficiency,
3 getting done as quickly as possible, that very well could
4 explain why he failed again to look at that thing again to be
5 seen. There's nothing preventing him from seeing it.

6 Q. What's your third opinion?

7 A. Number three, exposures to hazards in environment
8 with potential stored energy are more typically correlated
9 with human error and unsafe behavior, rather than deficient
10 LOTO procedure.

11 Q. What's your basis?

12 A. This opinion is based on the study that was done,
13 actually done, I believe in Canadian sawmills, but they -- the
14 authors actually had a really rich data, they had 57 documents
15 of accidents from the sawmills where they did a really deep
16 dive, what happened, looked at every one really closely, in
17 almost all of them, they looked at the LOTO -- excuse me.
18 Take a step back. These are all LOTO related accidents, where
19 people were expose to energy that should have been locked out.
20 What they found was when they went back they found procedures
21 had they been followed were just fine, that all of these or
22 almost all of the accidents were the result of taking
23 shortcuts or not following the procedures one way or another.
24 Human error. So again, that's -- it's one study. That's the
25 point of this. We have testimony in this case, and statements
26 from multiple people, saying that had the LOTO procedures been
27 followed here, this wouldn't have happened, very consistent
28 with the data from that study.

1 Q. Okay. And what's your fourth opinion?

2 A. Number four, adding an additional step to the
3 incident LOTO procedure of noting the indicated pressure would
4 not have reliably prevented this accident.

5 Q. That's part of what we talked about earlier adding
6 the line at the end?

7 A. Yeah, it is the one other bit I want to mention with
8 respect to this one, we had, there's the testimony from
9 Mr. Palalay who suggested that it's really specific to this
10 that. That there are actually either warrant his initials on
11 the LOTO sheet where he was supposed to initial. Or
12 Mr. Collins may have done some of the steps out of order,
13 which what that says to me and, again, I'm not here to say
14 this is what would have happened but given that kind of track
15 record and just sort of zipping through and writing on the
16 LOTO sheet where you're supposed to write, I can't say he
17 wouldn't have just immediately grabbed the LOTO sheet and
18 written zero right when he got it because that's where he
19 thought he was going to be at the end.

20 That's one example I can say when you know, my task
21 is to make that number zero. So he didn't look at that,
22 again, didn't look at the gauge, didn't verify he had done
23 that. I can't say adding an extra step on the sheet would
24 have changed that because he had that information already.

25 Q. Okay. Tell me some of the things you might have
26 stated, some of them, what did you learn about Mr. Collins
27 throughout your analysis in reading of all the evidence?

28 A. Yes. There's a couple really critical things I think

1 that came through in the testimony and statements about
2 Mr. Collins. One was he was very experienced. He knew what
3 he was doing. In fact, he had done it before with the same
4 procedures. So not only does that provide intrinsic evidence
5 that the LOTO procedure was safe that Mr. Collins could
6 comprehend and follow the LOTO procedure at this facility,
7 that was Number 1. Which again, very critical, that also
8 lends to that first opinion about him being unlikely to seek
9 out new information. So after you have done something
10 multiple times without incident, you're probably not going to
11 start over and say how do I do this. You're probably going to
12 do it.

13 Second bet, I eluded to earlier about his desire,
14 propensity, whatever you want to call it to finish quickly.
15 Again, that goes to the second opinion that really he was
16 somebody who may have been focused on things in areas towards
17 goals that may not have been optimal for what he was trying to
18 do.

19 Q. He knew how to check a pressure gauge?

20 MR. BASILE: Objection. Speculation. Asked and
21 answered.

22 THE REPORTER: Mr. Schumann, please speak up little
23 bit.

24 MR. SCHUMANN: Sorry. I think I speak loudly but
25 obviously I don't. I apologize.

26 THE COURT: Just the acoustics, too, your turned
27 toward the witness, so. Okay. Let me have one moment.

28 So the question, as I see here was referring to

1 Mr. Collins, if he knew how to check the pressure gauge.

2 MR. SCHUMANN: I guess that was the question. It
3 wasn't a great question. So I'll withdraw.

4 THE COURT: Okay. The objection is sustained.

5 Q. BY MR. SCHUMANN: You understand from the records
6 that Mr. Collins was part of working with and training others?

7 A. Yes.

8 Q. And did you review the root cause analysis?

9 A. I did.

10 Q. And part of the root cause analysis also discussed
11 that Mr. Collins was a little too speedy?

12 A. Yes, it did.

13 Q. And that was from findings from having discussions
14 and speaking with other co workers from that day?

15 A. Yes.

16 Q. Part of your studies and your work of science is it
17 also to discuss whether there's any possible way for any
18 manufacturer or construction company or power plant to, reason
19 to foresee every possible misuse of the property?

20 A. Yes.

21 MR. BASILE: Objection. Hold on. Objection.
22 Kennemur and lack of foundation. Overbroad. Relevancy.

23 THE COURT: Sustained, Mr. Schumann. Court will
24 defer to you on the Kennemur objection.

25 MR. SCHUMANN: That's okay.

26 Q. BY MR. SCHUMANN: Would it be correct to say that
27 part of your opinion is that if someone decides to cut corners
28 and not follow directions, it doesn't really matter how many

1 warning signs there are in front of them?

2 A. Yes, I think that's fair.

3 Q. You recall from the records reading that Mr. Collins
4 had verbal discussions with other co workers about the unusual
5 venting?

6 A. Yes.

7 Q. Did that go into your analysis too?

8 A. Yes. So that's what I was getting at before, other
9 people heard this unusual venting, perceived it as warning.
10 In fact asked Mr. Collins about it because they perceived it
11 as a potential indicator that this hazard existed and
12 Mr. Collins, I think the testimony at least indicates he
13 effectively shut it down, said don't worry about it. We're
14 good. Suggesting he was taking care of it. Again, I'm not an
15 engineer, I don't know if that was a precursor to what
16 ultimately happened. It is one of those, just kind of
17 consistent with he had the information, whether he ignored it
18 completely or sped through it, I don't know, but that was
19 certainly an impression that was given by his co workers.

20 Q. Did you also read about Mr. Collins's likely signing
21 someone elses initials?

22 A. Yes.

23 Q. Would that, in itself, be a warning sign so to speak
24 for the person who does the initialling?

25 MR. BASILE: Objection. Lack of foundation.
26 Kennemur, beyond the scope.

27 THE COURT: Overruled.

28 THE WITNESS: Yes. I don't know that I necessarily

1 used the word warning, but again, this goes to the -- really
2 fourth opinion here, I believe it was Mr. Palalay, said, yeah,
3 there was areas where he had written or started my initials.
4 Mr. Palalay was fairly new at this job. Just kind of thought,
5 okay, this how is works. But absolutely whether it's a
6 warning to Mr. Palalay because he was new, I can't say. I
7 don't know how much he would perceive that as a warning,
8 necessarily, but certainly, again, with the benefit of
9 hindsight, that's the fourth opinion about this. Somebody who
10 is zipping his way through these LOTO sheets, we have multiple
11 examples of this. I can't say adding one more line on there
12 would have changed anything.

13 Q. So the overall general opinion that you conclude that
14 this incident was an unfortunate human error?

15 A. Yes. Like I said, it really goes to -- I would say,
16 the second part of that first opinion, right, we can see, and
17 what we heard and what we have evidence for, is if this LOTO
18 procedure were followed, this wouldn't have happened. For one
19 reason or another it wasn't followed, and we had this horrible
20 outcome.

21 MR. SCHUMANN: Thank you.

22 THE WITNESS: Thank you.

23 THE COURT: Thank you, Mr. Schumann. Mr. Basile,
24 cross-examination.

25 MR. BASILE: Yes. Thank you.

26 CROSS-EXAMINATION

27 BY MR. BASILE:

28 Q. Mr. Krauss, now, the company you work for is who

1 these lawyers retained; isn't that true?

2 A. Yes, the retention is through my company.

3 Q. Right. And your company is called Exponent, right?

4 A. Yes.

5 Q. Exponent does quite a bit of business in the
6 litigation courtroom testimony areas, right?

7 A. About half of our work is litigation related.

8 Q. The income that your company generates from
9 litigation is \$200 million a year?

10 A. That order, it's a thousand person international
11 company, but yes.

12 Q. And most of the times that your company is hired is
13 on behalf of corporations; isn't that true?

14 A. I don't know.

15 Q. Now, certainly, most of the cases that you've been
16 retained on involved corporate defendants?

17 A. Well, I don't know that I can go so far as to say
18 corporate. The majority of my work is defense side. I don't
19 think I've ever broken it down into who the defendants are.
20 The majority of my work is for defense.

21 Q. I remember you told me in you deposition you probably
22 been hired or testified in litigation for almost every
23 shipping company in the United States, remember that?

24 A. I don't know if I said almost every but a lot, yes.

25 Q. And also trucking companies, you've testified on
26 behalf of, when it's almost all the time when the other side
27 is when someone has been hurt or killed, right?

28 A. So I want to be clear, I testified on behalf of a lot

1 of these companies and against, so it's -- I follow the
2 science. So someone tries to retain me and the science
3 doesn't support their position, I tell them I can't help you.
4 I do multiple times per week.

5 Q. Now, in fact, this isn't the first time you've
6 testified in court, is it?

7 A. It is not.

8 Q. You've testified hundreds, if not thousands of times?

9 A. No. Maybe the order of a hundred.

10 Q. Okay. Your Exponent company that you are part of,
11 you have your own stock in it, right?

12 A. I have stock, it's a public company. I'm certainly
13 not a majority holder or anything like that.

14 Q. Your company has defended the tobacco industry; isn't
15 that true?

16 MR. REID: Objection. Relevance.

17 THE COURT: Limited very, very short track here,
18 Mr. Basile. Overruled.

19 THE WITNESS: That may have been before my time. I
20 don't know.

21 Q. BY MR. BASILE: Asbestos companies?

22 A. It's possible.

23 Q. Chemical companies?

24 A. I don't know.

25 Q. Auto manufacturers?

26 A. Yes, that I know.

27 Q. And this is not the first time that these lawyers
28 have hired you; isn't that true?

1 A. That is true.

2 Q. In fact, they've hired you, you told me on about 20
3 prior cases?

4 A. I think that's probably about right.

5 Q. And they pay you for these cases, right, for your
6 work?

7 A. They pay my company, yes.

8 Q. Could I have the overhead. So in the 20 some cases
9 that this law firm has retained you, it's all been when they
10 are defending someone, right?

11 A. Yes.

12 Q. And it's involved traffic collisions probably?

13 A. It has.

14 Q. People have been injured or killed?

15 A. Yes.

16 Q. And it's always been this firm hiring you to help
17 them in those cases, right?

18 THE COURT: Mr. Basile, keep this line of
19 questioning, proper as to bias, choose your words carefully.

20 MR. BASILE: Yes, sir.

21 THE WITNESS: I mean this firm does defense work.
22 I'm also hired by plaintiffs a lot. I work with both sides,
23 but they are not going to hire me to do plaintiff work because
24 they are a defense law firm. I've been doing this for -- I
25 just passed 19 years. Like I said, maybe on the order of
26 20 cases with them. Yes, they've all been defense.

27 Q. BY MR. BASILE: So you agree you're a paid witness.

28 A. My company is paid.

1 Q. Right. And to date, in just this case, how much has
2 this firm paid you?

3 A. So they paid my company. I want to be very clear.
4 I'm on salary. I get paid the same thing whether I'm sitting
5 here or working on a publication at my desk. Doesn't make a
6 difference, but I think we're right about -- I looked
7 yesterday, we're about \$49,000.

8 Q. That's about \$49,000 up until when, yesterday?

9 A. Yes.

10 Q. And how much are you charging per hour?

11 A. I'm build out at 600 an hour.

12 Q. And where is your office?

13 A. Near LAX.

14 Q. Are you charging \$600 an hour from when you leave
15 your office until you get back to it?

16 A. My company does, yes.

17 Q. All right. And in the 20 cases that you've done with
18 them, if you know has your billing been around 50,000 for each
19 case?

20 A. No.

21 Q. You don't know, did you go look it up, what you've
22 been paid and all that?

23 A. I can tell you, I do a lot of cases. This one is
24 larger than most of my cases.

25 Q. Okay. Now, speaking of this case, you never been out
26 to the site?

27 A. Correct.

28 Q. That picture that you showed this jury you didn't

1 take it, did you?

2 A. That's correct.

3 Q. These lawyers sent it to you, right?

4 A. That's correct.

5 Q. You don't know who took it or when it was taken?

6 A. I believe it was taken after the accident. It was
7 part of the post accident photo set that I received.

8 Q. Post accident, could be any time afterwards, right?

9 A. Well, I don't think they were leaving the ladder, all
10 the medical debris and all the things that were in the
11 photograph indefinitely. I think it was fairly close in time
12 to when this accident occurred.

13 Q. You never designed a LOTO sheet?

14 A. Correct.

15 Q. You never installed one or worked on one?

16 A. I have not.

17 Q. And you never been out to the site?

18 A. No.

19 Q. Now, you've been talking about this thing, human
20 factors, right?

21 A. This thing is a scientific field of study but yes,
22 I've been talking about human factors?

23 Q. Is there a study that you're aware of that you ever
24 look at corporate factors?

25 A. I'm not familiar.

26 MR. REID: Objection. Beyond the scope.

27 THE COURT: Overruled.

28 THE WITNESS: I'm not familiar with that term.

1 Q. BY MR. BASILE: Now, before Diamond Generating
2 Corporation, before this ever happened, did Diamond Generating
3 Corporation ever ask you to visit any of their plants, and
4 evaluate human factors as it relates to safety systems at the
5 plants?

6 A. No.

7 Q. Only after Daniel Collins was killed that they asked
8 you to do this human factor?

9 MR. SCHUMANN: Argumentative.

10 THE COURT: Overruled as phrased. And watch your
11 tone, Mr. Basile?

12 THE WITNESS: In this case, that's true.

13 Q. BY MR. BASILE: So what's your total billing going to
14 be for today by the time you get back to your office?

15 A. I suppose it depends on traffic, I'm not sure.

16 Q. You get 600 bucks an hour for sitting in traffic?

17 A. No, I wish I would. My company gets paid that much.
18 I do not.

19 MR. BASILE: That's all I have, Your Honor.

20 THE COURT: Mr. Schumann, redirect.

21 MR. SCHUMANN: Yeah.

22 REDIRECT EXAMINATION

23 BY MR. SCHUMANN:

24 Q. Approximately, how many documents, if you have an
25 estimate, how many did you review?

26 A. Oh, gosh. So I'm looking, I'm just looking.

27 MR. BASILE: Your Honor, I have to object outside the
28 scope.

1 THE COURT: It's overruled. I believe he's going to
2 the amount of billing, so he's trying to ascertain how many
3 hours he had billed for.

4 MR. SCHUMANN: Correct.

5 THE COURT: Overruled. Just if you're going to refer
6 to something that we're not privy to, let us.

7 THE WITNESS: I'm looking at the list of materials
8 that we mentioned earlier, it was produced during my
9 deposition.

10 THE COURT: Dr. Krauss, you're allowed to refresh
11 your memory with that. Don't read from any other source.

12 THE WITNESS: I'm not. I'm counting documents, if
13 that's okay.

14 THE COURT: Thank you, Dr. Krauss.

15 Q. BY MR. SCHUMANN: How many depositions?

16 A. So I have 15 depositions. Again, we mentioned
17 earlier multiple LOTO sheets, OSHA investigation file, which
18 was extensive. All the OSHA interviews which is like another
19 mini depo to review. Cause analysis, there was a lot. In
20 fact, just clarity, that's also not all me. I have folks who
21 work with me who assisted me in reviewing the materials and
22 created summaries for me as well.

23 Q. Were there more than 25,000 pages?

24 A. It wouldn't surprise me. I haven't counted the
25 pages.

26 Q. You didn't come in here to tell this jury something
27 that I told you to tell them, did you?

28 A. No. Like I said earlier, I'm very clear with my

1 clients. I'm very busy. I don't take cases if the science
2 does not support the outcome. You called me, I looked at the
3 case and I couldn't help you, I would have told you right at
4 the get go. But when I get a case, I work it up, if there's
5 something I can offer, then I do. That's how this case was
6 worked up.

7 MR. SCHUMANN: Okay. Nothing further.

8 THE COURT: Thank you, Mr. Schumann.

9 Mr. Basile.

10 RE CROSS EXAMINATION

11 BY MR. BASILE:

12 Q. Just to clarify on that, Dr. Krauss, your opinions in
13 this case are very narrow, they are just about human factors,
14 right?

15 A. That's true.

16 Q. You're not a safety engineer, right?

17 A. That's correct, I think a lot of what I study is
18 related to that, but I do not hold myself as any sort of
19 engineer.

20 Q. Nor are you a safety high pressure gas power plant
21 safety person?

22 A. I am not.

23 MR. BASILE: All right. That's all I have.

24 THE COURT: Mr. Schumann.

25 MR. SCHUMANN: Nothing further, Your Honor.

26 THE COURT: Dr. Krauss, thank you for your time this
27 afternoon.

28 THE WITNESS: Thank you.

1 MR. SCHUMANN: Your Honor, we've sped up a lot. We
2 sped up beyond what we expected.

3 THE COURT: You have an estimate of two hours with
4 Dr. Krauss. He came in at -- let's see. You came in at 40,
5 little bit shy of that.

6 MR. SCHUMANN: Because our next witness is here
7 tomorrow morning.

8 THE COURT: Okay. We can discuss that outside the
9 presence of the jury. We're still going to go tomorrow
10 morning, but we'll talk about -- we're still on schedule.

11 MR. SCHUMANN: Yeah.

12 THE COURT: Okay. Ladies and gentlemen, currently
13 it's about 2:50, we will take our afternoon recess for the
14 day. Please understand, a lot of these witnesses, as you can
15 tell, we can speculate as to how long it is going to take
16 Dr. Krauss to drive back to Los Angeles. Many of them are
17 coming from out of the area. So, it's difficult sometime for
18 counsel to plan on them being here and so anyhow we're on
19 schedule. Please, return tomorrow morning. We'll see
20 everyone at 10:00 a.m. I'm sorry. Juror Number 7, anything
21 unrelated to the case?

22 TJ07: Well, I just wanted to ask, Your Honor, if you
23 had spoken about the possibility of Thursday morning coming in
24 early, if that was still in the plans?

25 THE COURT: I don't believe so because of Juror
26 Number 9 is leaving us for I believe a family reunion.

27 TJ09: No, I'm on a trip.

28 THE COURT: Because of that, we'll not be coming in

1 Thursday. We're also not coming in on Monday. You may not
2 be, but we will luckily be here on Monday finalizing jury
3 instructions so we're all ready for you to Tuesday.

4 TJ07: Okay. Thank you.

5 THE COURT: Yes. If that helps, we'll not be here on
6 Thursday.

7 TJ07: Thank you, Your Honor.

8 THE COURT: Juror Number 8.

9 TJ08: Will that extend our day next week until
10 Thursday.

11 THE COURT: So once the case is submitted to you,
12 I'll give you instructions at that time but essentially you
13 are captains of your own ship. We start calendar every
14 morning at 8:30. However, you don't need to report until
15 10:00. Sometimes we don't finish calendar until 9:45 or 9:50,
16 however, you'll set your own timetable, come in 8:30 and start
17 deliberations. You're welcome to do that. 10:00 is the usual
18 schedule. So to answer your question, it's going to depend
19 how long it takes you to deliberate. So I couldn't tell you
20 when you're going to be finished.

21 TJ09: Thank you.

22 THE COURT: But if that helps you, you will hopefully
23 be able to work together and set your own schedule. Okay.
24 Anything else unrelated to the case? Okay. Thank you. We'll
25 see everyone back tomorrow morning at 10:00 a.m. Please do
26 not discuss the facts of the case or the parties involved with
27 each other or anyone else. We're almost done. Thank you.

28 (Pause in the proceedings.)

1 THE COURT: Okay. We're outside the presence of the
2 jury. We are five minutes away from our scheduled break.
3 We'll take it at 3:00 o'clock. Let's first proceed with
4 witnesses. So, based on where we left off yesterday, there
5 was still possibility of two additional witnesses, Mason and
6 Johnson. Is that still the plan?

7 MR. REID: Yes, Your Honor. We'll have Mr. Mason
8 here at 10:00 a.m. Mr. Johnson will be here at 11:00.
9 There's still an issue of whether they are going to require us
10 to bring in Mr. Held, pretty sure I can lay a foundation with
11 Mr. Johnson, the animations. Unbeknownst to us Mr. Held is
12 currently in Tennessee. He'd be able to appear by Zoom
13 conference if that's what we need to do.

14 THE COURT: What was witness Mason, what was his last
15 name -- I'm sorry, what is his full name?

16 MR. REID: James Mason. It's our designated expert,
17 Your Honor. Should be on the lift.

18 THE COURT: There is he. Okay. So two hours for
19 direct examination.

20 MR. REID: It won't be that long.

21 THE COURT: Okay. And --

22 MR. REID: I anticipate at least two hours with
23 Mr. Johnson.

24 THE COURT: Johnson. What was the full name.

25 MR. REID: Dennis.

26 MR. BASILE: We called him in our case, Your Honor.

27 THE COURT: Okay I do see that here. Okay. Did you
28 reserve cross-examination with Mr. Johnson?

1 MR. REID: Yes, we did, Your Honor.

2 THE COURT: So you'll do your full two hours.

3 MR. REID: Yes, Your Honor.

4 THE COURT: Okay. I do recall initially there was
5 one or two witnesses that you reserved on. Okay. And then,
6 only other witness might be Brady Held.

7 MR. REID: That's correct, Your Honor.

8 THE COURT: Okay. Well, work with counsel on whether
9 some type of agreement. Mr. Basile, today there was some
10 leading questions, I believe, both ways, but -- well,
11 obviously, you're doing cross-examination, so that's okay.
12 But the Court overruled objections on that because they
13 weren't going to exactly material issues. It was getting
14 answers at least in the Court's opinion that were highly
15 critical at that moment. It was in an attempt to speed
16 things along, that's the way the Court interpreted it, but the
17 defense is going to close tomorrow. They are going to rest
18 their case. So they need to speed things up, along then I'm
19 going to be taking that into consideration for how they
20 question, they were efficient, obviously don't lead on a
21 critical question.

22 MR. REID: Understood, Your Honor.

23 THE COURT: But I understood that's where
24 Mr. Schumann was going particularly this afternoon. So please
25 keep that in mind when trying to figure out if Mr. Held is
26 going to need to come in. I think that's it.

27 MR. BASILE: We'll try to work something out, a
28 stipulation or something, Your Honor.

1 THE COURT: Okay. I think we're going to break for
2 the day. Let me see, exhibit wise, Madam Court Reporter, I
3 think I only have one new exhibit that was introduced today.

4 There was 144. CPV Sentinel a sign in sheet of
5 3-6-17. I don't know if that's redundant of another exhibit.
6 That was not something that was previously introduced.

7 MR. REID: That's probably a document that's included
8 in 264, which has all the LOTO sheets and sign ins and tags.

9 MR. SULLIVAN: I checked, Your Honor. It was not in
10 that exhibit. We'd like to have that introduced.

11 MR. REID: No objection.

12 THE COURT: 144 will be admitted. That is the only
13 new exhibit that the Court noted for today. We'll discuss
14 scheduling for next week for your clients' planning ahead,
15 plan on most likely being here Monday so we can finalize jury
16 instructions at the pace we're going. Okay. All right.

17 MR. REID: Understood, Your Honor.

18 MR. BASILE: Your Honor, I think what the jurors
19 brought up was a good idea, I think he addressed it, but I
20 think with this long break and having Monday off, Mr. Burke
21 leaving for his trip, I think it would be good to inform, if
22 you could before we break tomorrow, that they can come in at
23 8:30 or they can stay, I guess until 4:30, whatever it is,
24 Your Honor. I think because, I think they are allowed to,
25 discuss that amongst themselves. They are not discussing the
26 evidence or anything. I want to give them an opportunity to
27 set that schedule before we get to Tuesday and closings, so
28 they all know what we're going to be doing.

1 THE COURT: Okay. I thought that's the what I said
2 this afternoon. But --

3 MR. BASILE: Closer in time to when we break, I was
4 hoping so they might meet and confer about what our schedule
5 is going to be.

6 THE COURT: Okay. We'll cross that bridge when we
7 get to it. Thank you. Please take care. We'll see everyone
8 tomorrow morning. We'll try and open up when we are done with
9 our morning calendar.

10 MR. REID: Thank you, Your Honor.

11 (Proceedings adjourned.)

12 (Next Volume and Page number is Volume 13, Page 2201.)

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REPORTER'S CERTIFICATE

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DENISE COLLINS; CHRISTOPHER COLLINS,)	
)	
Plaintiffs,)	
)	
vs)	Case No. PSC1901096
)	
CPV SENTINEL ENERGY CENTER, LLC,)	
MOTT MACDONALD, LLC, GEMMA POWER)	
SYSTEMS, LLC, and DOES 1 to)	
15, Inclusive,)	
)	
Defendants.)	
)	

I, Demetria Bischoff, Certified Shorthand Reporter No. 12602, hereby certify:

On July 19, 2022, in the county of Riverside, state of California, I took in stenotype a true and correct report of the testimony given and proceedings had in the above-entitled case, pages 2005 - 2118, and that the foregoing is a true and accurate transcription of my stenotype notes and is the whole thereof.

DATED: Palm Springs, California, July 20, 2022.



Demetria Bischoff, CSR NO. 12602

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COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT - DIVISION TWO
APPEAL FROM THE SUPERIOR COURT OF RIVERSIDE COUNTY

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DENISE COLLINS and CHRISTOPHER) DCA No. E080233
COLLINS,)
Plaintiffs/Respondents,) Superior Court
vs.) Case No. PSC1901096
DIAMOND GENERATING CORPORATION,) Volume 13 of 19
Defendants/Appellant.) Pages 2201 - 2331
(2332 - 2400 Blocked)

REPORTER'S TRANSCRIPT ON APPEAL

BEFORE THE HONORABLE MANUEL BUSTAMANTE - DEPARTMENT PS2

July 20, 2022

APPEARANCES:

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SUPERIOR COURT - STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

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DENISE COLLINS; CHRISTOPHER)
COLLINS,)
Plaintiffs,) Case No. PSC1901096
vs.)
CPV SENTINEL ENERGY CENTER, LLC,)
MOTT MACDONALD, LLC, GEMMA POWER)
SYSTEMS, LLC, and DOES 1 to 15,)
Inclusive,)
Defendants.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE MANUEL BUSTAMANTE - Department PS2

July 20, 2022

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JULY 20, 2022 - MORNING SESSION

BEFORE THE HONORABLE MANUEL BUSTAMANTE

THE COURT: Good morning. We're on record for Collins versus DG Corp. All members of the jury are present. All counsel are present with the exception of the Collins, who are not here. We left off yesterday with Defense's case.

Mr. Reid and Mr. Schumann, whenever you're ready.

MR. REID: Good morning, Your Honor. DG Corp. would like to call James Mason.

THE CLERK: Do you solemnly state that the evidence you shall give in this matter now pending before this court shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Thank you. Please be seated.

Please state and spell your first and last name for the record.

THE WITNESS: James Mason, J-a-m-e-s M-a-s-o-n.

THE CLERK: Thank you.

MR. REID: May I proceed?

THE COURT: Yes, Mr. Reid.

MR. REID: Thank you, Your Honor.

JAMES MASON,

called as a witness by the Defense, was sworn and testified as follows:

DIRECT EXAMINATION

BY MR. REID:

Q. Good morning, Mr. Mason. How are doing this morning?

1 A. Good. Thank you.

2 Q. Mr. Mason, were you retained by my office on behalf
3 of DG Corporation in this case?

4 A. I was.

5 Q. And were you retained to evaluate the LOTO procedure
6 that was in use on the day of incident?

7 A. I was.

8 Q. Were you also retained to offer opinions on the LOTO
9 procedure and the cause of the incident?

10 A. Yes.

11 Q. A little bit about your background. What's your
12 education?

13 A. I have a Bachelor of Science degree in mechanical
14 engineering and material science and engineering and then a
15 master's degree in material science, a Ph.D. in applied
16 mechanics.

17 Q. And where did you get your Bachelor's degree?

18 A. University of California at Berkeley.

19 Q. And your master's degree?

20 A. Same place, University of California at Berkeley.

21 Q. And where did you get your doctorate?

22 A. At California Institute of Technology, Cal Tech.

23 Q. Could you describe your experience -- professional
24 experience in failure analysis?

25 A. Sure. In material science and in mechanical
26 engineering, when things break frequently, we go through root
27 cause sort of analysis. And my background in material science
28 allows me to look at fracture services and figure out why the

1 material might have failed.

2 Usually the question is was the material overloaded
3 or was the material defective? So that's the kind of failure
4 analysis I get involved. In a lot of times, it branches out
5 into the mechanical engineering field a lot more. Like, for
6 example, like in a LOTO, just to understand how the forces
7 came to be applied to the components of failure, in this case,
8 the bolts on top of the filter.

9 Q. And are you a licensed professional engineer?

10 A. I am.

11 Q. In what states?

12 A. California, Washington, and Indiana.

13 Q. Do you have experience with Lock Out/Tag Out
14 procedures?

15 A. I do. When I worked in the Indiana, I worked for a
16 major manufacturer of hip and knee replacements and managing a
17 testing lab. And we've had pretty powerful testing machines
18 capable of applying 10,000 pounds of force. So whenever with
19 we did service in those, we have had to do lockouts and
20 tagouts.

21 I did not write those, but as supervisor of the lab,
22 I signed off on them and involved in the process for creating.

23 Q. You've also had experience with mechanical systems
24 under high pressure?

25 A. I do. Those same testing machines dealt with high
26 pressure --

27 (Reporter clarification.)

28 THE WITNESS: 3,000 PSI pounds per square inch.

1 Sorry.

2 Q. BY MR. REID: Would you pull the microphone a little
3 closer?

4 A. And then I did a summer at Eglin Air Force base where
5 I dealt with explosive materials and the pressures they create
6 and the failures they create as well.

7 Q. And the fuel filter skid -- the fuel filter assembly
8 that we're here to talk about today, that's also a system
9 that's under high pressure, correct?

10 A. Yes.

11 Q. And do you know the approximate pressure that was on
12 the system at the time of incident?

13 A. It's 8,000 to 1,000 PSI.

14 Q. It's in that range?

15 A. Yes.

16 Q. Did my office provide materials for you to review?

17 A. You did.

18 Q. All right. Did those materials include the
19 depositions of Mike Delaney?

20 A. Yes.

21 Q. Dennis Johnson?

22 A. Yes.

23 Q. Jason King?

24 A. Yes.

25 Q. Albert Palalay?

26 A. Yes.

27 Q. Robert Ward?

28 A. Yes.

1 Q. Wayne Forsyth?

2 A. Yes.

3 Q. Jim Walsh, who was the person most knowledgeable for
4 Mott McDonald?

5 A. Yes.

6 Q. Charles Collins as the person most knowledge for
7 GEMMA Power Systems?

8 A. Yes.

9 Q. The declaration of Glen Stevick?

10 A. Yes.

11 Q. What is your understanding of who Mr. Stevick was?

12 A. I think he was hired by the plaintiff to do the same
13 sort of thing, I did try to determine the cause of this
14 incident.

15 Q. And did you review his declaration?

16 A. I did.

17 Q. And as part of that declaration, was he alleging that
18 there was a hidden defect in the fuel system?

19 A. He was --

20 MR. BASILE: Objection. Foundation. Calls for
21 speculation.

22 THE COURT: Overruled.

23 Q. BY MR. REID: And did he also allege that that defect
24 was the responsibility of GEMMA Power Systems?

25 A. Yes, I believe so.

26 Q. Did you review the deposition of plaintiffs' expert,
27 Christopher Lane?

28 A. I did.

1 Q. And did you also review his job file?

2 A. I did.

3 Q. So in addition to the materials that we provided to
4 you, you got all the materials that have been provided to
5 Mr. Lane, correct?

6 A. Correct.

7 Q. Did you conduct an inspection at the plant of the
8 Unit 5 fuel filter scene?

9 A. I did, in March of 2021.

10 Q. And did you meet the current plant manager Dennis
11 Johnson at that inspection?

12 A. I did.

13 Q. Were you provided a copy of the LOTO sheet that was
14 in use on the day of the incident?

15 A. I was, on that date in March. But I don't know the
16 exact date.

17 Q. But you had a copy of the LOTO sheet when you were at
18 plant, correct.

19 A. Yes, sir.

20 Q. Did Mr. Johnson go through the steps in LOTO sheet
21 with you?

22 A. He did.

23 Q. And did he point out to you the various valves and
24 switches and pieces of equipment that were covered by LOTO?

25 A. He did.

26 Q. Mr. Mason, our office has retained on a number
27 occasions in the past, correct?

28 A. Correct.

1 Q. At any point in time, did we ever tell you what your
2 opinions were going to be?

3 A. Absolutely not.

4 Q. In this case did we tell you what your opinions
5 should be?

6 A. No.

7 Q. Did you we simply provide materials to you and allow
8 you to inspect the plants, and then you came up with your own
9 opinions?

10 A. Yes.

11 Q. And those opinions, were those communicated to
12 plaintiffs' counsel in your deposition?

13 A. I believe so, yes.

14 Q. You and I've known each other for a while. Have I
15 always told you that we just want to hear the truth?

16 A. Absolutely. You've told me you'd want to hear the
17 truth sooner rather than later.

18 Q. We also told you that it didn't matter whether it was
19 good or bad for us. We just wanted to hear the truth?

20 A. Exactly, yes.

21 Q. What are your opinions regarding the LOTO procedure
22 and the cause of this incident?

23 A. I believe the LOTO procedure was correct and should
24 have worked if it were followed line by line. I think it was
25 clear it was easy to follow, and the procedures put in place
26 at this location also had redundancy so that not just one
27 person did it. You had an installer, a verifier, and a work
28 supervisor. This isn't plenty of redundancy to go through and

1 make sure that it was done and that it was done properly.

2 Q. And I may have misspoken. We've talked about
3 procedures, and then we talked about the actual LOTO sheet.
4 So you looked at the SMP-3 LOTO procedure, correct?

5 A. I did.

6 Q. And did you find any faults in that procedure?

7 A. I did not.

8 Q. And then what you just described, you were talking
9 about the actual LOTO sheet that was in use on the day of the
10 incident; is that correct?

11 A. Correct. We kind use them interchangeably. It's
12 confusing. I think that the LOTO sheet is the checklist.

13 Q. Is it also your opinion that the steps in this LOTO
14 sheet were not pour formed correctly on the day of incident?

15 A. Yes.

16 Q. What do you base that on?

17 A. So on the testimony of the various folks involved, I
18 think, and including the root cause analysis performed by the
19 outside party -- I can't remember his name right now, but...

20 Q. Mr. Stanley?

21 A. Mr. Stanley. That's correct. Thank you.

22 It seems they went out. They started the procedure.
23 They started to vent the filter, and they needed -- they
24 decided they needed ear protection, so they closed the two
25 vents. Then they continued with the procedure even though
26 they had not completely vented it. And then and there, they
27 violated the checklist.

28 They went onto leave Isolation Valve 2 closed. It

1 was tagged as though it was closed for good in the procedure
2 and not reopened to completely vent the filter at a later
3 time.

4 Q. Did you read the testimony by Mr. Delaney that
5 Mr. Collins stated he was going to set a record that morning?

6 A. I did.

7 Q. Do you believe that had an effect on the outcome?

8 A. Absolutely.

9 Q. And why do you believe that?

10 MR. BASILE: Objection. Lack of foundation.

11 Cumulative. Calls for speculation.

12 THE COURT: Overruled.

13 THE WITNESS: I think we all know that when you're in
14 a hurry, you make mistakes. But I think it's borne out by the
15 fact that he was in a hurry to get it done quickly. They had
16 this little hiccup with the lack of ear protection, so he
17 decided, You go get your ear protection. I'll continue the
18 LOTO, and he should not have done that.

19 In his, you know, well intentions, desire to get it
20 done quickly, he went off sheet. He went off the checklist,
21 and the checklist is there to provide safety for everyone.

22 Q. BY MR. REID: So I think I understand. What you're
23 saying is that once the vent valves had been opened, that step
24 should have been completed before anything else was done; is
25 that correct?

26 A. Correct.

27 Q. And that's not what occurred, correct?

28 A. Correct.

1 Q. Can the job of the installer be done in a hurry in
2 this situation?

3 A. I would say no. This is the reason there's a lock
4 out/tag out, because this is dangerous equipment. The reason
5 we have these procedures in place is to protect people. But
6 you've got to slow down, make sure you're doing it right and
7 getting it right.

8 Q. Do you have an opinion, as we sit here today, as to
9 whether or not Mr. Collins is the person who closed Isolation
10 Valve Number 2?

11 A. I know that's been an item of debate. The only
12 evidence we have is the tag. He installed the tag. He
13 initialled it, so the way the Lock Out/Tag Out procedures
14 works is if you initialed it, you did it. So that's only -- I
15 believe he did because of that tag.

16 Q. Okay. Can I have Exhibit 379, please; tag Number 14.
17 All right. And this is the tag from the date of the
18 incident. You can see the date up in the top corner there,
19 3/6/17; is that correct?

20 A. Correct.

21 Q. And this is the tag you were referring to in your
22 testimony just a moment ago, correct?

23 A. Yes, sir.

24 Q. And where it says "installed by," you understand
25 those to be Dennis Collins's initials, correct?

26 A. Yes, D.C.

27 Q. And that's based on testimony that you've reviewed?

28 A. Correct.

1 Q. You can take that down. Thank you.

2 Did Mr. Collins also initial that step on the LOTO
3 sheet where the "checklist," as you've called it?

4 A. I believe so.

5 Q. Let me just grab it. Sorry. Can I have Exhibit 589,
6 please. Whoops. All right. Enlarge the top, please.

7 Do you recognize this as the Lock Out/Tag Out sheet
8 or the checklist for the date of the incident?

9 A. Yes, sir.

10 Q. Scroll down for me to Step 14, which, I believe, is
11 the second page.

12 A. Yeah.

13 Q. Isolation Valve 2, final fuel filter. And is it your
14 understanding looking at this document that it was Mr. Collins
15 who initialed that step as the installer?

16 A. Yes, sir. There it is --

17 Q. And I apologize. We're talking over each. It's
18 going to make the court reporter nuts.

19 A. Sorry.

20 Q. But if you just slow down just a second for me.
21 We've talked about Mr. Collins's job as the installer.

22 In your opinion that he closed this isolation valve,
23 do you believe this isolation valve was closed out of order?

24 A. Yes, sir.

25 Q. Did you also review the testimony of Mr. King
26 regarding this morning?

27 A. I did.

28 Q. Did Mr. King perform the job of the work supervisor

1 correctly?

2 A. I don't believe he did.

3 Q. Is that partially because he wasn't told about the
4 LOTO being hung?

5 MR. BASILE: Objection. Leading. Calls for
6 speculation. Kennemur also, Your Honor.

7 THE COURT: Sustained.

8 THE WITNESS: I'm sorry. I didn't hear the ruling.

9 THE COURT: Sustained.

10 THE WITNESS: Okay.

11 Q. BY MR. REID: Did Mr. King testify -- strike that.
12 Was it Mr. King's responsibility to walk down the
13 LOTO?

14 A. Yes, sir.

15 Q. And under the SMP-3 procedure, it was part of his
16 responsibility to make sure the system had been depressurized?

17 A. Yes.

18 Q. Isolated and depressurized, correct?

19 A. Correct.

20 Q. And his testimony was that he did not do that on the
21 day of the incident, correct?

22 A. That's correct.

23 Q. Did you have any opinions regarding Albert Palalay's
24 experience and qualifications for the job of the verifier?

25 A. It's my understanding from the testimony that he gave
26 that he was not yet trained to be a verifier Lock Out/Tag Out
27 procedure.

28 Q. Would it be fair to say that he should not have been

1 performing that role?

2 A. Absolutely, yes.

3 Q. In his testimony, did you see anything regarding him
4 checking the pressure on the fuel system, Mr. Palalay?

5 A. I don't recall that he ever checked it.

6 Q. Based on Mr. Palalay's testimony, do you believe that
7 he is the person that first opened the vent valves on the
8 system?

9 A. No. There was some testimony or in the root cause
10 analysis that Mr. Delaney opened it, I believe.

11 Q. Okay. So is it your understanding the vent valves
12 were opened, then closed, and then opened a second time?

13 A. Yes.

14 Q. And I believe the testimony you're referring to by
15 Mr. Delaney is that he was the one that opened the vent valves
16 the second time; is that correct?

17 A. Correct.

18 Q. And do you have an opinion, as you sit here today, as
19 to who opened the vent valves the first time?

20 A. I do not.

21 Q. Do you recall the testimony of Mr. -- or not
22 "testimony." Excuse me.

23 Do you recall testimony about Mr. Kim unplugging the
24 electrical system for the skid?

25 A. I do.

26 Q. And what occurred after that?

27 A. Well, he was an electrician working on a separate
28 system that they -- to shutdown the whole Unit 5, so, you

1 know, multiple people could get different things done. So he
2 powered down the electrical system, and he heard a release of
3 gas. He realized he shouldn't hear that, and so he went
4 outside to check on it. And this is because of filter had not
5 been vented, basically. And so I believe there was a
6 discussion with Mr. Collins that something was awry, and my
7 understanding is Mr. Kim walked away thinking Mr. Collins
8 would take care of it, the he had sufficiently notified
9 Mr. Collins.

10 Q. And I think you may be mixing up. I believe the
11 conversation with Mr. Collins was between Jason King, the O
12 and M manager, and Mr. Collins.

13 MR. BASILE: Objection. Hold on. Objection.
14 Leading. Lack of foundation. Calls for speculation.

15 THE COURT: Overruled.

16 If you know.

17 THE WITNESS: Yes, I believe so.

18 Q. BY MR. REID: Okay. Was there a change to the LOTO
19 sheet before the 2017 LOTO season, essentially -- or outage
20 season?

21 A. Yes, sir.

22 Q. What was that change?

23 A. The closing of the Number 2 valve was moved further
24 down the sheet.

25 Q. Do you believe that change contributed to the
26 incident?

27 A. No.

28 Q. Why not?

1 taught a class to under graduates on safety engineering.

2 Q. And your deposition was taken in this case, right?

3 A. Yes.

4 Q. And in your deposition, you said, "I'm not a safety
5 guy." Didn't you say that to us?

6 A. Yes. I am -- particularly in this matter.

7 Q. You're not a safety guy particularly in this matter,
8 right?

9 A. Correct.

10 Q. Now, you've reviewed Mr. Lane's deposition, right?

11 A. I did.

12 Q. He's a safety systems guy, isn't he?

13 A. I believe so, yes.

14 Q. Now, your resume is 20-some pages -- 26 pages, right?

15 A. I believe so, yes.

16 Q. And you're here testifying to this jury about this
17 Lock Out/Tag Out procedure, right?

18 A. Correct.

19 Q. Are the words "lock out/tag out" anywhere in your
20 27-page resume?

21 A. No.

22 Q. Are the words "high-pressure gas power system"
23 anywhere in your 27-page resume?

24 A. No.

25 Q. Now, you've testified in other cases for this law
26 firm; isn't that true?

27 A. I'm trying to think if I testified.

28 Q. But you've been hired by them?

1 A. I've been hired, yes.

2 Q. In a number cases?

3 A. Yes.

4 Q. In one of the cases, you were hired as to a leaky
5 pipe concerning a homeowners association, right?

6 A. I believe so, yes.

7 Q. It wasn't any high-pressure pipe, was it?

8 A. No.

9 Q. How much -- is this on? -- how much are they paying
10 you per hour for you work in this case?

11 A. I get paid a salary by my company, so the firm does
12 not pay me directly.

13 Q. How much is your firm charging these lawyers for your
14 work in this case?

15 A. I think it depends it. In beginning of the case
16 before it goes to trial, \$300 an hour. And then after it goes
17 to trial, it may go up to 350 or 400. I honestly don't know
18 because I don't handle the billing.

19 Q. It's 350 to 400 an hour?

20 A. Approximately, yes.

21 Q. Now, total billings through the time we took your
22 deposition that your firm had sent was over \$13,000; isn't
23 that true?

24 A. Yes.

25 Q. And you're charging today how much an hour?

26 A. I think the 400.

27 Q. 400. Is that what's -- I think you guys call "portal
28 to portal"?

1 A. It includes my travel time, but not --
2 Q. Where did you travel from today?
3 A. Oakland, California.
4 Q. Oakland. When did you leave?
5 A. Yesterday.
6 Q. What time?
7 A. The flight was at 1:30.
8 Q. And do you charge \$400 an hour for the whole time
9 you're gone?
10 A. Not the whole time I'm gone.
11 Q. What hours do you bill for?
12 A. Just the time in transit and the time I'm here.
13 Q. Well, what's "in transit"? From Oakland to here?
14 A. Yes, sir.
15 Q. And from here about back?
16 A. Yes, sir.
17 Q. It's \$400 an hour for all that?
18 A. Yes, sir.
19 Q. Including last night overnight?
20 A. No. So yesterday I traveled here, it took about four
21 hours.
22 Q. So it's \$400 travel time here?
23 A. For four hours.
24 Q. And at what time did you start the clock this
25 morning?
26 A. Once I arrived here, about 9:00 o'clock.
27 Q. So while your waiting out there for us to come in, it
28 was 400 bucks an hour?

1 A. Yeah. And I was reviewing the case file.

2 Q. Sure. It will be 400 bucks an hour until you get
3 back to Oakland, right?

4 A. Just the travel time.

5 Q. Okay. So this 13,000 at the time of your depo was
6 probably closer to 20 before it's all said and done. Wouldn't
7 you agree?

8 MR. REID: Calls for speculation.

9 THE WITNESS: I think it would be closer to --

10 THE COURT: One moment.

11 Overruled. You may answer.

12 THE WITNESS: I have to do the math, but it will be
13 closer to 15,000, not 20,000.

14 Q. BY MR. BASILE: So only \$2,000 at \$400 an hour for
15 all that time then, right?

16 A. Yeah, you're right. So maybe 18-.

17 Q. Yeah, a little closer to my number than yours, so
18 we're going to say 18,000. Okay.

19 Dr. Mason, how many power plants do you think there
20 are in the United States?

21 A. I wouldn't know.

22 Q. Thousands probably, right?

23 A. I would be guessing.

24 Q. Well, there's certainly more than the 14 that Diamond
25 Generating Corporations owns and operates, right?

26 A. Yes.

27 MR. REID: Argumentative, Your Honor.

28 THE COURT: Overruled.

1 Q. BY MR. BASILE: The only experience with the Lock
2 Out/Tag Out was when you were working on hip implant with the
3 medical device company, I understand, right?

4 A. Yes. I was running a testing lab.

5 Q. Right. Did Mr. Reid or Mr. Schumann ever ask you, Do
6 you know if we can find a safety system expert that maybe is
7 at one of these other power plants in the country to come and
8 testify?

9 MR. REID: Argumentative, Your Honor.

10 THE COURT: Overruled.

11 THE WITNESS: I don't recall.

12 Q. BY MR. BASILE: Just a few more.

13 Now, you told this jury that you're of the opinion
14 that Mr. Collins closed the valve prematurely. Is that your
15 testimony?

16 A. Yes, sir.

17 Q. And you also -- your testimony this morning was that
18 your review indicated that he closed the ISO Valve 2
19 prematurely -- right? -- that's your testimony here today.

20 A. Yes.

21 MR. BASILE: Your Honor, I'd like to read from his
22 deposition page 35, line 25 to 36, line 3.

23 THE COURT: One moment.

24 James Walsh?

25 MR. BASILE: Mason.

26 THE COURT: Mason. You don't go by James Walsh?

27 MR. BASILE: Do you know anybody by the name of James
28 Walsh? No.

1 THE COURT: Well, the reason I ask is because I don't
2 appear to have a James Mason transcript.

3 MR. BASILE: Your Honor, I can --

4 THE COURT: Let me take one more look.

5 MR. BASILE: Your Honor, on the original was to be
6 deposited by the deponents. I have a copy here I'm willing to
7 show the Court.

8 THE COURT: Deputy Lee, I'm sorry. Could you assist,
9 please.

10 MR. REID: I apologize, Your Honor.

11 THE COURT: Sure.

12 Mr. Basile, if you could please just hand that to
13 Deputy Lee, and then I'll review.

14 MR. BASILE: Thank you, Your Honor.

15 THE COURT: And which lines were you --

16 MR. BASILE: It's 35, 25 to 36, 3. And then there
17 will be another section I'll also point out to the Court.
18 It's 35, 25 to 36, 3.

19 THE COURT: AND what was second part?

20 MR. BASILE: 36, 16 through line 21.

21 MR. REID: Your Honor, in rebuttal, we're going to
22 want to read a couple of lines down, so if you want to hang
23 onto it.

24 THE COURT: It's Mr. Basile's copy. So we're all
25 going to share here this morning.

26 MR. REID: Thank you, Your Honor.

27 THE COURT: So, Mr. Reid, Mr. Basile can proceed.

28 MR. REID: Thank you, Your Honor.

1 THE COURT: Thank you.

2 MR. BASILE: Thank you, Your Honor.

3 Q. BY MR. BASILE: When we took your deposition, we
4 asked for all of your opinions. Remember?

5 A. Yes, sir.

6 Q. Let me read what we asked you and you answered:

7 "Okay. Do you anticipate offering any -- offering an
8 opinion to the jury that it was Mr. Collins that closed the
9 valve prematurely?

10 "Answer: No."

11 Then 36, 16 through 25:

12 "Question: In the depositions that you reviewed, did
13 any of the witnesses indicate that they actually saw Daniel
14 Collins close Isolation Valve 2?

15 "Answer: I don't recall any testimony to that
16 effect."

17 Now, you said that Mr. Palalay was not qualified to
18 be out there that day; isn't that true?

19 A. Yes, sir.

20 Q. And just because the initials D.C. appear on a tag,
21 it doesn't mean that was the one who actually operated the
22 valve; isn't that true?

23 A. I think the LOTO procedure requires that the person
24 that installs it actually did the action, so that to me means
25 that, yes, D.C. means that person closed.

26 Q. Okay. You're not a safety systems an expert, right?

27 And I take it you didn't review the LOTO safety
28 system and any audits that were done annually or should have

1 been done annually?

2 A. I did not.

3 MR. REID: Objection. Beyond the scope.

4 THE COURT: Overruled.

5 Q. BY MR. BASILE: You haven't reviewed those?

6 A. I did not review those.

7 Q. That would be Mr. Lane's area of expertise, right?

8 MR. REID: Argumentative.

9 THE COURT: Overruled.

10 THE WITNESS: I believe so.

11 Q. BY MR. BASILE: You believe so.

12 Now, you did review that root cause analysis; isn't
13 that true?

14 A. I did.

15 Q. And we talked about that in your deposition, right?

16 A. I believe so, yes.

17 Q. And you agree with Mr. Stanley's conclusion about
18 there being a systems failure, don't you?

19 A. Yes.

20 Q. And it was a failure of a safety system that caused
21 Daniel Collins's death?

22 A. Correct.

23 MR. BASILE: That's all I have.

24 THE COURT: Mr. Reid, redirect?

25 MR. REID: Yes, Your Honor.

26 REDIRECT EXAMINATION

27 BY MR. REID:

28 Q. Mr. Mason, would you anticipate that plaintiffs'

1 expert, Mr. Lane, was paid for his testimony?

2 A. Yes, sir.

3 MR. BASILE: Objection. Beyond the scope.

4 Relevancy.

5 THE COURT: Briefly, Mr. Reid. Overruled.

6 Q. BY MR. REID: Do you have any idea how much he was
7 paid?

8 A. No, sir.

9 Q. You didn't look at his job file, correct?

10 A. Correct.

11 Q. Was it close to 50,000 pages of documents in that job
12 file?

13 A. Yes.

14 Q. If I could have Mr. Mason's testimony from his
15 deposition, page 35, line 25 up on the screen, please.

16 THE COURT: The Court can review -- was there a
17 question pending?

18 MR. REID: Your Honor, it's rehabilitation.
19 Mr. Basile kind of selectively read the testimony. I'd like
20 to read the passage in its entirety.

21 THE COURT: Do you want to lay foundation if it's
22 going to be a prior consistent statement or inconsistent?

23 Q. BY MR. REID: Mr. Mason, I asked you if you had an
24 opinion about Mr. Collins having closed Isolation Valve Number
25 2, and you responded to that testimony, correct?

26 A. Correct.

27 Q. And Mr. Basile read deposition testimony that was
28 kind of cut up. And is it still your opinion that Mr. Collins

1 closed Isolation Valve Number 2?

2 A. Yes.

3 THE COURT: If I may just see the portion briefly.
4 And you know the procedure?

5 MR. REID: I do, Your Honor. I don't have that copy.
6 If we can borrow Mr. Basile's for a moment.

7 MR. BASILE: Can I be told what page and line?

8 MR. REID: I said page 35, line 25 through 37, line
9 1.

10 THE COURT: If you like to review, Mr. Basile,
11 please, take your time. And if you may borrow your copy
12 again.

13 MR. BASILE: That's pretty long. Let's see.

14 MR. REID: 37, line 1.

15 MR. BASILE: Line 1?

16 MR. REID: Yeah.

17 MR. BASILE: I'm just going to mark it for the Court,
18 Your Honor.

19 THE COURT: It basically sounds like most of pages --
20 all of page 36.

21 MR. BASILE: Right. I would only ask that entire
22 answer on 37 be read, not cut off where they are asking to cut
23 it off.

24 THE COURT: That's fine.

25 Mr. Reid, if you can just go through line -- conclude
26 line 8 on page 37.

27 MR. REID: We'll do that, Your Honor.

28 THE COURT: And then if I didn't see any -- if there

1 are any objections --

2 MR. REID: There was one objection by myself in the
3 middle there.

4 THE COURT: All right. Thank you.

5 MR. REID: Please.

6 MR. BASILE: Your Honor, are we going to put it up on
7 the --

8 THE COURT: Are you going to put it up on the screen
9 or are you going to read it?

10 MR. REID: It's on the screen, Your Honor.

11 THE COURT: Well, your objection will be viewable
12 then.

13 MR. REID: Yeah.

14 Q. BY MR. REID: You see this excerpt from your
15 testimony, Mr. Mason?

16 A. Yes, sir.

17 Q. And Mr. Basile read, "Okay. Do you anticipate
18 offering an opinion to the jury that it was Mr. Collins that
19 closed the valve prematurely?" You said, "No."

20 "Question: Okay."

21 And then the point -- my objections, "Vague and
22 ambiguous as to valve."

23 Which valve were we talking about?

24 A. It's Isolation Valve Number 2.

25 Q. Okay. And then Mr. Sullivan said, "The valve would
26 be Isolation Valve Number 2 that resulted in the gas being
27 trapped within the tank."

28 Again, by Mr. Sullivan, "Are you familiar with that

1 valve?" "Yes."

2 "Question: Okay. And the records that you reviewed,
3 was there any indication -- any documentation that you saw
4 that indicated -- or let me rephrase, please. In the
5 depositions that you reviewed, did any of the witnesses
6 indicated that they actually saw Daniel Collins -- Denise,
7 excuse me -- or Daniels Collins close Isolation Valve Number
8 2?"

9 "Answer: I don't recall any testimony to that
10 effect.

11 "Question: Is the only evidence that your relying
12 upon to conclude that Daniel Collins closed Isolation Valve 2,
13 the Lock Out/Tag Out tag that has Mr. Collins's purported
14 initials on it?"

15 Your answer was "Yes. I know that Mr. Palalay shut
16 off the vent and then went to go get ear protection and a coat
17 because he was cold. So those two were doing it together, and
18 so the other step I would -- I would or argument I would make
19 is that, by process of elimination, he was gentleman that
20 remained although there were other people that might have been
21 involved, so that -- now that I think about it."

22 So that's consistent with what you testified earlier,
23 that you were relying on Mr. Collins's initials on the tag to
24 state that he closed Isolation Valve Number 2, correct?

25 A. Correct.

26 MR. REID: That's all I have, Your Honor. Thank you.

27 THE COURT: Mr. Basile.

28 MR. BASILE: No. No questions, Your Honor. That's

1 fine.

2 THE COURT: Okay.

3 All right. Thank you, Mr. Mason.

4 Mr. Reid?

5 MR. REID: Mr. Johnson was supposed to be here by
6 11:00 o'clock. Let me check and see if he's here.

7 MR. SULLIVAN: Your Honor, there's a procedural issue
8 that we need to address with the Court before Mr. Johnson
9 testifies. It is possible that we can take a break and
10 address that?

11 MR. REID: That's correct, Your Honor.

12 THE COURT: Was this brought to --

13 MR. REID: It's regarding Mr. Held's testimony.

14 THE COURT: Okay. Was this brought to the -- to our
15 attention this morning? Parties were let in at 9:45. We
16 finished calendar, actually, early this morning around 9:10.

17 I checked with the courtroom supervisor at 9:45
18 saying you can come in and just to let me know if there was
19 any issues before the jury would be brought in at 10:00, so
20 we're not going take an additional break. We can take our
21 break at 11:00. You can bring it up at that time. That's why
22 we have the morning. We are not going to take extra time from
23 the jury. We already broke 15 minutes early yesterday, so...

24 MR. REID: Thank you, Your Honor.

25 THE COURT: I'm sure there's -- I'm sure there's some
26 testimony you can get into in the next 20 minutes.

27 MR. REID: And I don't think the issue will come up
28 in the early part of Mr. Mason's testimony.

1 Mr. Johnson is not here yet. We were anticipating
2 11:00 o'clock, Your Honor. We apologize.

3 THE COURT: I don't suppose you're ready to rest your
4 case?

5 MR. REID: Not without Mr. Johnson, Your Honor.

6 THE COURT: Okay.

7 Members of the jury, we're going take our morning
8 recess. It's 10:40. If you can please come back at
9 11:00 o'clock. Then we'll resume at that time.

10 Just so you know ahead for your planning purposes, we
11 do need break at 11:45 today. There's a courtroom meeting, so
12 we need to break a little bit early, so we're breaking at
13 11:45. That's not going to be on counsel. That will be on
14 us. It's something that we have to attend. But just so you
15 know, for your purposes.

16 Please return at 11:00, and we'll have 45 more
17 minutes to go.

18 (Proceedings out of the presence of the jury as follows:)

19 MR. REID: Your Honor, you asked us to come to an
20 agreement regarding Mr. Held's testimony. We came to that
21 agreement. We signed a stipulation. Counsel has it.

22 THE COURT: I'm glad you were able to work it out.
23 You've done pretty well up to this point. It's not something
24 to bring up in the front of the jury because you're,
25 essentially, asking for time out in front of the jury. So
26 I've done everything I could to put the shoulder -- you know,
27 any delays on the Court.

28 MR. REID: We appreciate that, Your Honor.

1 THE COURT: But, essentially, you're putting it on
2 yourselves at that point.

3 MR. REID: I understand.

4 MR. SULLIVAN: It's my fault for that, Your Honor. I
5 should have brought it to the clerk's attention. I thought
6 they were going to last at least an hour to get us to the
7 break, then I was going bring it to the Court's attention at
8 break.

9 THE COURT: Understood.

10 MR. SULLIVAN: So I have the stipulation -- I can
11 give to the bailiff -- that the parties have agreed to reach.

12 There's another matter related directly with that
13 video --

14 THE REPORTER: Please slow down.

15 MR. SULLIVAN: Sorry.

16 THE COURT: Is this something you'd like read to the
17 jury?

18 MR. SULLIVAN: Yes, Your Honor.

19 THE COURT: Okay. When would you like me to read
20 this? At the conclusion of the next witness's testimony? at
21 the beginning?

22 MR. REID: At the beginning, Your Honor.

23 THE COURT: Okay. So prior to him testifying?

24 MR. REID: Yes. Then we'll lay further foundation
25 for video with Mr. Johnson.

26 THE COURT: Okay. Great. I have no problem. I'll
27 read just from -- the parties stipulate, so I'll bring in that
28 paragraph.

1 MR. SULLIVAN: There's another issue as relates to
2 that animation, Your Honor. The plaintiffs are willing to
3 stipulate to exhibit number 492, which is an animation that
4 shows the correct way that a LOTO is supposed to be hung;
5 however, we do object to the introduction of Animation Exhibit
6 Number 493.

7 And we would ask that the Court inquire of the
8 defendants such that they make an offer of proof to establish
9 the foundational requirements before that video is allowed to
10 be shown to the jury. We have a short two-page bench brief on
11 the issue. It's spells out what our concerns are. The
12 concerns are that there's not any evidence to establish the
13 actions that are depicted in that animation as it relates to
14 the things that these people in the animations allegedly did.

15 As the Court notes or is fully aware of, you can't
16 bring an animation in if doesn't reasonably show stuff that
17 allegedly occurred that's supported by the evidence. In this
18 case here, it's our belief and that's the reason we need the
19 offer of proof, that the only foundation for this sequence of
20 events that these actors that are depicted in the animation
21 did was conversations that Mr. Johnson had with the lawyers,
22 who then passed the information onto Mr. Held, who is the
23 person who created the animation. And then they relied
24 exclusively on the input from Mr. Johnson in order to include
25 the actual acts that are depicted in the animation.

26 Mr. Johnson was not there on the day of the event.
27 He has no personal knowledge of it. He apparently has
28 reviewed the root cause analysis report. He hasn't reviewed

1 any depositions. He may have talked to some of the witnesses.
2 Talking to the witnesses and trying to get that information in
3 through Mr. Johnson has violated -- is in violation of the
4 Court's holding in People versus Sanchez, which is that, you
5 know, you have to establish the foundation for any of the
6 things that the experts are going to rely upon.

7 And when you go through the animation and you look at
8 all of the steps that are there, you'll find that the
9 animation is direct contradiction to what the witnesses
10 actually testified to in their depositions regarding the
11 events.

12 Additionally, Albert Palalay, who was clearly a key
13 player within this particular animation that they are going to
14 show hasn't testified in this case. The only statements as it
15 relates to Albert Palalay that are in evidence in this case
16 are the stuff that's in the root cause analysis. If you look
17 at the description of the events of the root cause analysis
18 and you compare it to the steps in the actual animation, they
19 are completely different. And it would be unduly prejudicial
20 time-consuming, confusing --

21 THE COURT: Mr. Sullivan, I know you have your mask
22 on. I'm familiar with those KN95s.

23 Okay. That last point is well-taken, so, Mr. Reid,
24 the Court used the animation, essentially. It's a
25 hypothetical as long as there's a basis for the facts
26 contained in that hypothetical; however, if Mr. -- what's
27 concerning to the Court was up until that point, I was
28 inclined to just allow -- you know, hear you out on your

1 offer. But if the root cause analysis, if what's contained in
2 there is inconsistent with the steps in the video, the Court
3 is concerned about allowing its admission.

4 MR. REID: Your Honor, if you'll recall, Mr. Stanley
5 testified that Dennis Johnson was one ever people who
6 participated in the investigation of the incident. It's true
7 he wasn't there on the day of, but he has very broad
8 familiarity with this system. He was -- as we'll show, he was
9 the work supervisor for 23 LOTOs from the beginning of the
10 LOTO seasons until -- until the date he was promoted.

11 He participated in the investigation. He spoke to
12 all of the witnesses. And Plaintiffs' counsel and others have
13 pointed on out, and Mr. Lane pointed out, Mr. Palalay's
14 testimony is all over the place. We have what he told to
15 OSHA. We have what he told to Mr. Stanley, and we have other
16 evidence -- because initially he denied that he had anything
17 to do with the opening the valves, and other people have
18 testified that he had.

19 So Mr. Johnson reviewed the LOTO sheet. He reviewed
20 the tags. He reviewed -- obviously he spoke with all the
21 people, and he's very familiar with the system. We're not
22 going to try and show the animation to the jury until we've
23 laid that foundation. At that point in time, Your Honor,
24 we'll respect your ruling. These are purely demonstratives.

25 There's a right way. There's a wrong way. The wrong
26 way shows the various ventings that occurred at various times
27 based on the Excel spreadsheet that we've presented.

28 THE COURT: When you say "demonstrative," in terms

1 of --

2 MR. REID: We intend to show it to the jury today and
3 in closing. It's not going to be admitted as an exhibit.
4 There's really no way for the animation -- for the jury to
5 look at once they are deliberating.

6 THE COURT: Mr. Sullivan.

7 MR. SULLIVAN: Simply because they are using it for
8 demonstratives purposes doesn't mean they are allowed to show
9 it to the jury. You still have to establish the
10 reasonableness and the foundation for it.

11 And I went through the video, and I created a nice
12 little summary that shows exactly what the animation shows.
13 It shows Collins and Palalay going into the skid, closing
14 Isolation Valve Number 1. From there, the vent valves are
15 opened -- one ask two, which are Tags 4 and 5 on the LOTO
16 sheet. From there --

17 THE COURT: I'm trying -- I'm sorry. Mr. Schumann's
18 opening, I'm trying to remember it. I think I'm confusing
19 this.

20 MR. REID: We showed the right way video --

21 THE COURT: No. I trying to think with my kids'
22 video games. Is this from a first-person view, or is this a
23 third-person view?

24 MR. REID: It's third person.

25 MR. BASILE: Third person.

26 THE COURT: So you can see two subjects?

27 MR. SULLIVAN: Yes.

28 MR. REID: You just see the one subject.

1 MR. SULLIVAN: But it has names allocated to them --
2 going to them, so it shows them in these places.

3 THE COURT: I was trying to figure out how do we know
4 it's Mr. Palalay and Collins?

5 MR. SULLIVAN: Because they have labeled them, and
6 that's where the problem comes in. And the sequencing is the
7 problem as well, Your Honor.

8 Palalay, after the vent valves are opened -- they
9 have Palalay remain at the skid. Daniel Collins leaves, and
10 he goes and performs Steps 6 through 13. After Collins
11 completes Step Number 9, they have Palalay at that point in
12 time leaving the skid and going to the control room. And then
13 Palalay never shows back up as participating in the video.
14 While Palalay is gone, after Collins finishes Step 13, it has
15 him going to the skid and then performing Step Number 14 with
16 Mike Delaney there. All right?

17 Mike Delaney has testified. He testified in here,
18 and he testified in his deposition. He never saw Daniel
19 Collins close any isolation valves at all. But this video or
20 this animation clearly has Palalay being present when that
21 particular --

22 THE COURT: Will Mr. Johnson be familiar with that
23 prior testimony?

24 MR. SULLIVAN: I don't think he's reviewed any of the
25 depositions.

26 MR. REID: He has not reviewed the depositions. He
27 doesn't have any foundation for any of the steps. It's
28 basically his speculation about what happened that day. All

1 right? And that's not admissible evidence. You have to have
2 a connection between the evidence.

3 Now, even more importantly in his deposition, Albert
4 Palalay said that --

5 THE COURT: Okay. Mr. Sullivan, I'm sorry. I do
6 appreciate your argument, and you made some points. It's not
7 that I'm getting short with you. I'm being mindful of the
8 time.

9 MR. SULLIVAN: I understand.

10 THE COURT: So if we have the time, I'm happy to sit
11 here with you during my lunch hour, but we're not going keep
12 jury the waiting --

13 MR. REID: And Mr. Johnson has arrived, Your Honor.

14 THE COURT: Okay. Thank you.

15 So we're going wait to see what foundation you lay,
16 Mr. Reid.

17 All of the points you have, Mr. Sullivan, initially I
18 was thinking they could go just to the weight, not to the
19 admissibility. Well, I mean, I know it's for demonstrative,
20 so it's just going to follow along with his testimony. But if
21 he can't answer questions about other evidence that's come
22 through -- come out through discovery that's inconsistent with
23 the animation, I'm not sure really it has a foundation for
24 this -- this demonstrative; however, depending on what
25 knowledge he has, I think it really goes more to the weight,
26 and I think you can certainly use it in your
27 cross-examination. Certainly Mr. Schumann, Mr. Reid would if
28 the roles were reversed. So, you know, the animation is only

1 as good as the information that its relying on.

2 MR. BASILE: Right. But the Court, as the Court is
3 aware, acts as the gatekeeper before that stuff comes in. In
4 this instance, I think that they shouldn't be allowed through
5 the gate because it would be too unduly prejudicial to allow
6 the jury to hear a made-up version of what happened that day.
7 And they'll see it on this beautiful animation. Now, all of a
8 sudden, they might get a credence when there really is no
9 evidence at all that supports it.

10 THE COURT: There's some unknowns here as to exactly
11 what happened, though. Mr. Collins was left alone. What
12 steps he took, the initial pressure release with why the gauge
13 didn't go down, waiting for it to go down to zero. There's --
14 I don't think either side has all the answers here, so...

15 MR. BASILE: We may never know, and it's all related
16 to the confusion that happened that day.

17 THE COURT: So I'm tentatively going with I think
18 goes to its weight, but we'll see what kind of foundation
19 Mr. Reid lays, because I'm concerned about point Mr. Sullivan
20 raises about, essentially, Mr. Johnson is just kind of acting
21 as a conduit for this.

22 MR. REID: I understand, Your Honor.

23 MR. SULLIVAN: One final point I'll make like in ten
24 seconds is that the sequencing is completely inconsistent with
25 the times that were on the tags because it shows them doing
26 certain things. When you look at the times on the tags and
27 compare them to what's on the animation, they are all out of
28 order. Again, it's all made up.

1 I mean, if you're going to create something like
2 that, you have look at the foundational facts and you've got
3 to base it on those, and that hasn't been done in this case.

4 THE COURT: There's times on the animation as well?

5 MR. SULLIVAN: There's no times --

6 MR. REID: There's no times --

7 MR. SULLIVAN: But there's a sequence in which they
8 are done. If you look at the times, they are out the
9 sequence. They don't match up.

10 MR. REID: And, Your Honor, the everybody here knows
11 those tags were not filled out accurately. Some of the times
12 are based on what we see in the Excel spreadsheet with the
13 ventings. And things that had to have happened based on how
14 that Excel spreadsheet goes. So it's not strictly on the
15 tags; it's based on other information that Mr. Dennis --
16 Mr. Johnson has reviewed.

17 THE COURT: I'll read the stipulation, but my
18 tentative is to deny the animation. There's just too many
19 variables that I'm not certain where these are coming from.

20 You are putting the Court in a tough position --

21 MR. REID: I understand.

22 THE COURT: -- we've been at this maybe 12 minutes.

23 MR. REID: Well, and, Your Honor, they are bringing
24 it up at the last minute just before he testifies, so it makes
25 it tough for all of us, Your Honor. This could have been
26 dealt with another way.

27 THE COURT: It's also it's your case as well.

28 MR. SULLIVAN: I understand, Your Honor.

1 THE COURT: Thank you. Please take whatever time you
2 have left. We're going to bring the jury in in three minutes,
3 so...

4 MR. REID: Okay.

5 THE COURT: We're in recess.

6 (Recess.)

7 (Proceedings in the presence of the jury as follows:)

8 THE COURT: Okay. We're back on the record on
9 Collins versus DG Corp. All members of the jury are present.

10 And Mr. Reid, I believe, during a break, you
11 indicated your witness was here?

12 MR. REID: Yes, Your Honor.

13 THE COURT: Whenever you're ready.

14 MR. REID: DG Corp. would like to call Dennis
15 Johnson.

16 THE COURT: Mr. Johnson, you've come full circle.
17 You were here back on June 29th. Defense went ahead and
18 reserved their questioning of you, so you've already been
19 sworn in, and you are under oath.

20 THE WITNESS: Okay.

21 THE COURT: You may have a seat.

22 Mr. Reid, whenever you're ready.

23 MR. REID: Would you like him to state his name and
24 spell it again, Your Honor?

25 THE COURT: Sure.

26 THE WITNESS: Dennis Johnson. D-e-n-n-i-s
27 J-o-h-n-s-o-n.

28 THE COURT: Mr. Reid, as I mentioned, Mr. Johnson was

1 previously sworn, and he's still under oath. And you may
2 resume your questioning.

3 MR. REID: Thank you, Your Honor.

4 DENNIS JOHNSON,
5 recalled as a witness by the Defense, was sworn previously
6 sworn and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. REID:

9 Q. Mr. Johnson, did you attend college?

10 A. I did.

11 Q. Where did you attend college?

12 A. In Salt Lake City, Salt Lake Community College.

13 Q. Did you receive a degree?

14 A. It's a vocational college.

15 Q. And did you receive a certificate then?

16 A. It's a state-certified license as a journeyman
17 electrician.

18 Q. Did you serve in the military, sir?

19 A. I did not. I was a contractor for the military.

20 Q. And what did you do as a contractor for military?

21 A. We were assigned a special assignment to destroy the
22 chemical weapons where they were stored, and that was also in
23 Utah.

24 Q. Did you have experience with power plants prior to
25 working at the Sentinel facility?

26 A. Yes.

27 Q. And where was the first power plant you worked at?

28 A. That facility where we destroyed the chemical

1 weapons, they had their own gas turbines, so another one of my
2 assignments was I was assigned to what's called a "power
3 house," so those were air-driven gas turbines.

4 Q. And when approximately was that timeframe?

5 A. 2005 to 2008.

6 Q. And from 2008, what was your next experience with
7 power plants?

8 A. CP Kelco in San Diego, California.

9 Q. And what type of power generation facility was that?

10 A. Combined cycle. Again they --

11 (Reporter clarification.)

12 Q. BY MR. REID: Combined cycle?

13 A. Combined cycle.

14 Q. And what is a "combined cycle" power plant?

15 A. They use the steam from the gas turbine, so they all
16 -- they use power, then they also use the steam for their
17 batch process.

18 Q. And what was your job title at that plant?

19 A. I and C technician, instrumentation and control
20 technician.

21 Q. And from that plant, you worked at Larkspur Energy;
22 is that correct?

23 A. Correct.

24 Q. And what was your title there?

25 A. Instrument control technician.

26 Q. You testified in your deposition that when you worked
27 at Larkspur, you were a DGC OPS employee. Do you recall that
28 testimony?

1 A. Correct.

2 Q. And you testified here before the jury that you were
3 a DGC or DG Corp. employee at that time. Was that a
4 misstatement?

5 A. I was -- yeah, correct. So I was hired by Diamond
6 Generating Corporation for DGC operations.

7 Q. Okay. So you were a DGC OPS employee from the time
8 you worked at Larkspur until now, essentially?

9 A. Always have been, yes.

10 Q. Okay. What are your job duties or what were your job
11 duties at Larkspur as an IC and E technician?

12 A. Mainly the control systems, so everything on the back
13 end of the computer screen. So all the instrumentation that
14 brings signals into the control room. And then interface,
15 which they call "human machine interfaces" of what the
16 operations team uses to control the gas turbines.

17 Q. And when were you hired to work at Sentinel Energy
18 Center?

19 A. In 2012.

20 Q. So since 2012?

21 A. That's correct, yeah.

22 Q. Was that before the plant was completed?

23 A. It was.

24 Q. It was before the plant began commercial operations;
25 is that correct?

26 A. That is correct.

27 Q. What was your title at the Sentinel plant when you
28 first started there?

1 A. Instrumentation and control; IC and E technician, so
2 instrumentation, control, and electrical technician.

3 Q. In May 2016, did you take promotion within OPS?

4 A. I did.

5 Q. And what was your new title?

6 A. Program manager; IC&E.

7 Q. You were program manager for IC&E for all of the DGC
8 OPS locations; correct?

9 A. That's correct.

10 Q. When did you become the plant manager at Sentinel?

11 A. May of 2017.

12 Q. So after Mr. Collins's incident, correct?

13 A. That's correct.

14 Q. And when Mr. Walker was let's go, you became the
15 interim manager. And then you became the manager; is that
16 correct?

17 A. That's correct.

18 Q. At that time who was your direct supervisor?

19 A. Adam Cristodoulou.

20 Q. Was he your direct supervisor prior to you becoming
21 the plant manager?

22 A. We were hired for the same tape of -- he was the
23 general manager, and I was a program manager. So at the time,
24 as I was program manager, he would have been a direct
25 supervisor of the plant managers.

26 Q. And, to your knowledge, was Mr. Cristodoulou a DGC
27 OPS employee?

28 A. He was not. He was hired as -- yes, he was hired as

1 DGC Operations employee in 2016, '17.

2 Q. Can we put up Exhibit 208, please. Just highlight
3 below the -- actually, let's go up to the top. Let's look at
4 date first.

5 Sent 11/7/2016. So this was in November of 2016.
6 Then if we can go back to the down to the bottom, and this is
7 from Adam Cristodoulou, correct?

8 A. That's correct.

9 Q. And you can see his title, Adam Cristodoulou, general
10 manager, DGC Operations, correct?

11 A. That's correct.

12 Q. All right. And that was your understanding, that he
13 worked -- he was employed by DGC Operations, correct?

14 A. Yes.

15 Q. Okay. Can we go back up in this document, please, to
16 the subject attachments.

17 The subject is "safety procedure" and then the
18 attachments.

19 Would you highlight the attachments, please.

20 This e-mail is with regard to some procedures that
21 were being updated in November of 2016. Could you take a look
22 through those attachments for me and see if there are any of
23 those procedures that have anything to do with Lock Out/Tag
24 Out.

25 A. They do not.

26 Q. Take this one down. Number 209, please. Highlight
27 the top.

28 This is a document that was sent on January 23rd,

1 2017. If you can go down to the bottom, second page. Yeah,
2 all the way down. And just, again, highlight.

3 All right. So January 2017, Mr. Cristodoulou was
4 still a general manager at DGC Operations; is that correct?

5 A. That's correct, yes.

6 Q. To your knowledge, he was a DGC Operations employee
7 on the date of this incident, correct?

8 A. Yes.

9 Q. After you became plant manager, was Mr. Cristodoulou
10 the person who was doing your annual review?

11 A. He would have been, yes.

12 Q. And what do you mean by "he would have been"?

13 A. It was pretty quick between time that I became plant
14 manager. And then we didn't have a full rotation, or he would
15 have given my reviews. But he did give my reviews, I would
16 say, probably once, if not, two times.

17 Q. All right. You were at the plant when it first
18 opened, correct?

19 A. Correct.

20 Q. Were you involved in drafting any of safety
21 procedures that were used?

22 A. No.

23 Q. Do you know if those safety procedures after they
24 were -- well, strike that.

25 Do you know who drafted those safety procedures?

26 A. My understanding is they were brought with Jason King
27 to DG Operations from his prior assignment.

28 Q. And specifically you're talking about the SMP-3

1 procedure, correct?

2 A. That's correct.

3 Q. Do you know if those procedures were submitted to the
4 owners' representative for approval?

5 A. I don't know that.

6 Q. When you first started at the Sentinel plant, did you
7 receive LOTO training?

8 A. We did.

9 Q. And who conducted that LOTO training?

10 A. Jason King.

11 Q. Were you trained on the SMP-3 LOTO procedure?

12 A. Yes.

13 Q. Were you trained on that procedure annually?

14 A. Yes.

15 Q. Was Daniel Collins present with you in all of those
16 trainings?

17 A. I can't say all. But, he was present, yes.

18 Q. Mr. Johnson, there were probably a hundred training
19 records that were produced in this case. Have you reviewed
20 all of those training records?

21 A. Yes.

22 Q. Thank you.

23 Did you find any training record that showed that a
24 DG Corp. employee conducted any in-person training at the
25 Sentinel facility?

26 A. I don't recall any safety training. I believe a NERC
27 training document came up, and that would have been given by
28 Wayne Forsyth.

1 Q. Exhibit 204, please.

2 We've looked at this document before, and Mr. Forsyth
3 testified that this was a training that he did at the OPS
4 facility in January of 2013, so this would have been prior to
5 the incident, correct? Well, not "prior to the incident" --
6 excuse me. Prior to the plant opening, correct?

7 A. That's correct.

8 Q. All right. And is this the only record you found of
9 any DG Corp. employee conducting training at the facility?

10 A. Yes.

11 Q. Does NERC training, N-E-R-C training, have anything
12 to do with Lock Out/Tag Out?

13 A. No.

14 Q. Are you familiar with the Lock Out/Tag Out procedures
15 that were used at the plant, in other words, the SMP-3?

16 A. Yes.

17 Q. And you're familiar with the role of the installer,
18 the verifier, and the work supervisor, correct?

19 A. Yes.

20 Q. Are all three of those people -- all three of those
21 job descriptions -- supposed to make sure that the LOTO when
22 it's done isolates and completely depressurizes the fuel
23 system?

24 A. Yes.

25 Q. Approximately how many times did you act as the work
26 supervisor prior to your being promoted in May of 2016?

27 A. I believe I was primarily the work supervisor for all
28 the major outages, so from '14 through '16.

1 Q. Okay. My count was 23, but I'm going show you some
2 of them.

3 Exhibit 264, please. Page 1 and two. Zoom in on the
4 top there. This is a -- well, strike this.

5 What is this document?

6 A. It is what's called a LOTO sheet, Lock Out/Tag Out
7 sheet.

8 Q. Okay. And this was for the Unit 3 annual outage?

9 A. It was.

10 Q. And LOTO work supervisor, you're listed; is that
11 correct?

12 A. That's correct.

13 Q. And scroll down for me.

14 This would have been done, at least according date it
15 was installed, on February 3rd, 2014?

16 A. Correct.

17 Q. Is this the very first outage that was done at the
18 plant?

19 A. This would have been the first major maintenance
20 outage, yes.

21 Q. Page 5 and 6, please.

22 This is another Lock Out/Tag Out sheet. You're
23 listed as the LOTO work supervisor, correct?

24 A. Correct.

25 Q. And then scrolling down a little bit --

26 Stop. Stop.

27 -- that LOTO work supervisor final release, is that
28 your signature?

1 A. That is.

2 Q. And is that an indication that the outage was
3 completed and the LOTO was taken down for or closed, I guess?

4 A. Yeah. So it means that the LOTO has been released --

5 Q. Okay.

6 A. -- by person with the release initials over there on
7 the far right, yes.

8 Q. And that indication is -- or that signature is an
9 indication that you were the work supervisor throughout the
10 entire outage for this LOTO, correct?

11 A. That's correct.

12 Q. Let's go to page 29 and 30, please.

13 And this was an outage for the Unit 5, correct?

14 A. Yes.

15 Q. And you're, again, listed as LOTO work supervisor,
16 correct?

17 A. Correct.

18 Q. And if we scroll down, this was hung on March 3rd,
19 2014?

20 A. Correct.

21 Q. There's been testimony by Mr. Gonzalez that this is
22 the date that a near miss occurred. Do you recall that near
23 miss?

24 A. I do.

25 Q. And you were the work supervisor that day, correct?

26 A. That is correct.

27 Q. And what can you tell us about that near miss.

28 A. Tony was setting up to perform the same task --

1 Q. Let me stop you for a second. Tony is Mr. Gonzalez's
2 nickname, correct?

3 A. I'm sorry. Juan Gonzalez.

4 Q. Thank you.

5 A. So Juan Gonzalez was setting up to perform the
6 changing out of the filters in the final fuel filter assembly.
7 And while I was doing my work supervisor -- walk down the
8 LOTO -- I was in his area and heard a short release of gas,
9 went to the area, engaged with Juan Gonzalez; asked him, Hey,
10 what was that? Do you know what that was? And he kind of
11 seemed he wasn't exactly sure. So we both kind of walked
12 around, looked at the gauge. At the time, saw there was
13 pressure and told him to stop work immediately and get with at
14 that time Jason King, operations maintenance manager.

15 Q. Did you and Juan go to Jason King?

16 A. No. I just said to Juan Gonzalez to go talk to Jason
17 while I continued on the with rest of the walk-down on the
18 LOTO.

19 Q. So you finished checking the other steps and making
20 sure they were okay. And Juan went to go get Jason and tell
21 him what occurred, essentially?

22 A. Correct.

23 Q. At that point, did Mr. King have open the LOTO box,
24 get the key and come out, and undo the locks for vents?

25 A. Yes.

26 Q. And undo the lock for Isolation Valve Number 2,
27 presumably?

28 A. Yes.

1 Q. And then the system was vented, and the outage
2 continued, correct?

3 A. That's correct.

4 Q. All right. Scroll back up for me, if you could. A
5 little further down. I apologize.

6 Okay. "LOTO work supervisor final release." On all
7 of the other documents I looked up that you were the LOTO work
8 supervisor, you always signed this line?

9 A. Uh-huh.

10 Q. Is this line not being signed by you an indication
11 that someone else took over the role of work supervisor for
12 this LOTO?

13 A. That's correct.

14 Q. Okay. And that would have been Mr. King; is that
15 correct?

16 A. Correct.

17 Q. Okay. So at that point, it would have been his
18 responsibility to make sure the system was isolated and
19 completely depressurized, correct?

20 A. That's correct.

21 Q. All right. Do you know if this near miss was ever
22 reported or written up?

23 A. It was not.

24 MR. BASILE: Late objection. Lack of foundation on
25 that.

26 THE COURT: Overruled.

27 Q. BY MR. REID: After Mr. Collins's incident --

28 THE COURT: Was there an answer?

1 (The reporter reads back testimony as requested.)

2 MR. REID: So Mr. Johnson, let me just caution you.
3 When there's an objection, we need to wait for the judge to
4 rule on the objection rather than in the deposition where the
5 objection is just reserved. So wait for the judge to rule,
6 then you can give an answer. Fair enough?

7 THE WITNESS: Yes.

8 MR. REID: All right. Thank you.

9 MR. REID: And I'm sorry, Madam reporter. Can you
10 read back the question and answer, please, because I've lost
11 it at this point.

12 (The reporter reads back testimony as requested.)

13 MR. REID: Thank you.

14 Q. BY MR. REID: When you're performing the role of the
15 work supervisor on these many occasions, is that something you
16 can hurry through?

17 A. No.

18 Q. And why not?

19 A. Well, it's -- I mean, it's a task that your --
20 everybody is waiting to go to work. But I mean, the rush of
21 the very last step -- so you're the very last step before
22 people actually go to work on those pieces of equipment.

23 Q. And you need to take your time and do it properly,
24 correct?

25 A. Correct.

26 Q. That's because this is a dangerous system, correct?

27 A. Yes.

28 Q. It operates under high pressure?

1 A. Yes.

2 Q. That pressure can be anywhere from 700 to 900 PSI?

3 A. Correct.

4 Q. Just going back to that near miss for a moment, you
5 said Juan was setting up to take the filter -- the lid off the
6 filter, correct?

7 A. That's correct.

8 Q. And he wasn't actually going to take the lid off the
9 filter until you completed your walk-down, correct?

10 A. That is correct.

11 Q. And as the work supervisor, you stopped all work
12 while that near miss was reported to Mr. King, and the system
13 was depressurized, correct?

14 A. Yes.

15 Q. Page 41 and 42, please.

16 Is this the Lock Out/Tag Out sheet for Unit 6?

17 A. Yes.

18 Q. All right. Scroll down a little bit for me.

19 And was this hung on March 6th of 2014?

20 A. It looks like March 10th.

21 Q. Yeah, March 10th. And you were the work supervisor
22 for this?

23 A. That's correct.

24 Q. And this is another one that you didn't sign, for
25 some reason?

26 A. Correct.

27 Q. Do you have any recollection as to why you didn't
28 sign it?

1 A. There was a handful that I was not around -- or I was
2 not actually present for the clearance of the LOTO, so it
3 would have been a responsibility usually of Jason King.

4 Q. Okay. And on Tag Number 2, the verifier, do you
5 recognize those initials?

6 A. Yes.

7 Q. And who are those initials?

8 A. D.C. for Dan Collins.

9 Q. And is this a LOTO where you were reviewing the work
10 of Mr. Collins?

11 A. Yes.

12 Q. As the verifier?

13 A. Yes.

14 Q. And, to your knowledge, was this LOTO done step by
15 step in order?

16 A. To my knowledge, yes.

17 Q. And there were no issues on this day? There was no
18 unusual gas venting?

19 A. No.

20 Q. No one was injured?

21 A. No.

22 Q. Correct. Were there other times that you reviewed
23 Mr. Collins's work?

24 A. Yes.

25 Q. And as the installer?

26 A. Dan Collins as the installer?

27 Q. Yes.

28 A. Yes.

1 Q. Again, as the verifier?

2 A. Yes.

3 Q. Approximately how many times did you perform the work
4 supervisor function when Mr. Collins was involved in hanging
5 the LOTO?

6 A. Maybe four to six times.

7 Q. Let's go page 83 and 84.

8 This is another LOTO sheet for Unit 6. You're listed
9 as work supervisor. You were -- the LOTO work supervisor
10 final release, is that your signature?

11 A. Yes, it is.

12 Q. Scroll down just a little bit more for me.

13 It appears this was hung on February 9th of 2015,
14 correct?

15 A. Yes.

16 Q. And there are a number of different initials here,
17 but you recognize Dan Collins's initials, correct?

18 A. Yes.

19 Q. So this is another example of you verifying, walking
20 down a LOTO that Mr. Collins had participated in, correct?

21 A. Correct.

22 Q. And there were no incidents on this date, correct?

23 A. No.

24 Q. And there were no unusual gas ventings on this day,
25 correct?

26 A. Correct.

27 Q. In the years that you performed the work supervisor
28 role approximately 23 times, were there ever more than one gas

1 venting?

2 A. No.

3 Q. So only one for all those 23 times, correct?

4 A. That is correct.

5 Q. Okay. Let's go to page 113, 117. And, again, this
6 is Exhibit 264, which is the pages we've been referring to
7 within that exhibit.

8 This is the annual outage for Unit Number 7, correct?

9 A. That's correct.

10 Q. And you were the LOTO supervisor, correct?

11 A. Yeah, it looks like it was transferred, yes.

12 Q. Okay. "Transferred," what does that mean?

13 A. So this would be the actual transfer over to Jason in
14 person. So I mean, that I would have been on site, but he
15 took over the work supervisor role.

16 Q. But you would have performed the walk-down?

17 A. The walk-down was me, yes. It would have been --
18 yeah, sometime during the course of the -- while the LOTO was
19 active, it was transferred.

20 Q. And the outages took four to five days?

21 A. Yes.

22 Q. And when you're talking about sometime during the
23 outage, there's a work supervisor who double-checks and makes
24 sure the system hasn't depressurized every day the LOTO is in
25 place, correct?

26 A. Correct.

27 Q. Scroll down just a little bit for me.

28 And this appears to have been hung on March 9th of

1 2015, correct?

2 A. That's correct.

3 Q. And this is a LOTO that the majority of it was
4 verified by Mr. Collins, correct?

5 A. That's correct.

6 Q. Let's go -- and one more question. No unusual
7 incidents on this date?

8 A. No.

9 Q. No one was injured?

10 A. No.

11 Q. Only one gas venting?

12 A. On this date, no. Only one other gas venting, yes.

13 Q. Okay. Bad question. My fault.

14 Let's go to 159, 160. Again, in Exhibit 264, this is
15 the annual Lock Out/Tag Out for Unit 2 -- annual outage for
16 Unit 2; is that correct?

17 A. That's correct.

18 Q. You're listed as the work supervisor?

19 A. Correct.

20 Q. Scroll down for me.

21 And work supervisor release, that's your signature?

22 A. It is.

23 Q. And this LOTO was hung on February 8th, of 2016?

24 A. Correct.

25 Q. Scroll down a little bit more for me, second page.

26 No. Not getting what I wanted. That's fine. Page 234 and
27 235, please.

28 This is Unit 5 annual outage. It looks like it was

1 in March, 2016. You are listed as the work supervisor,
2 correct?

3 A. That's correct.

4 Q. The LOTO work supervisor final release, is that your
5 signature?

6 A. Yes.

7 Q. And it was hung March 28th of 2016, correct?

8 A. Yes.

9 Q. And those are Dennis Collins's initials?

10 A. Dan Collins.

11 Q. And who was the other initial, if you recognize it?

12 A. That looks like Ernie Jones, Ernest Jones.

13 Q. All right. Thank you.

14 No unusual venting ones this date?

15 A. No.

16 Q. No one was injured?

17 A. No.

18 Q. Can I go to Exhibit 489, please. The full native
19 Excel sheet. And can we do that in March 28, 2016, date?

20 You recognize this Excel spreadsheet?

21 A. I do.

22 Q. And what is this document?

23 A. It is a document that can pull from our -- it's
24 called a "historian server," so we have a server that is
25 always collecting data. So we're able to populate that data
26 in Excel spreadsheet.

27 Q. All right. And there were five tabs on this Excel
28 spreadsheet, correct?

1 A. That's correct.

2 Q. And in one of the tabs is the date this of the
3 incident, the one in red?

4 A. Yes.

5 Q. Then the fifth tab over, which is what we're looking
6 at now, is for March 28, 2016, correct?

7 A. Yes.

8 Q. And that's the date of the LOTO sheet we just looked
9 at, correct?

10 A. Yes.

11 Q. All right. Scroll down, please, to the yellow
12 highlighted section. Yeah, right there.

13 So you testified there was only one gas venting on
14 that date, correct?

15 A. Correct.

16 Q. In this document, the recording of the pressures at
17 the fuel filter skid, on that date, indicates that there was
18 one venting, correct?

19 A. Correct.

20 Q. And the pressure at 6:40 a.m. was 927 pounds. Then
21 it was vented to 659 down to zero, correct?

22 A. That is correct.

23 Q. Take that down, please.

24 On each of the occasions that you acted as the work
25 supervisor, the 23 times -- and we haven't reviewed them all.
26 I don't want to waste the jury's time or yours -- was the
27 system always completely isolated and vented to zero?

28 A. Yes.

1 Q. Going back to that near miss for just a moment,
2 Mr. Gonzalez bumped something per his testimony, and there was
3 a short burst of gas. And you heard that, correct?

4 A. I did.

5 Q. Had he not bumped something, would you still have
6 discovered that there was pressure still in the system?

7 A. Yes.

8 Q. That's based on following the LOTO procedure, the
9 SMP-3?

10 A. That is correct.

11 Q. Okay. And one of the things that you always did as
12 the work supervisor was you looked at the gauge on the filter,
13 correct?

14 A. Yes.

15 Q. All right. On all of those occasions where you were
16 the work supervisor, you always were aware of when the LOTO
17 had been hung, and you needed to do your job, correct?

18 A. That's correct.

19 Q. And sometimes you would be told by someone involved
20 in the LOTO, correct?

21 A. That's correct.

22 Q. Sometimes you would see the LOTO box brought into the
23 control room, and you would know that it was time to go do
24 your job, correct?

25 A. That's correct.

26 Q. All right. On the date of the incident, Mr. King did
27 not walk down the LOTO, correct?

28 A. That's correct.

1 Q. There has been testimony -- and there's an exhibit, a
2 daily log from the date of the incident for the control room
3 that shows that the LOTO was issue at 7:16 a.m. Have you
4 reviewed that daily log?

5 A. The control operator log?

6 Q. Yes.

7 A. Yes.

8 Q. Okay. What is does it mean when the control room
9 operator issues the LOTO?

10 A. The issuance of the LOTO means it's been completed
11 through the system, and it's ready to hand to the installer.

12 Q. Okay. All right. At some point in time after the
13 LOTO had been performed by Mr. Collins and Mr. Delaney and
14 Mr. Palalay on the date of the incident, that LOTO box was
15 brought into the control room, correct?

16 A. That is correct.

17 Q. Approximately what time was that, if you know?

18 A. It was pretty early that day. It was -- it could
19 have been as early as 5:45, 6:00 a.m.

20 Q. Okay. Could it have been 7:15? 7:20?

21 MR. BASILE: Objection. Leading and lack of
22 foundation.

23 THE COURT: Sustained.

24 THE WITNESS: We can review the LOTO sheet. I
25 believe that the issuance date was actually a prior date when
26 the LOTO was created, the actual sheet.

27 Q. BY MR. REID: Let's go back and look at that again.
28 Exhibit 589, please.

1 And this is the LOTO for the date of incident,
2 correct?

3 A. That's correct.

4 Q. And the LOTO initiator and authorizer was Robert
5 Ward, correct?

6 A. That's correct.

7 Q. And based on the time to the right of his name, it
8 appears the LOTO was initiated and authorized early that
9 morning?

10 A. That is correct.

11 Q. Okay. Look at Exhibit 379, please. Let's look at
12 the last set of tags. All right.

13 Can you zoom in on the time in bottom-right corner?

14 Can you tell what time that is?

15 A. 0710.

16 Q. And that's an indication that Tag 21 of 21 had been
17 completed and that the LOTO was hung, at least to the best of
18 everyone's knowledge at that point, correct?

19 A. That is correct.

20 Q. Would that LOTO box have been brought into the
21 control room?

22 A. Yes.

23 Q. Shortly after that?

24 A. Yes.

25 Q. Okay. Does that refresh your recollection as to when
26 the LOTO box was potentially in the control room?

27 A. Yes.

28 Q. So it would have been sometime between 7:10 and 7:30;

1 is that fair?

2 A. Yes.

3 Q. Okay. Now, Mr. King testified that no one notified
4 him that the LOTO had been hung, correct?

5 A. That's correct.

6 Q. With the LOTO box and the LOTO sheet being in the
7 control room at 7:30 a.m., would you have expected Mr. King to
8 have noticed that that LOTO box and the LOTO sheet were there?

9 A. I would expect he would have been in out of that
10 control room multiple times.

11 Q. So it's fair to say he should have noticed that the
12 LOTO sheet and the LOTO box were there?

13 A. Yes.

14 Q. And in spite of the fact that no one notified him, he
15 would have been on notice that he needed to perform the role
16 of the work supervisor, correct?

17 A. Yes.

18 Q. To act as the work supervisor, you would have been
19 present at the plant when the LOTO was hung to verify it,
20 correct?

21 A. Yes.

22 Q. I hate to harp on this, but on 23 occasions there
23 were no unusual ventings, correct?

24 A. That's correct.

25 Q. Single vent every time?

26 A. Correct.

27 Q. No one was injured?

28 MR. BASILE: Objection. Asked and answered.

1 THE COURT: Overruled on those grounds.
2 Q. BY MR. REID: No one was injured?
3 A. That's correct.
4 Q. If I can have Exhibit 349, please.
5 What is this picture?
6 A. It's the final fuel filter assembly.
7 Q. Do you know which unit it's at?
8 A. I do not, not this picture.
9 Q. All right. These fuel filter assemblies are the same
10 for all eight units, correct?
11 A. That is correct.
12 Q. I'll just represent to you this is a picture of the
13 Unit 5 final fuel filter assembly. Fair enough?
14 A. Yes.
15 Q. These long red handles, do you see those?
16 A. Yes.
17 Q. Okay. And this lower pipe cover with installation,
18 that's the inlet side of the fuel filter, correct?
19 A. That's correct.
20 Q. And this filter, that's fuel filter itself, correct?
21 A. That's correct.
22 Q. And up on top here is the lid that came off, correct?
23 A. Yes.
24 Q. This pipe here is the outlet side, correct?
25 A. Correct.
26 Q. And this first valve, that's Isolation Valve Number
27 1; is that correct?
28 A. That's correct.

1 MR. BASILE: Objection. Lack of foundation and as to
2 point and time, Your Honor.

3 THE COURT: Sustained and also leading.

4 Q. BY MR. REID: When you first started at the plant in
5 that very first LOTO in 2014, can you identify Isolation Valve
6 Number 1?

7 A. Yes.

8 Q. And where is that?

9 A. It is the long, red handle valve running horizontal
10 on top of that pipe.

11 Q. So this is the handle that's on Isolation Valve
12 Number 1, correct?

13 A. That's correct.

14 Q. And the handle below that when you first started at
15 the plant, this here -- what was that isolation -- is that an
16 isolation valve?

17 A. That is Isolation Valve Number 2.

18 Q. All right. The one on the top here?

19 A. Discharge valve.

20 Q. Is that also known as "Isolation Valve Number 3"?

21 MR. BASILE: Objection. Vague and ambiguous as to
22 point and time. It was named.

23 MR. REID: I identified the time when he started at
24 the plant, Your Honor, the first LOTO.

25 THE COURT: Can you just be more clear?

26 Overruled, but don't lead on these -- on this series
27 of questions, please.

28 MR. REID: Yes, Your Honor.

1 THE WITNESS: Per the fuel filter assembly, that
2 would be Isolation Valve Number 3.

3 Q. BY MR. REID: At any point in time from the first
4 LOTO that was done in 2014 up until the date of the incident,
5 had that isolation valve on the outlet side ever been
6 identified as Isolation Valve Number 2?

7 A. No.

8 Q. Were you part of the investigation conducted by
9 Mr. Stanley after the incident occurred?

10 A. I was part of mainly the technical side of the
11 investigation, not the interviews or anything like that.

12 Yes, provide technical information and then give the
13 main, like, design criteria of the fuel house assembly for the
14 main investigation, yes.

15 Q. Did you speak to Albert Palalay after this incident?

16 A. Not as part of the investigation; as a coworker, yes.

17 Q. Did you speak to Robert Ward after this investigation
18 or after the incident?

19 A. Yes. But, again, same context.

20 Q. As a coworker?

21 A. Correct.

22 Q. Did you speak to Mike Delaney?

23 A. Yes.

24 Q. And you spoke to Jason King, correct?

25 A. Yes.

26 Q. And they all relayed to you their version of the
27 events that morning; is that correct?

28 A. That's correct.

1 MR. BASILE: Objection. That's hearsay, Your Honor.
2 Lack of foundation. Relevancy.

3 THE COURT: Sustained.

4 Can you go through them one by one?

5 MR. REID: Absolutely.

6 Q. BY MR. REID: Did Mr. Palalay relay to you his
7 version of the events of that morning?

8 A. Yes.

9 Q. Did Mr. King relay to you his versions of the events
10 of that morning?

11 A. Yes.

12 Q. Did Mr. Delaney relay to you his versions of the
13 events of that morning?

14 A. Yes.

15 Q. Did you talk to anyone else regarding the events of
16 that morning?

17 A. Yes.

18 Q. Who else did you speak to?

19 A. Ernie Jones, Tom Walker, Adam Cristodoulou, probably
20 more.

21 Q. You weren't present on the date of the incident,
22 correct?

23 A. I was not.

24 Q. Adam Chris Cristodoulou was there, correct?

25 A. Yes.

26 Q. And do you know what Adam was doing there that day?

27 A. He was there supervising the -- monitoring the
28 outage, really monitoring Jason King for a possible promotion

1 into plant manager.

2 Q. And at that point in time, Mr. Walker was getting
3 ready to retire; is that correct?

4 A. That's correct.

5 THE COURT: Mr. Reid, I apologize. We're going to
6 stop there --

7 MR. REID: Yeah, I was going -- we're on break --

8 THE COURT: -- for this afternoon. Would you like me
9 to read the stipulation this afternoon?

10 MR. REID: Yes, that's fine.

11 THE COURT: I know I was supposed to read it.

12 MR. REID: We're getting into that, so yes.

13 THE COURT: So I'll hold onto it?

14 MR. REID: Yes, please.

15 THE COURT: Members of the jury, we're going take our
16 -- as I mentioned earlier, we're going take an early lunch, so
17 if you can please come back at 1:30. We'll resume then.

18 Please do not discuss the facts of the case or any
19 parts involved with each or anyone. Have a nice lunch.

20 (Proceedings out of the presence of the jury as follows:)

21 THE COURT: Counsel, we are -- we will be in recess.
22 We'll see you at 1:15, so we're in recess now.

23 MR. REID: Thank you, Your Honor.

24 (Lunch Recess.)

25

26

27

28

1 JULY 20, 2022 - AFTERNOON SESSION

2 THE COURT: Okay. Let's formally go on the record in
3 Collins versus DG Corp. All counsel are present. All parties
4 are present with the exception of the Collins. Thank you for
5 coming back in a little bit earlier before we start. I passed
6 basically a disposition table with the joint trial binder.
7 We're past the 100 series. I wanted to give you an indication
8 on the 200 series and beyond and the substantive instructions
9 as to the cause of action that remains here. This is the
10 Court's tentative on most of these requested instructions.

11 There is a couple that had question marks on. So we
12 can discuss these on Monday. Just so you know you'll notice,
13 for example, I have a question mark next to 201. I'm not sure
14 what claim --

15 MR. REID: We'll withdraw that one at this point,
16 Your Honor.

17 THE COURT: Okay. We can discuss it next time we
18 have time.

19 MR. REID: We wanted it in there just in case.

20 THE COURT: Of course, I understand. 203, 204, I put
21 a question mark next to. That's what it means, 406
22 apportionment of responsibility. I looked at the proposed
23 verdict forms. The one that I have for defense, even though
24 there was the request for the Privett instruction, the one for
25 defense means to be more in line with the negligence claim of
26 negligent undertaking; however, they are different in some of
27 that language. The language I'm going to go with is the one
28 from the CACI instructions for 450C; however, one thing that

1 both sides seem to be, I guess, in agreement on, and the
2 Court's confused. Element Number five. There is a couple
3 elements in the the alternative. It's A, B, or C; however,
4 the verdict forms reflects all three of them now.

5 Mr. Sullivan.

6 MR. SULLIVAN: I believe the plaintiff's has the word
7 or in there. Maybe the defense is the other way.

8 THE COURT: Okay. So the reason I bring it up, I
9 wasn't sure if the parties wanted or plaintiff wanted to pick
10 one. If defense wanted to pick one. I know it's a special
11 verdict form you want to know the jurors thought process.
12 I'm not sure you're going to put, you know, you plead -- you
13 plead them in the alternative usually is what the evidence
14 will support.

15 MR. BASILE: They are all choices, or, or, or and how
16 we -- sorry. Excuse me, Your Honor. I don't have our one.

17 THE COURT: Since it's bracketed though, they don't
18 -- not all three need to be given, sometimes just one. Just
19 something to consider.

20 MR. BASILE: Okay. We'll talk about that.

21 THE COURT: Okay. And then finally, I guess, the
22 bigger issue is the apportionment of fault. I can tell you
23 now, I think it is reflected in the plaintiff's verdict forms.
24 The comparative fault instruction, I think that's reflected in
25 the table. 407 at this time that the Court does find that the
26 evidence would support some form of comparative fault
27 depending on how the jurors view credibility of some
28 witnesses. That's an instruction that must be given. So at

1 the very least there's comparative fault as to the decedent
2 Danile Collins; however, there's, defense verdict form has
3 GEMMA in there, I believe that's the equipment manufacturer.

4 MR. REID: The manufacturer of the plant, Your Honor.

5 THE COURT: The manufacturer of the plant and then
6 several other entities in there while a non party, a jury
7 can't apportion fault to a non party. The jury's
8 determination must be supported by the evidence. So that's
9 where the Court feels that some of those parties may not,
10 should not be on the verdict form.

11 The case has been narrowly tried. So I think that
12 should be reflected on the verdict form. Just so you know
13 where I'm going. It shouldn't be between DG Corp., certainly
14 DG Corp. and some comparative fault on the decedent. But Mr.
15 Reid and Mr. Schumann, if you want to join, I'll be looking
16 back to you, we're going to have apportionment of fault as to
17 other parties. What evidence would support that. I can tell
18 you now with GEMMA, I know it's been referenced here and
19 there. I don't know if the jury is a in position to allocate
20 fault to them based on what they heard.

21 MR. REID: Understood, Your Honor.

22 THE COURT: That's pretty much all I have.

23 Hopefully that will help kind of where we're going.

24 MR. REID: We just wanted to address the stipulation
25 just quickly.

26 MR. REID: It was our understanding this morning that
27 reading this stipulation would take care of Mr. Held's
28 deposition testimony or trial testimony. We just want to make

1 sure we heard correctly. They are willing to stipulate to the
2 foundation for the right way video, is that accurate?

3 MR. SULLIVAN: Yes.

4 THE COURT: That was the Court's understanding. The
5 way it should have been pursuant to the, I guess, recently
6 changed LOTO steps; however, there was the other one which
7 upon further consideration, based on 352 confusion of the
8 issues and possible misleading the jury, the Court will
9 exclude that, of course you're welcome to continue your
10 testimony.

11 MR. SULLIVAN: We can delete the reference to that
12 animation that's not going to be used. It's in the
13 stipulation, isn't that right, counsel?

14 MR. SCHUMANN: But not -- they we might have to
15 change the paid structure, the paid structure was for both.

16 MR. BASILE: What?

17 MR. SCHUMANN: Payment of 40,000 was to do both, it
18 wasn't just to do one of them.

19 MR. BASILE: No, that's how much he was paid.

20 MR. SCHUMANN: Yeah, to do both.

21 THE COURT: I hear the parties comments. Let me
22 know, Mr. Reid, my apologies to you, you were very clear. I
23 was supposed to read the stipulation, although now maybe it
24 happened for a reason, I was supposed to read this before the
25 witness's testimony. I did not. I apologize. Just let me
26 know if, it's your case, when you would like me to read the
27 stipulation and if there's any changes you'd like me, I can do
28 it by way of interlineation. I'm going to step off the bench.

1 I'll come back in two minutes before we let the jury in. Let
2 me know. If you want to talk with counsel that way I'm not
3 privy to your discusses.

4 MR. REID: Thank you, Your Honor.

5 (Pause in the proceedings.)

6 THE COURT: We're back on the record. Mr. Reid.

7 MR. REID: Yes, Your Honor. If you just read the
8 stipulation the way it is. We're not going to fight about
9 what's what. If you read it before he begins to testify
10 again, that's fine.

11 THE COURT: Leave it as it currently is. It's plural
12 as to animations.

13 MR. REID: That's fine, Your Honor. Thank you.

14 THE COURT: Okay. We're still on schedule to rest
15 today.

16 MR. REID: Yes, Your Honor.

17 THE COURT: Okay. And then, after the jury leaves,
18 we'll discuss our own schedule for Monday. Then remember they
19 are coming back on Tuesday.

20 Safe to say that we're not -- we're probably not
21 going to have too much time for me to start the 200
22 instructions with them, right?

23 MR. SCHUMANN: Today?

24 MR. REID: We might.

25 THE COURT: Maybe a brief recess, then we can talk
26 about it. I certainly won't finish them today. I can at
27 least get started with them.

28 MR. REID: Makes sense, Your Honor.

1 THE COURT: Okay. Let's see where we get. To take
2 your time. We did give you until Wednesday.

3 MR. REID: Thank you, Your Honor.

4 MR. BASILE: Your Honor, I think that's a great idea.
5 Might inquire if they can go later today.

6 THE COURT: Let's not push our luck, Mr. Basile.

7 MR. BASILE: Optimistic.

8 THE COURT: Thank you.

9 (Pause in the proceedings.)

10 THE COURT: Back on the record in Collins versus DG
11 Corp. All members of the jury are present. Hope everyone had
12 a nice lunch. We were able to get some work done here a
13 couple minutes before you came in. I apologize the Court
14 interrupted you when you were with Mr. Johnson.

15 MR. REID: Did you want to read that stipulation now,
16 Your Honor.

17 THE COURT: Of course.

18 MR. REID: Thank you, Your Honor.

19 THE COURT: So the parties entered into a
20 stipulation. What that means is they agreed to a certain set
21 of facts or something and this is always appreciated by the
22 Court. It means that witnesses don't have to come in to
23 establish this, if the parties agreed to this.

24 So the following is an agreement: A stipulation
25 between the parties. The parties stipulate that Brady Held,
26 core animation designer, was hired by attorneys through DG
27 Corp. to create animations marked as Exhibits 492 and 493.
28 The animations accurately depict the equipment at the plant

1 and how the valves operate. He was paid a total of \$40,675 to
2 create the animations.

3 To prepare the animations he visited the site on one
4 occasion to document the lay out of the plant equipment. All
5 the actions shown in the animation were supplied to him from
6 the information that came from Dennis Johnson through DG
7 Corp.'s attorneys. This was the only time he was asked to
8 create animations for the plant.

9 So that is an agreement between the parties, and that
10 means Mr. Held does not have to come in and testify to what I
11 just read to you in 30 seconds. That's always appreciated
12 from counsel to cooperate.

13 THE COURT: Mr. Reid, when you're ready.

14 MR. REID: Thank you, Your Honor.

15 Q. BY MR. REID: Exhibit 489, again, please. Tab for
16 the day of the incident.

17 All right. We discussed this Excel spreadsheet a
18 little this morning. This is the document that you prepared
19 by downloading information from the control rooms -- the
20 Historian, basically, correct?

21 A. That's correct.

22 Q. All right. At the top, we have gas pressure at the
23 filter skid, gas pressure at the gas turbine, correct?

24 A. That's correct.

25 Q. And that's based on readings from two sensors that
26 we've talked about with the jury already, but they are
27 basically one at the Skid and one inside the turbine package,
28 correct?

1 A. That is correct.

2 Q. All right. It's starts at 4:40 a.m., 775 PSI
3 approximately in both places, right?

4 A. That's correct.

5 Q. And that's the pressure when the -- when you're not
6 operating any turbines, correct?

7 A. That's correct.

8 Q. All right. So scroll down, please. The first
9 highlight.

10 6:10 a.m., The pressure increased up to a little over
11 900 PSI, and what's that an indication of?

12 A. That we have gas turbines coming online for
13 operation.

14 Q. And did you -- excuse me. Did you add that note to
15 the side of that, System pressure increased for normal plant
16 operations?

17 A. Yes, I did.

18 Q. That's based on your knowledge and experience of the
19 plant, correct?

20 A. That's correct.

21 Q. Scroll down to the next one, please.

22 All right. March 6th, 2017, 6:32 a.m. to 6:38 a.m.,
23 what is indicated there?

24 A. That is the venting process, so that's when they
25 would have been performing the venting at that final fuel
26 filter skid.

27 Q. And is this venting process unusual?

28 A. It is, yes.

1 Q. Why is it unusual?

2 A. It stopped only with -- after a short period of time,
3 and also there was pressure remaining at both pressure inside
4 and at the filter skid.

5 Q. Scroll down for me a little further. Next highlight.
6 There.

7 Dan Collins venting off gas inside the turbine
8 package. What is that comment based on?

9 A. So he was inside the filter skid, manipulating two
10 valves on that LOTO sheet which had to be opened and locked in
11 the open position. And when he did that, abnormal vent
12 occurred at the package.

13 Q. All right. So as of this one, we have two ventings
14 that are unusual, correct?

15 A. Correct.

16 Q. The first one was unusual because it shorted
17 duration?

18 A. Yes.

19 Q. And it doesn't vent all the way to zero, correct?

20 A. Yes.

21 Q. Scroll down a little further for me. Stop.

22 What is the indication on the right-hand side there?
23 "Bad," what does that mean?

24 A. So that is our plant historian giving the status
25 update that the indicator is bad, meaning it is not getting a
26 healthy indication from that sensor.

27 Q. And did this occur when Mr. Kim basically pulled the
28 plug on the package?

1 MR. BASILE: Objection. Lack of foundation.
2 Speculation.

3 THE COURT: Sustained.

4 Q. BY MR. REID: Do you know why this went bad?

5 A. During these outages, they were performing an upgrade
6 to network switches, so they were pulling out the old ones and
7 installing new upgrade ones. And Mr. Kim was awaiting for
8 confirmation that he could then shut the system down to let
9 that network assist system and begin his work.

10 Q. Did he receive confirmation that he can proceed?

11 MR. BASILE: Objection. Calls for speculation. He
12 was not even there that day.

13 THE COURT: I'm sorry. That last part, Mr. Basile?

14 MR. BASILE: Lack of foundation.

15 THE COURT: The last part was he wasn't there that
16 day?

17 MR. BASILE: I suggested foundation.

18 THE COURT: Okay. Overruled. If he knows.

19 THE WITNESS: Can you ask one more time? Sorry.

20 THE COURT: Would the court reporter read it back.

21 (The reporter reads record as requested.)

22 Q. BY MR. REID: Who did he receive that confirmation
23 from?

24 MR. BASILE: Same objection. Lack of foundation. No
25 personal knowledge.

26 THE COURT: Overruled.

27 THE WITNESS: From Dan Collins.

28 Q. BY MR. REID: When this bad signal occurred, what

1 would have happened with the emergency stop block valves?

2 A. They would have lost their control signals which
3 holds them in the normal position. They would have fell to
4 their fail-safe positions. So they would cycle, and there
5 would be a very large venting of gas.

6 Q. So that would have been the third venting of gas that
7 morning, correct?

8 A. That's correct.

9 Q. Do you know if Mike Delaney manipulated the vent
10 valves at the fuel filter skid on that morning?

11 A. He did.

12 Q. Would that have resulted in another venting of gas?

13 A. It did.

14 Q. Okay. So there were four gas ventings that morning,
15 correct?

16 A. That is correct.

17 Q. Okay. Did you assist in the preparation of an
18 animation showing the right way that this fuel system should
19 be vented?

20 A. Yes, I did.

21 Q. All right. Do you recall a gentleman named Brady
22 Held?

23 A. Yes.

24 Q. And who is Mr. Held?

25 A. He's a gentleman that came to take the drone shots
26 and to walk the system down with myself, so he had an
27 understanding.

28 Q. And did you show Mr. Held, the way the LOTO procedure

1 for the date of the incident, should have worked?

2 A. Yes.

3 Q. Did they also take photographs of the fuel filter
4 skid?

5 A. Yes, they did.

6 Q. And did they also use a laser scanner to record skid
7 and the surroundings?

8 A. Yes, they did.

9 Q. Was it your understanding that Mr. Held was going to
10 create a 3D image of the fuel filter skid and the related
11 equipment?

12 A. Yes.

13 Q. Did you review several versions of the right-way
14 animation?

15 A. I did.

16 Q. And did you provide corrections to Mr. Held?

17 A. I did.

18 Q. Did you review the final version of the right-way
19 video?

20 A. Yes, I did.

21 Q. And does that final version accurately depict how the
22 LOTO sheet that was being used in 2017 prior to the date of
23 the incident was used?

24 A. Yes.

25 MR. REID: Exhibit 492, this is the right-way video,
26 Your Honor.

27 THE COURT: Deputy Lee, I'm sorry. Could we lower
28 the lights in the well, please.

1 MR. REID: Permission to publish, Your Honor?

2 THE COURT: Yes.

3 MR. REID: Let's go ahead and play this through.

4 Would you stop for just a moment. Is this 492 or
5 493?

6 Thank you. You may proceed.

7 THE COURT: Take that down for a moment.

8 (Pause in the proceedings.)

9 Q. BY MR. REID: Mr. Johnson, is that a copy of the
10 final version that you approved?

11 A. Yes.

12 Q. And it depicts the installer and the verifier doing
13 the LOTO together, correct?

14 A. Yeah, it depicts the -- yeah, it shows the installer
15 doing all the work. Yeah, we put verifier there so that you
16 understand there's a verification step as well, yes.

17 Q. And there's been testimony that the installer and the
18 verifier should have been doing this job separately?

19 A. Correct.

20 Q. We showed the installer and the verifier together
21 because that's the way it was actually being done, correct?

22 A. That's correct.

23 Q. Okay. If you could put the video back up again,
24 please, the animation, Exhibit 492. Let's restart it. Can
25 you stop it and just scroll it forward? Let's roll forward to
26 Isolation Valve Number 1, which is Step 3. All right. Go
27 ahead and stop.

28 All right. Isolation Valve Number 1, is that

1 designed to isolate the fuel filter skid from the rest of the
2 gas pressure at the plant?

3 A. Yes, it is.

4 Q. Scroll forward a little bit. Show that valve closed.
5 Up until this point on the day of the incident --
6 Stop for me.

7 -- so up until this point based on the information
8 that you have, had everything been done in order? So Steps 1,
9 2 and 3 were done in order?

10 MR. BASILE: Objection. Lack of foundation.
11 Sanchez.

12 THE COURT: Sustained.

13 MR. BASILE: Calls for expert --

14 MR. REID: Your Honor, Mr. Johnson was designated as
15 a nonretained expert. I believe he has expertise in this
16 particular facility especially with this fuel filter skid.

17 THE COURT: One moment. It's unclear what
18 information he's relying on. He may be an expert but can only
19 relay on evidence that there's been proper foundation laid
20 for. I believe Mr. Palalay hasn't testified in few of the
21 other sources, so sustained.

22 MR. REID: Thank you, Your Honor.

23 Q. BY MR. REID: Based on your knowledge and experience,
24 when those vent valves are opened, does the system pressure go
25 to zero?

26 A. No.

27 Q. Okay. Maybe I'm not understanding.

28 What is the purpose of Final Vent Valve Number 4 and

1 Number 5?

2 A. I am sorry. I thought you were referring to the
3 actual this incident day. So, yes, the purpose of those two
4 valves, to vent the system down to zero pressure.

5 Q. And did that occur on the day of the incident?

6 MR. BASILE: Objection. Again, lack of foundation,
7 Your Honor.

8 THE COURT: Sustained.

9 MR. REID: Go ahead and scroll forward. Stop for me.

10 Q. BY MR. REID: The two gauges up in the upper
11 left-hand corner, what do those depict?

12 A. There's a local gauge right there at the filter skid
13 that's -- "local" meaning it's a visual via skid. And then
14 there's the -- what we call the "DCS gauge" or the digital
15 control system gauge which is just shown inside the control
16 room on the human machine interface screen.

17 Q. So the one on the left is meant to depict the
18 pressure gauge, which is actually on the fuel filter itself,
19 correct?

20 A. That's correct.

21 Q. And the one on the right is meant to depict the
22 readings from the two pressure sensors that are one at the
23 filter skid and one in the package, correct?

24 A. That's correct.

25 Q. All right. Proceed. Scroll forward to Step Number
26 9, please. Just scroll. That's fine and stop for me.

27 . And I apologize. This is a little dark. What is
28 this valve that's being depicted?

1 A. That is the package manual isolation valve which
2 would isolate gas to the skid itself or to the gas turbine.

3 Q. Okay. Scroll forward. Stop there, please.

4 What are the valves in Step 10 and 11?

5 A. The maintenance valves inside of a package are used
6 to open and leave that system vented to atmosphere.

7 Q. And if the system has been properly isolated and
8 depressurized, is there going to be any gas venting when those
9 involve valves are open?

10 A. No.

11 Q. Each one of these steps that we've shown, there's a
12 lock and a tag placed, correct?

13 A. That's correct.

14 Q. And that's to prevent that valve or switch from being
15 manipulated during the course of the outage, correct?

16 A. That's correct.

17 Q. For each step in the LOTO, is it important to
18 complete the step, place the log, and then the tag?

19 A. Yes.

20 Q. Should anyone be moving on without having the lock
21 and the tag placed?

22 A. No.

23 Q. Okay. Continue forward, please, to Step 14. So,
24 yeah. If you just want to scroll to that. Stop there,
25 please.

26 Step 3, closing of the first isolation valve, and the
27 two vent valves occurred sometime back in this procedure,
28 correct?

1 A. That's correct.

2 Q. So if there were any residual gas in the fuel filter,
3 it would have been vented by the time we got to this step,
4 Number 14, correct?

5 A. Yes.

6 Q. Do you have any knowledge of the isolation valve step
7 being moved down if the LOTO sheet for 2017?

8 A. As the course of the investigation, yes.

9 Q. Just finish the rest of it.

10 Step 15, that's the just the bypass valve, correct?

11 A. Correct.

12 Q. But is that the last step in the LOTO that has
13 anything to do with the fuel pressure in the system?

14 A. Yes, it is.

15 Q. Thank you. We can take down, please.

16 All right. And, again, once that final step is
17 done -- going a little further down than what we did with 15,
18 this work supervisor is going to walk that LOTO down, correct?

19 A. That's correct.

20 Q. And as part of that walk-down, he's going to verify
21 that the pressure at the gauge is actually at zero, correct?

22 A. Yes.

23 Q. And that's the gauge on the fuel filter, correct?

24 A. Yes.

25 Q. When you were doing the job of the work supervisor,
26 did you check gauge on the filter?

27 A. Yes.

28 Q. Did you also check the two gauge pressure readings in

1 the control room?

2 A. I did.

3 Q. Approximately how long did it take you to do a
4 walk-down?

5 A. A minimum of an hour.

6 Q. All right. And during that time, contractors are
7 waiting, correct?

8 A. Correct.

9 Q. But it's important that that walk-down be completed
10 before anyone starts working on the system, correct?

11 A. Yes.

12 Q. Exhibit 176, please. Is this SMP-3 procedure?

13 A. Yes.

14 Q. Is this the Lock Out/Tag Out procedure that was in
15 use on the date of the incident?

16 A. Yes.

17 Q. We talked earlier about the role of the installer,
18 the verifier, and the work supervisor, correct?

19 A. Yes.

20 Q. Based on what you reviewed and your part in the
21 investigation, did Daniel Collins perform the installer role
22 correctly on the day of the incident?

23 A. No.

24 Q. Did Albert Palalay perform the verifier role
25 correctly on the day of the incident?

26 A. No.

27 Q. Did Jason King perform the work supervisor role
28 correctly on the day of incident?

1 A. No.

2 Q. If the LOTO procedure in use on the day of the
3 incident had been performed correctly and in order --

4 (Reporter clarification.)

5 Q. BY MR. REID: And in order, would there have been an
6 accident?

7 A. No.

8 MR. REID: That's all I have for the moment,
9 Your Honor.

10 THE COURT: Thank you, Mr. Reid.

11 Mr. Basile, cross-examination.

12 MR. BASILE: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. BASILE:

15 Q. Mr. Johnson, you were the first witness I called in
16 this case. Do you remember that?

17 A. Yes.

18 Q. That was back on June 29th, right?

19 A. Yes.

20 Q. Now, since June 29th -- I don't want to know anything
21 about conversations or anything, but how much time have you
22 spent speaking with these lawyers?

23 A. Very little.

24 Q. Very little. What's "very little? E-mail traffic?

25 A. I've not spoken to them in person, no.

26 Q. You sent e-mails back and forth?

27 A. Some e-mails about when we're going to be showing
28 up --

1 Q. And --

2 A. -- what time to be here, what to expect; if possibly
3 might be showing up at a certain day and time, yes.

4 Q. Okay. A couple of questions about this animation.
5 It shows a lot of different systems that were
6 included in that LOTO sheet; is that true?

7 A. Yes.

8 Q. And the there's no separate energy control procedure
9 for just the fuel filter skid that day; isn't that true?

10 A. That is correct.

11 Q. Now, Exhibit 258, please.

12 Those -- well, on your animation that you showed, it
13 had the installer and verifier going out together on that
14 animation, right?

15 A. It did.

16 Q. That's wrong, isn't it?

17 A. That's -- per the procedure is wrong, correct.

18 Q. Okay. So your animation was wrong?

19 A. No. The animation depicted how it was being done
20 successfully --

21 Q. Okay.

22 A. -- up until the incident.

23 Q. But they are not supposed to go out to together,
24 though --

25 A. No.

26 Q. -- right?

27 Now, did you hear when the judge read the stipulation
28 that Diamond Generating Corporation's lawyers spent over

1 \$40,000 on these animations? Did you hear that?

2 MR. REID: Argumentative, Your Honor. It's been
3 stipulated to.

4 MR. BASILE: It's cross-examination.

5 THE COURT: Sorry. Overruled.

6 Q. BY MR. BASILE: Did you hear that, sir?

7 A. Yes.

8 Q. Now, before Daniel Collins was killed, did Diamond
9 Generating Corporation ever hire a videographer or a video guy
10 like Mr. Held to come out?

11 MR. REID: Argumentative --

12 Q. BY MR. BASILE: -- to make a training video like
13 that?

14 MR. REID: -- argumentative, Your Honor. Cumulative
15 to the stipulation.

16 MR. BASILE: It's cross.

17 THE COURT: Overruled.

18 If you know, Mr. Johnson.

19 THE WITNESS: Yeah, I don't recall.

20 Q. BY MR. BASILE: Well, based on your experience,
21 there's been no training videos made like that there?

22 A. Not that I recall.

23 Q. So 258, we've looked at this. I'm not going to take
24 a lot of time. But those valves weren't clearly marked, were
25 they?

26 MR. REID: Vague and ambiguous as to time,
27 Your Honor.

28 MR. BASILE: On the day that this happened?

1 THE WITNESS: No.

2 THE COURT: Sustained. Sustained.

3 And then reask your question, Mr. Basile.

4 Q. BY MR. BASILE: They weren't clearly marked the day
5 this happened?

6 A. No.

7 Q. You agree, right?

8 A. I agree to what?

9 Q. You agree that the valves on the day this happened
10 were not clearly marked?

11 A. I agree.

12 Q. Okay. Now, let's talk about that near miss just a
13 little bit. It's your testimony that how it worked that day
14 was that the -- you were notified that the LOTO had been
15 installed, and you were doing your walkthrough, and you caught
16 that there was still pressure in the tank, right?

17 A. I did not catch that there was pressure in the tank.

18 Q. Okay. You heard something being released?

19 A. Correct.

20 Q. And this was after you had -- or while you were doing
21 your walk, right?

22 A. During the time of doing the walk, yes.

23 Q. And no one is supposed to be out there doing any work
24 until you do your walk, right?

25 A. They can be -- they are setting up. They are moving
26 tools in locations, ladders in locations.

27 Q. But no one can be actually doing work until you've
28 made it all clear, right?

1 A. Breaching the systems. Setting up for -- preparing
2 for work, yes.

3 Q. Right. But no one can start that work until you've
4 given the all-clear, right?

5 A. That's correct.

6 Q. And then that's when they sign onto the LOTO sheet,
7 right?

8 A. That's correct.

9 Q. After you've given your all-clear, right?

10 A. Yes.

11 Q. So no one should be signing onto that sheet until
12 after you give your all-clear, right?

13 A. No one should put their lock on until they're all
14 clear.

15 Q. Okay. Or the purpose of LOTO sheet is to -- for
16 people to sign on that they are going to do work -- right? --
17 on it?

18 A. Yeah. Then you match the lock to the signature, yes.

19 Q. Right.

20 A. That's one of the work supervisor's jobs.

21 Q. And that's done after you've done your "clear,"
22 right?

23 A. The lock, yes.

24 Q. Okay. Let's look at Exhibit 220, please. Just the
25 top.

26 Now, this is the one from that day. Do you see that,
27 sir, from the day of the near miss?

28 A. Yes.

1 Q. An you were the work supervisor?

2 A. Correct.

3 Q. And you have to clear this before anyone can sign on,
4 right?

5 A. That is correct.

6 Q. Okay. Let's look at the signatures to see when
7 people were signing on. Can you go down to the Juan Gonzalez?
8 And they list what task they are going to do, right?

9 A. That is correct.

10 Q. And where is Mr. Gonzalez?

11 A. Right there.

12 Q. Do you see what time he signed on?

13 A. 1400.

14 Q. Yeah. And you just told us that no one is supposed
15 to sign onto this until after you do your walk, right?

16 A. Correct. Nobody did.

17 Q. Well, I thought I understood you that no one can go
18 out and do work until you've given the all-clear. No one can
19 sign onto the sheet until you given the all-clear.

20 MR. REID: Asked and answered.

21 THE COURT: Overruled.

22 Q. BY MR. BASILE: Isn't that what you told us a few
23 minutes ago?

24 A. I clarified that people will go set up their work
25 sites before getting the all-clear to breach the system.

26 Q. So you're saying all these people from 1745 -- you
27 see times on the right? 5:54 in the morning. Do you see
28 that?

1 MR. REID: Misstates the evidence as to when they
2 signed on, Your Honor.

3 MR. BASILE: I'm sorry. I'm in the wrong column.
4 On the sign-on column. James, show that down there.

5 THE COURT: Sustained.

6 If you can clarify the question, please --

7 MR. BASILE: Yeah. James, can you show that? The
8 time signed on. Yeah, get that column up there. Time signed
9 on. Not date, time.

10 Q. BY MR. BASILE: Do you see people were signing on
11 from 8:27 in the morning to 10:40? To 2:00 o'clock in the
12 afternoon, Mr. Gonzalez is signing on? Do you see that?

13 A. I do see that.

14 Q. So are you telling us that they would go sign on, sit
15 there with all of their equipment and wait all that time, then
16 for you to give the okay?

17 MR. REID: Argumentative.

18 THE COURT: Overruled.

19 THE WITNESS: I don't understand your question.

20 Q. BY MR. BASILE: Well, as I understand this LOTO
21 procedure, the work supervisor, after it's hung, is supposed
22 to go through all of those steps that's shown on the animation
23 before anybody can do any work, right?

24 A. That is correct.

25 Q. And before anybody can do any work, they gotta sign
26 onto this LOTO sheet, right?

27 A. Correct. The first person signed on at 0827 in the
28 morning.

1 Q. Right. And you would have completed your walkthrough
2 by the time they sign on, right?

3 A. That is correct.

4 Q. Okay. So then you would have completed your
5 walkthrough when this near miss occurred?

6 A. No. I'm doing my walkthrough much earlier than 0827
7 in the morning. Again, Mr. Juan Gonzalez was setting up much
8 earlier than 2:00 o'clock in the afternoon to do his job. So
9 that near miss was caught before anybody was signed on. The
10 installer has done his job. The verifier had verified the
11 job. Tony was setting up in the area. He bumped it. There
12 was pressure. There was not a single lock on that box yet.

13 Q. Do you see under "Juan Gonzalez" what his task was
14 that day? Change the filters?

15 A. Okay. Yes.

16 Q. And as I understood your earlier testimony, when you
17 heard that gas going off, that that's when you were doing your
18 walkthrough. Isn't that what you told us earlier?

19 A. Yes.

20 Q. But it's -- Mr. Gonzalez is doing that -- signed on
21 at 2:00 o'clock in the afternoon.

22 A. I guess I'm not being very clear here, so I answer?

23 THE COURT: Okay. Please answer.

24 And then just wait for him to finish, Mr. Basile,
25 before moving on.

26 Yes, Mr. Johnson. Please go ahead.

27 THE WITNESS: He signed on to go back to do that job,
28 the actual job, when everything had been put in the safe

1 state.

2 Hours after the near miss occurred after the valves
3 had been remanipulated, he didn't even go back to do the
4 actual job until 1400 in the afternoon. This was not when he
5 was there for the first time when I was doing my walk-around.

6 Q. BY MR. BASILE: Well, doesn't he have to sign onto
7 the LOTO when he goes out there the first time?

8 A. I've explained they set up. He was setting up a
9 ladder. He was setting up his tools. He was not breaching
10 the system working under the LOTO.

11 Q. So if you walk through at 8:27 or whatever it was in
12 the morning, that's when you said the near miss occurred?

13 A. 8:27 is when the first person signed on. The near
14 miss occurred quite a bit earlier than this.

15 Q. Do you have any records of that?

16 A. Of when the near miss occurred?

17 Q. Right.

18 A. No.

19 Q. You just figure that's when it happened?

20 A. Nobody can sign onto this LOTO until I give my okay.

21 Q. Okay.

22 A. My okay was not given until that near miss was fixed.

23 A. These LOTOs are installed very early in the morning.
24 As you can see by all the tags, usually finished by about 7:00
25 in the morning. This would show that it was probably an hour
26 and half after that LOTO was installed until the first person
27 was signed on, giving plenty of time to get those locks back
28 off, get the valves remanipulated, and get it put back in a

1 safe state.

2 Q. Could you page-down, James, on this?

3 So on Mr. Gonzalez, you're saying that when he went
4 -- at 2:00 o'clock, that's after everything had been corrected
5 and straightened out. That's what you just told us, right?

6 A. That's what I said.

7 Q. Okay. Let's show down below that the dates and times
8 James, please. Below Gonzalez; below Gonzalez. The dates and
9 times below Gonzales. On down, enlarge that please.

10 Do you see Mr. Gonzalez's line up there? It's 3/13,
11 -14 at the top?

12 A. I do.

13 Q. And then nothing started up again until the next day,
14 3/14. Isn't that what it's saying?

15 A. What do you mean by "started up"?

16 Q. Well, what I'm saying is you're telling us when the
17 near miss occurred, you had to shut everything down before you
18 could start back up, right?

19 A. What "start up"?

20 Q. Gonzalez taking the lid off and doing the work.

21 A. He started that job. From the looks like, he signed
22 on on 3/14 at 1400.

23 Q. And what was date of the near miss?

24 A. On 3/3/14.

25 Q. Well, do you see the date that he signed in on at,
26 3/13?

27 A. What do you mean "3/13"?

28 Q. 3/3. I'm sorry. I got the slashes. I meant "3/3."

1 Do you see he signed in -- it's counting the slash --

2 MR. REID: Argumentative, Your Honor.

3 Q. BY MR. BASILE: He signed in -- let me straighten
4 this out?

5 Mr. Gonzalez signed this on 3/3/14. Forget the 13.
6 My mistake. 3/3/14. Do you see that?

7 A. Yes.

8 Q. It never started up again until the next day, on
9 3/4/14; isn't that true?

10 A. I don't understand your question by "it didn't start
11 up." What didn't start up? What are you asking?

12 Q. The work on this LOTO. It's 3/4. Isn't that dated
13 3/4 for all those people signing on the LOTO -- from
14 Mr. Gonzalez on down?

15 A. There's multiple days for an outage. It goes on for
16 multiple days. That's everybody signing the next morning.
17 That's why you'll see them signing on very early.

18 The LOTO was completed the day before, so that day of
19 3/4, they can come in, they sign back onto that LOTO for that
20 day. They are not waiting for anything to be completed. So
21 they get out pretty early as. You can see, 0545 to 6:00 a.m.

22 Q. So it just so happened that when Mr. Gonzalez had
23 that near miss on 3/4 at 2:00 o'clock in the afternoon, it
24 just so happened that no one else was going to sign on until
25 the next day, according to this sheet, right? That's what the
26 sheet indicates, right?

27 MR. REID: Objection. Argumentative.

28 THE COURT: Only if you understand, Mr. Johnson.

1 Overruled.

2 THE WITNESS: This sheet does not indicate that. And
3 I have explained when the near miss occurred. It did not
4 happen at 1400.

5 Q. BY MR. BASILE: I know that's based on your memory,
6 right?

7 A. Yes.

8 Q. Okay. There's no records of what happened, right?
9 Right?

10 A. Right.

11 Q. And this sheet as far as when people sign onto the
12 LOTO, the last person on the 3rd to sign onto this LOTO was
13 Mr. Gonzalez, right?

14 A. Yes.

15 Q. Then no one else signed onto the LOTO until the next
16 day; isn't that true?

17 A. Correct. They were all signed on already, as you
18 could see on the day.

19 Q. We'll let the document speak for itself.

20 MR. SCHUMANN: Argumentative. Motion to strike.

21 THE COURT: I don't think anything can be stricken
22 from the record, but sustained.

23 MR. BASILE: Thank you, Your Honor.

24 Q. BY MR. BASILE: Exhibit 255, please.

25 Now, this is that skid, right?

26 A. That is a package.

27 Q. The package, yeah. Here is the skid right here, the
28 fuel filter skid, right?

1 A. Yes.

2 Q. And we've already gone over with your animation how
3 workers would have to go throughout this and hanging the LOTO,
4 correct?

5 A. Yes.

6 Q. Now, there's a gauge near the turbine package to
7 measure the pressure around the turbine package, up around
8 here; isn't that true?

9 A. For the fuel pressure?

10 Q. No. The turbine over there. Isn't there a gauge up
11 here?

12 A. To measure what? I'm sorry. I didn't understand
13 your question.

14 Q. Well, there's a gauge near the turbine package,
15 inside the turbine package -- right? -- to measure the
16 pressure in the gas line, right?

17 A. So "near" and "inside" are different. But there is
18 an actual transmitter inside the turbine package to relay
19 pressure to the control room.

20 Q. But there's a gauge in there, right?

21 A. Can you explain what you mean by "gauge" so I answer
22 correctly.

23 Q. Well, there's a gauge that someone could look at in
24 the turbine package that could read zero pressure in the
25 turbine package; isn't that true?

26 A. No.

27 Q. Then let's -- there was unusual venting that day,
28 right?

1 A. Yes.

2 Q. And I think you testified there was, like, four
3 unusual ventings, correct?

4 A. That's correct.

5 Q. And in a safe system when this high-pressure stuff
6 being shutdown, if there's something unusual that happens, the
7 whole system should be stopped and figured out was going on;
8 isn't that true?

9 A. That is true.

10 Q. And to your knowledge, that was never done that day?

11 A. That's correct.

12 Q. Could we have Exhibit 219 beside Exhibit 361.

13 This is the LOTO sheet right here, correct? Do you
14 see it?

15 A. In the upper left?

16 Q. Yes.

17 A. Yes.

18 Q. And --

19 MR. REID: It's vague and ambiguous as to the day,
20 Your Honor -- the date of the LOTO sheet.

21 Q. BY MR. BASILE: Can you see the date on any of those
22 columns? Get close enough. I believe this is 3/14 -- or
23 3/3/14. Do you see that, sir?

24 THE COURT: The objection is sustained --

25 Q. BY MR. BASILE: Do you see where it says 3/3/14 for
26 this LOTO sheet?

27 A. Yes, I do.

28 Q. And your testimony to the jury is that ISO Valve

1 Number 2 was always this one down here on the right; is that
2 correct?

3 A. That is correct.

4 Q. Now, and it followed in order ISO Valve 1 is to be
5 closed first, right?

6 A. That's correct.

7 Q. So that would be this valve I just closed here,
8 right?

9 A. Yes.

10 Q. Ask then, ISO Valve 2 is to be thrown next, correct?

11 A. That is correct.

12 Q. So then that would be this valve?

13 A. I don't see where your pointing.

14 Q. There, right (indicating)?

15 A. Yes.

16 Q. And that would drain the gas out the vents in this
17 area ,right? Is that correct?

18 A. By closing -- sorry.

19 Q. Right there. I mean --

20 A. By closing Isolation Valve Number 2, nothing would
21 drain.

22 Q. Right. Nothing would drain right there. The only
23 thing that would drain would be between this and the vent
24 valves, correct?

25 A. That's correct.

26 Q. So there still would be pressure in the tank, right?

27 A. That is correct.

28 Q. Okay. Let's go to Exhibit 219. Leave that up next

1 to 358.

2 Now, if the procedure is close ISO Valve 1 here --
3 you follow me? Right there.

4 MR. REID: Objection. Lacks foundation. Calls for
5 expert witness testimony.

6 THE COURT: Overruled. If he knows.

7 Q. BY MR. BASILE: Do you see ISO Valve 1 being closed
8 there?

9 A. Yes.

10 Q. Then if you close ISO Valve 2 up here, do you see
11 that?

12 A. Is this just like a scenario or --
13 (Multiple speakers.)

14 Q. BY MR. BASILE: Yeah. Yeah, I'm doing it right now.

15 THE COURT: Mr. Basile?

16 MR. BASILE: I'll let him answer. I'm sorry.

17 THE COURT: Please slow down and make sure the
18 witness is following along. You're moving ahead.

19 Mr. Johnson, if you need a question reasked, please
20 let the attorney know.

21 MR. REID: Madam reporter, did you get his answer?

22 (The reporter reads record as requested.)

23 Q. BY MR. BASILE: Mr. Johnson, on this scenario, this
24 ISO valve was closed here, right? Do you follow me? Right
25 hear.

26 A. Yes.

27 Q. And then in this scenario -- let's close this valve
28 up here.

1 This is supposed to be 219 by 358, James.

2 In this scenario, ISO Valve 1 is closed. Do you
3 follow me?

4 A. Yes.

5 Q. And then this ISO Valve 2 is closed, right? Do see
6 that?

7 A. In what scenario?

8 Q. In this scenario I'm going through right now.

9 A. You're walking me through a scenario, so...

10 Q. Right.

11 A. Okay?

12 Q. I want you to follow me on this. ISO Valve 1 is
13 closed. Do you see that? Then this ISO valve on the top here
14 is closed. Following me?

15 A. I don't understand why that's called "ISO Valve 2" on
16 top. And is this a scenario -- a "what if" scenario? Or...

17 Q. I'll ask the questions. Okay? This is a -- okay.
18 Call it a "what if" scenario, whatever you want to call it.

19 This valve up here closed. Okay?

20 THE COURT: Mr. Basile, we're going to wrap up this
21 line of questioning very shortly.

22 MR. BASILE: Yes, I am.

23 Q. BY MR. BASILE: This here is closed. You follow me?

24 A. Yes.

25 Q. And then these two vents valves are open. Do you see
26 that?

27 A. Yes.

28 Q. And that would drain all the pressure from this

1 system; isn't that true?

2 A. The system remains pressurized from the filter house
3 into the gas -- or into the gas turbine.

4 Q. Well, when you say "from the filter house," you mean
5 from here into the gas turbine, right?

6 A. Which would be the system, so --

7 Q. Right.

8 A. -- this has only depressurized the final fuel filter
9 skid.

10 Q. That's my point. This would depressurize the final
11 fuel filter skid, right?

12 A. In this is scenario, which I've never seen this done
13 in industry before.

14 Q. Okay. I understand what your telling us. Thank you.
15 Now, just a couple more.

16 Exhibit 60, please.

17 When you took over as plant manager, you wrote this
18 e-mail to everyone, right?

19 MR. REID: Objection, Your Honor. Subsequent
20 remedial measures.

21 MR. BASILE: It's already in evidence, Your Honor.

22 THE COURT: Overruled.

23 Q. BY MR. BASILE: You wrote that to everybody, right?

24 A. I wrote that to people that were on the list, yes.

25 Q. Yes. And we talked about this when I called you as
26 our first witness. Remember?

27 A. Yes.

28 Q. And you said that you had a very common concern

1 brought to your attention in the wake of the events of
2 March 6th, and that was that everybody does everything
3 different. You wrote that, right?

4 A. Yes, I did.

5 Q. And you said that was a direct result of management
6 without leadership, right?

7 A. Yes.

8 Q. And you've told us that safety has to start at the
9 top, right?

10 A. Yes.

11 Q. And you agree that the thing that would have
12 prevented this from occurring would have been a reminder on
13 the sheet that required operator to actually record the
14 pressure before they start to remove the lid; isn't that true?

15 A. Actually, I disagree that the one, as you asked it --
16 and I tried to explain that it would be more than one thing
17 that would prevent an accident like this --

18 Q. Did you --

19 A. I'm sorry. Go ahead.

20 Q. Did you testify in your deposition that you agree
21 that the thing that would have prevented this from occurring
22 would have been a reminder on the sheet that required the
23 operator to actually record the pressure before they start to
24 remove the lid?

25 A. No, I did not. I agreed to one of those things, if
26 that was one of the things.

27 MR. BASILE: 224, 11 through 16, Your Honor.

28 THE COURT: It looks like we previously read from

1 this, Mr. Basile?

2 MR. BASILE: Yeah.

3 THE COURT: Go head.

4 Q. By MR. BASILE: Okay. You agree that at least one of
5 the things that would have prevented this from happening was
6 that there would be a line on the sheet that would require the
7 operator to actually record the pressure before they start to
8 remove the lid. That's one of the things that would have
9 prevented this, don't you agree?

10 A. In combination with others.

11 Q. But that's one of things that would have prevented
12 this?

13 A. In combination.

14 MR. BASILE: Your Honor, I'd like to read that now.

15 THE COURT: 11 through 16.

16 MR. BASILE: Thank you.

17 "Question: The things that would have prevented this
18 from occurring, one of them would have been the reminder on
19 the sheet that required the operator to actually record the
20 pressure on the pressure gauge on the tank before they start
21 to remove the lid; is that right?

22 "Answer: Correct."

23 Q. BY MR. BASILE: And you agree that a warning should
24 be on the filter tank, advising the operator to check the
25 pressure gauge before attempted to remove the lid. Don't
26 agree with that?

27 A. Another one of those things.

28 Q. And you agree that Mr. Stanley -- you reviewed his

1 report, right?

2 A. I'm sorry?

3 Q. You reviewed Mr. Stanley's root cause analysis?

4 A. I did.

5 Q. And in general, you agree with his findings?

6 A. In general.

7 Q. And you agree that there was a safety systems failure
8 in this case?

9 A. Yes.

10 MR. BASILE: Thank you. Nothing further.

11 THE COURT: Redirect?

12 MR. REID: Yes, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. REID:

15 Q. Exhibit 264, page 29.

16 This is the equipment Lock Out/Tag Out sheet for
17 3/3/2014, correct?

18 A. Yes.

19 Q. And scroll down for me. Let's go to page 31, please.
20 Enlarge that top one for me.

21 And this is the Lock Out/Tag Out sign-in sheet that
22 you were being shown by Mr. Basile; is that correct?

23 A. That's correct.

24 Q. And this LOTO was hung on March 3rd of 2014, correct?

25 A. That's correct.

26 Q. Can you look four lines down from the top for me?
27 Highlight that. Next one up. Yeah, that one.

28 Is that Mr. Gonzalez's signature?

1 A. Yes, it is.

2 Q. So he actually signed onto the LOTO at 8:30 to
3 replace the filters, correct?

4 A. SLO filters. That's a different system, synthetic
5 lube oil filter.

6 Q. And just below that it says "and" what?

7 A. Starter filters.

8 Q. Okay. So he'd actually signed onto the system
9 earlier in the day than was represented to you by Plaintiffs'
10 counsel, correct?

11 A. That's correct.

12 Q. And when he signs on down father, that's actually the
13 second time he signed onto the system, correct?

14 A. That is correct.

15 Q. So in between those initial signs-ons or, at least,
16 after you had complete your walk-down, work was stopped,
17 correct?

18 A. That is correct.

19 Q. The system was depressurized?

20 A. Yes.

21 Q. And work started again; is that correct?

22 A. Well, work never began. But yeah.

23 Q. Well, thank you. Words are important. Thank you.
24 So work never began because you stopped it, correct?

25 A. Correct.

26 Q. Okay. And then these sign-ons are after work had
27 been stopped and the problem had been corrected, correct?

28 A. That is correct.

1 Q. Go to Exhibit 358, please. Yeah, that one.

2 All right. You were just shown this exhibit by
3 Plaintiffs' counsel, correct?

4 A. That is correct.

5 Q. And you testified earlier in the day that the
6 isolation valve on the outlet side of the filter has never
7 been identified as Isolation Valve 2, correct?

8 A. That is correct.

9 Q. And when he walked you through this scenario, this is
10 a scenario that never occurred at the plant, correct?

11 A. No.

12 Q. Is that correct? I'm sorry. I asked a bad question.
13 Did this scenario ever occur at the plant?

14 A. No.

15 Q. And you can say that with certainty, correct?

16 A. Absolutely.

17 Q. Okay. In your walking down the LOTO system, you're
18 checking the tags on each valve, correct?

19 A. That's correct.

20 Q. Was there -- was the outlet side isolation valve,
21 which is labeled 2, ever used in any of the LOTOs?

22 A. No. Prior to the incident, no.

23 Q. Prior to the incident, it was never used, correct?

24 A. Correct.

25 Q. So there was never a tag on that valve, a red LOTO
26 tag, correct?

27 A. That's correct.

28 Q. And the isolation valve, the second isolation valve

1 on the inlet side is always where you found the isolation or
2 the LOTO tag for Isolation Valve Number 2; is that correct?

3 A. That is correct.

4 Q. Do you know if DGC OPS had workers' comp insurance in
5 place at that time?

6 MR. BASILE: Objection. Relevancy. Beyond the
7 scope.

8 THE COURT: Sustained.

9 Q. BY MR. REID: Let's go to Exhibit 60, please.
10 Enlarge the lower portion, please.

11 This was an e-mail that you wrote to the employees at
12 the Sentinel plant; is that correct?

13 A. That is correct.

14 Q. And you when you were discussing management and
15 management without leadership, you were referring to Jason
16 King and Tom Walker; is that correct?

17 MR. BASILE: Objection. That's leading, Your Honor.

18 THE COURT: One moment.

19 Sustained.

20 Q. BY MR. REID: When you were talking about management
21 without leadership, who were you talking about?

22 A. Local plant management.

23 Q. And who was that at the time of this incident?

24 A. Tom Walker and Jason King.

25 MR. REID: Nothing further, Your Honor.

26 THE COURT: Mr. Basile.

27 MR. BASILE: We're satisfied, Your Honor.

28 THE COURT: Thank you, Mr. Johnson.

1 Mr. Reid.

2 MR. SCHUMANN: We rest, Your Honor.

3 THE COURT: Okay. And we'll discuss it subject to
4 any new exhibits, correct?

5 MR. SCHUMANN: Yeah.

6 THE COURT: Thank you.

7 Okay. Members of the jury, both sides have rested.
8 Each day when you've left, we've stayed after for a bit and
9 gone through the exhibits, so both side have rested with
10 subject to the admission of exhibits that have been introduced
11 during the course of trial.

12 What we're going to do now in order to get a head
13 start on next week, we're not coming back tomorrow -- correct?
14 -- Juror Number 9?

15 TJ09: Correct.

16 THE COURT: We need you. So we're not coming back
17 tomorrow. And then we're not -- we won't be here on Monday,
18 so we may resume on Tuesday at 10:00 a.m. Okay.

19 In order to get a head start on that, though, I think
20 I'm going read some -- start with the jury instructions.
21 There's a quite a bit to read, but I can at least start with
22 some of the introductory ones and then conclude that on
23 Tuesday, and then counsel will have additional time so they
24 could, at least, hopefully conclude their closing arguments on
25 Tuesday.

26 So I'm going ask now if we can take a brief recess.
27 Let's go to -- a little bit longer to make make sure we have
28 the Jury Instructions 255.

1 Juror Number 9?

2 TJ09: You said you were going to read us jury
3 instructions. Will the jury instructions be available to us
4 in the jury room?

5 THE COURT: Yes. I keep a separate tab. My
6 courtroom supervisor did provide copies, and you'll have that.

7 A lot of this is procedure and just the way it's
8 done, so I will read them. They will be part of the record,
9 but you'll also have your copy. I know it's difficult to
10 memorize them. I would be surprised if anyone could, so
11 excellent question.

12 So 2:55, if everyone could return. Okay?

13 (Proceedings outside of the presence of the jury as follows:)

14 THE COURT: And we're now outside the presence of the
15 jury. Both sides have rested. Well, I should have asked,
16 Mr. Basile, Mr. Sullivan, I apologize, any rebuttal?

17 MR. BASILE: Yes, Your Honor. Just kidding.

18 THE COURT: I was about to go ask. So the only new
19 exhibit was 492. I believe based on our discussion this
20 morning that was going to be demonstrative.

21 MR. REID: That's correct.

22 THE COURT: It won't be admitted.

23 THE CLERK: 219 and 220, Your Honor.

24 THE COURT: 219, Mr. Basile mentioned 219. So I was
25 confused about that as well. I believe that's just 361, which
26 is the combination of both of them or was 219 was that
27 intent --

28 MR. SULLIVAN: It was a new exhibit side-by-side with

1 an existing exhibit.

2 MR. BASILE: 219 is LOTO.

3 THE COURT: So 219 next to 361, then another one next
4 to 358 since 358 has been introduced, so 361 I thought that it
5 was just a good misspoken.

6 MR. SULLIVAN: So 219 had not been used it. It was a
7 new one. We wanted it to be for the same near miss date, we
8 subbed out with the other one that was in there. We would
9 like 219 and 220 to be admitted.

10 THE COURT: Mr. Reid.

11 MR. REID: No objection, Your Honor. They are
12 duplicative of what's in 264.

13 THE COURT: Okay. 219 and 220 will be admitted.
14 Okay. We'll have a final list for you in terms of which
15 exhibits have been admitted, which ones will go to the jury,
16 which ones will reserve for -- there's a request to see them
17 again or hear them again. In terms of the instructions, if we
18 can review 200, here in the next couple minutes. So 201 is
19 withdrawn.

20 MR. REID: 201 is withdrawn, Your Honor.

21 THE COURT: Thank you. 203.

22 MR. BASILE: Yes, we both are requesting that.

23 MR. SCHUMANN: I don't think there's any evidence.

24 THE COURT: I was trying to figure out how this
25 instruction would apply.

26 MR. BASILE: Yeah, Your Honor. It applies in light
27 of the e-mail chains for, first of all, where it's discussed,
28 and also Mr. Kromer was mentioned, Adam Aaberg was mentioned.

1 None of them had been called to testify. No records had been
2 produced on any of those other things. We were at a loss
3 right where it is. I think it should be given just for those
4 reasons alone. Mr. Sullivan had a couple additional reasons.

5 THE COURT: I'm worried. I want to make sure you're
6 not shifting the burden. Mr. Reid, Mr. Schumann.

7 MR. SCHUMANN: We don't have to call anyone at all
8 at any point in time, really, if we don't want to.

9 THE COURT: It's law 101 principal.

10 MR. SCHUMANN: So, there's been no testimony that
11 anything was missing, you know, at all.

12 MR. BASILE: I specifically asked Mr. Johnson this
13 afternoon about any records of his recording the near miss or
14 anything like that, and in addition to this, I think they the
15 use notes might be a guide to the Court.

16 THE COURT: Request will be denied. If there was
17 something questioning, if defense had questioned that some
18 evidence that plaintiff was relying on, quite inferior and
19 then they could, you know, they could produce stronger
20 evidence. Instead, they are just questioning your, quote
21 inferior evidence, but I think what you're suggesting is more
22 you're trying to shift the burden over to them. I think we
23 need to be careful with that. Mr. Sullivan.

24 MR. SULLIVAN: Only comment I'd make, Your Honor,
25 there was testimony from a couple people about all this
26 training of that was allegedly received and there is no
27 records of any of that training. And it just seems rather
28 convenient that the witnesses would get up there and say that

1 it existed, when everyone has testified if there's training,
2 there's a record that's created. There was 45,000 pages of
3 documents produced, they were gone through by our expert.
4 There was no records of any of that training. I think for
5 that purpose, I think the instruction should be allowed.

6 THE COURT: Mr. Schumann.

7 MR. SCHUMANN: That expert who specifically said he
8 only perused some of them, he had chose not to read 45,000
9 pages, himself, that's their problem.

10 THE COURT: I don't think you're precluded from
11 making that argument, but the instruction will be denied, even
12 though it looks like both sides were requesting it, defense is
13 withdrawing; is that correct?

14 MR. REID: Yes.

15 THE COURT: This will be over plaintiff's objection,
16 Mr. Sullivan.

17 MR. SULLIVAN: Yes, Your Honor.

18 THE COURT: Okay. 204.

19 MR. SCHUMANN: We don't think it's needed.

20 THE COURT: Mr. Sullivan?

21 MR. SULLIVAN: At this point, I don't think the
22 evidence supports it, Your Honor.

23 THE COURT: Thank you. So that will be denied or
24 withdrawn. Then we have evidence submitted for limited
25 purpose.

26 MR. BASILE: Failure to explain or deny is given.

27 MR. SCHUMANN: I don't see any evidence that comes up
28 regarding 206, Your Honor.

1 MR. SULLIVAN: That would have been applicable if we
2 got into remedial measure there to show control, but that
3 never happened.

4 THE COURT: 207.

5 MR. REID: I'm sorry, Your Honor, 206 is denied?

6 THE COURT: Correct.

7 MR. REID: It's withdrawn.

8 THE COURT: By both sides, correct?

9 MR. REID: Yes, Your Honor.

10 THE COURT: Mr. Sullivan?

11 MR. SULLIVAN: Yes.

12 THE COURT: 207.

13 MR. SCHUMANN: I don't remember there being any such
14 evidence discussed or any explanation by the Court either on
15 207.

16 THE COURT: Mr. Sullivan.

17 MR. SULLIVAN: I don't recall any.

18 THE COURT: Okay. So it's not being requested by
19 either party. It won't be given. 209.

20 MR. SCHUMANN: I don't think anyone used.

21 THE COURT: That will be withdrawn. 406 is the one
22 we still need to address with the verdict form. In its
23 current form, I think it may be overbroad. We may have some
24 use for 406, unfortunately it depends who we're going to
25 include in there based on the evidence that this jury has been
26 presented.

27 MR. SCHUMANN: Sure.

28 MR. REID: Can we hold that for Monday, I assume.

1 counsel giving you arguments and then the Court reading the
2 instructions. Kind of get these out of the way. You'll have
3 them as you mentioned, Juror Number 9, you'll have these back
4 in the jury room. So you can all review. Okay.

5 Obligation to prove, more likely true than not true.
6 The parties must persuade you by the evidence presented in
7 court that what they are required to prove is more likely to
8 be true than not true. This is referred to as the burden of
9 proof. After weighing all of the evidence, you cannot decide
10 that something is more likely to be true than not true. You
11 must conclude that the party did not prove it. You should
12 consider all of the evidence, no matter which party produced
13 the evidence.

14 In criminal trials the prosecution must prove that
15 the defendant is guilty beyond a reasonable doubt. But in
16 civil trials, such as this one, the party who is required to
17 prove something needs to prove only that it is more likely to
18 be true than not true.

19 Direct and indirect evidence. Evidence can come in
20 many forms. It can be testimony about what someone saw or
21 heard or smelled. It can be an exhibit admitted into
22 evidence. It can be someone's opinion. Direct evidence can
23 prove a fact by itself. For example, if a witness testifies
24 she saw a jet plane flying across the sky, that testimony is
25 direct evidence that a plane flew across the sky. Some
26 evidence is proves a fact indirectly. For example, if a
27 witness testifies that he saw only the white trail that jet
28 planes often leave. This indirect evidence is sometimes

1 referred to as circumstantial evidence. In either instance
2 the witness's testimony is evidence that a jet plane flew
3 across the sky. As far as the law is concerned, it makes no
4 difference whether evidence is direct or indirect. You may
5 choose to believe or disbelieve either kind. Whether it is
6 direct or indirect, you should give every piece of evidence
7 whatever weight you think it deserves.

8 Failure to explain or deny evidence. If a party
9 failed to explain or deny evidence against them when they
10 could reasonably be expected to have done so based on what
11 they knew, you may consider their failure to explain or deny
12 in evaluating that evidence. It is up to you to decide the
13 meaning and importance of a failure to explain or deny
14 evidence against that party.

15 During the trial you received deposition testimony
16 that was read from the deposition transcript or shown by
17 video. A deposition is the testimony of a person taken before
18 trial. At a deposition, the person is sworn to tell the truth
19 and questioned by the attorneys. You must consider the
20 deposition testimony that was presented to you in the same way
21 as you would consider testimony given in court.

22 A party may offer into evidence any oral or written statement
23 made by an opposing party outside of the courtroom. When you
24 evaluate evidence of such a statement, you must consider these
25 questions. Do you believe that the party actually made the
26 statement? If you do not believe that the party made the
27 statement, you may not consider the statement at all. If you
28 believe that the statement was made, do you believe it was

1 reported accurately? You should be view testimony about an
2 oral statement made by a party outside of the courtroom with
3 caution.

4 During the trial you have heard testimony from expert
5 witnesses. The law allows an expert to state opinions about
6 matters in the expert's field of expertise, even if the expert
7 had not witnessed any event involved in the trial. You do not
8 have to -- sorry. You do not have to accept an expert's
9 opinion as with any other witness, it is up to you to decide
10 whether you believe the expert's testimony and choose to use
11 it as a basis for your decision. You may believe all, part or
12 none of an expert's testimony. In deciding whether to believe
13 an expert's testimony, you should consider, A, the expert's
14 training and experience; B, the facts that the expert relied
15 on; and C, the reasons for the expert's opinion.

16 Experts questions containing assumed facts. The law
17 allows expert witnesses to be asked questions that are based
18 on assumed facts. These are sometimes called hypothetical
19 questions. In determining the weight to give to the expert's
20 opinion that is based on assumed facts, you should consider
21 whether the assumed facts are true.

22 Conflicting expert testimony. If the expert
23 witnesses disagreed with one another, you should weigh each
24 opinion against the others. You should examine the reasons
25 given for each opinion and the facts and other matters each
26 witness relied on. You may also compare the expert's
27 qualifications.

28 Opinion testimony of a lay witness. A witness who is

1 not testifying as an expert, gave an opinion during the trial.
2 You may but are not required to accept that opinion. You may
3 give the opinion whatever weight you think appropriate.
4 Consider the extent of the witness's opportunity to perceive
5 the matters on which the opinion is based, the reasons the
6 witness gave for opinions and the facts and information on
7 which the witness relied on in forming that opinion. You must
8 decide whether information the witness relied was true and
9 accurate. You may disregard all or any part of an opinion you
10 find unbelievable, unreasonable or unsupported by the
11 evidence.

12 That's all we have for today. There's a couple
13 instructions that we're still finalizing, we'll have those for
14 you on Tuesday. Did I miss anything in the 200 series?

15 MR. REID: No, Your Honor.

16 MR. BASILE: No, Your Honor.

17 THE COURT: We'll see everyone back Tuesday. Please
18 enjoy the remainder of the week and your weekend and we'll see
19 you, 12 of you back on Tuesday at 10:00 a.m., and we'll be
20 ready to go for you. Okay. Thank you. Please do not discuss
21 the facts of the case or any parties involved with each other.
22 You're almost there or with anyone else, thank you.

23 (Pause in the proceedings.)

24 THE COURT: We're outside the presence of the jury.
25 We're going to close up here. Just review the 400, I've --
26 there's a couple things that you can see that 413, 414, 432,
27 were denied. If you want to bring those back up, let me know
28 on Monday morning. But based on at least what the Court

1 recalls I didn't see that they were warranted in this matter.
2 Same thing with 434. And then 460. If I recall, 460 was
3 something that was addressed at the MSJ. I believe that was
4 one of the causes of actions, correct, Mr. Sullivan?

5 MR. SULLIVAN: Yes.

6 THE COURT: That was -- the MSJ was granted as to
7 that cause of action.

8 MR. SULLIVAN: Yes.

9 THE COURT: That was denied. All the premises
10 liability 1,000 series, for reasons we mentioned before.
11 3933, supposed we may revisit, depending on the verdict form.
12 And then 3964 I believe was requested by defendant, but I'm
13 inclined to give that instruction. Then I inserted 5007, it
14 wasn't originally on the disposition table, but I already read
15 it once. That was on the -- by defense's request.

16 MR. REID: Thank you, Your Honor.

17 THE COURT: And then I just drew a line separate.
18 Obviously the deadlock instructions, I'm not going to read
19 those unless we get there.

20 MR. REID: Makes sense.

21 THE COURT: Then same thing with poling the jury.
22 I'll give 5018. 5019 I denied because we didn't give CACI
23 112. I think we discussed initially whether we were going to
24 give it. We decided maybe within the -- we didn't want to
25 open Pandora's box to the jury instructions since 112 was not
26 given. 5019 will not be given. Then, 5021, I don't think
27 there's any electronic evidence that's going to be presented
28 to them where they need a laptop to operate something.

1 So what I can see now, the verdict form, and that
2 instruction number 406 that really should be where we should
3 -- I think it's going to be important for us to focus our time
4 and energy to try to get it right. So am I missing something
5 or is there a large elephant in the room I'm not seeing here?

6 MR. SULLIVAN: No.

7 MR. SCHUMANN: If I can make a -- if I can make a
8 record, Your Honor.

9 THE COURT: Of course, Mr. Kim.

10 MR. SCHUMANN: In terms of denial, premises liability
11 jury instructions.

12 THE COURT: Of course.

13 MR. SCHUMANN: If I can just reiterate to the Court
14 that our client believe the Court might be making this
15 error --

16 THE COURT: Counsel, you need to speak up. There's a
17 printer going on back here.

18 MR. SCHUMANN: Okay. Sorry. Just making my record.
19 DGC believes the Court is making serious error refusing to
20 instruct on Privett. We think it could lead to reversal of
21 the judgment. It appears that the two primary reasons for
22 Privett not applying to this case were in DGC's minds
23 considered properly, the Court included that because DGC was a
24 parent company, it was not entitled to a Privett protection.
25 We had not found any case that holds the parent company,
26 though as part owner of the higher, would not have the Privett
27 protection. We do not see the reason to deny the parent
28 entity the same benefits of Privett, where it has inherently

1 paid worker's compensation benefits, et cetera.

2 We believe that it's improper or incorrect to deny
3 the benefits of Kensman (phonetic) because warnings about
4 hazards don't filter down to Mr. Collins. It is the
5 contractor here that DGC OPS that has the duty to protect its
6 employees, and if the contractor DGC OPS fails to warn of a
7 dangerous condition known to it, DGC OPS, or recently
8 discovered by that contractor, then the entity or entities
9 that hired that contractor was not liable for the contractors
10 omission or failing to warn its own employees. Thank you,
11 Your Honor.

12 THE COURT: All right. Anything further,
13 Mr. Schumann?

14 MR. SCHUMANN: No. That was it, Your Honor.

15 THE COURT: I think the Court made its record of
16 course obviously I don't think any court wants to
17 intentionally do anything improper. Interesting issues
18 presented. Most of the cases having to do with the
19 relationship of the parent corporation, subsidiary, at least
20 the court found a lot of them were federal cases relied on by
21 California courts. So I've already stated the reasons. I do
22 feel this was different. I don't think DG Operations, DGC
23 Operations is a contractor. It's a subsidiary. This is an
24 ongoing relationship, not just for one particular project. I
25 think there was a Caltrans case cited in defendant's moving
26 papers. There was a Qualcomm case cited, all of those were
27 large one time projects of the Court made its distinction on
28 that. But not a frivolous issue. Certainly, interesting and

1 complex issue here, but the Court made it's ruling the other
2 day. The motion is still denied. Anything else you want it
3 add?

4 MR. SCHUMANN: That was it, Your Honor. Thank you
5 very much.

6 THE COURT: Mr. Basile, anything further?

7 MR. BASILE: Thank you, Your Honor.

8 THE COURT: Please, gentlemen, take care of
9 yourselves.

10 MR. SCHUMANN: Every day, I look, there's one
11 missing.

12 THE COURT: We need you here on Tuesday.

13 MR. BASILE: Monday.

14 THE COURT: Sorry, Monday.

15 MR. SULLIVAN: What time would you like us here,
16 Your Honor.

17 THE COURT: Ordinarily, this would be one of those
18 things I would say, don't come in on time. Just come in at
19 10:00. We always start at at 10:00, still okay?

20 MR. SCHUMANN: Yes, Your Honor.

21 THE COURT: Then we can start at 10:00, but please be
22 prepared to address those issues, the verdict forms. I know
23 you have your tech people, have the verdict form on Microsoft
24 Word or something, so that if we need to make edits while
25 we're here, we can finalize it here, not have to go, well,
26 I'll do it back at my office. Whatever version you bring,
27 it's not going to be the final version. We'll collaborate and
28 come up with that together.

1 MR. SCHUMANN: You prefer to have our techs here on
2 Monday.

3 THE COURT: Not your tech but have a Microsoft Word
4 version for your -- for the verdict forms.

5 MR. SCHUMANN: Yes.

6 THE COURT: We're just doing it, scratching things
7 off, then it may be incorrect, that way if you have it here,
8 we can e-mail it into us, we can collaborate on it together.

9 MR. REID: Understood, Your Honor. Thank you.

10 THE COURT: Thank you.

11 MR. REID: Take care.

12 THE COURT: We are in recess.

13 (Proceedings adjourned.)

14 (Next Volume and Page number is Volume 14, Page 2401.)

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REPORTER'S CERTIFICATE

DENISE COLLINS; CHRISTOPHER COLLINS,)	
)	
Plaintiffs,)	
)	
vs	)	Case No. PSC1901096
)	
CPV SENTINEL ENERGY CENTER, LLC,)	
MOTT MACDONALD, LLC, GEMMA POWER)	
SYSTEMS, LLC, and DOES 1 to)	
15, Inclusive,)	
)	
Defendants.)	
)	

I, Demetria Bischoff, Certified Shorthand Reporter No. 12602, hereby certify:

On July 20, 2022, in the county of Riverside, state of California, I took in stenotype a true and correct report of the testimony given and proceedings had in the above-entitled case, pages 2205 - 2330, and that the foregoing is a true and accurate transcription of my stenotype notes and is the whole thereof.

DATED: Palm Springs, California, April 13, 2022.



Demetria Bischoff, CSR NO. 12602

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COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT - DIVISION TWO
APPEAL FROM THE SUPERIOR COURT OF RIVERSIDE COUNTY

-oOo-

DENISE COLLINS; CHRISTOPHER)
COLLINS,) DCA NO. E080233
)
Plaintiffs/Respondents,) Riverside County
) Case No. PSC1901096
vs.)
) Volume 14 of 19
DIAMOND GENERATING CORPORATION,) Pages 2401-2494
) (2495-2600 Blocked)
Defendant/Appellant.)
_____)

REPORTER'S TRANSCRIPT OF APPEAL
BEFORE THE HONORABLE MANUEL BUSTAMANTE DEPARTMENT PS2
JULY 25, 2022

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SUPERIOR COURT - STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

DENISE COLLINS; CHRISTOPHER COLLINS,)	
)	
PLAINTIFFS,)	
	)	Case No. PSC1901096
v.)	
)	
CPV SENTINEL ENERGY CENTER, LLC; MOTT MACDONALD, LLC; GEMMA POWER SYSTEMS, LLC; and DOES 1 to 15, Inclusive,)	
)	
DEFENDANTS.)	
)	
)	

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS

BEFORE THE HONORABLE MANUEL BUSTAMANTE

July 25, 2022

(APPEARANCES OF COUNSEL ON NEXT PAGE.)

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1 PALM SPRINGS, CALIFORNIA; JULY 25, 2022

2 MORNING SESSION

3 --o0o--

4 THE COURT: Good morning.

5 COLLECTIVE: Good morning, Your Honor.

6 THE COURT: On the record here, Collins vs. DG
7 Corp. Just one moment. I'm trying to get the real-time
8 set up.

9 (Pause in proceedings.)

10 THE COURT: Okay. We're on record, Collins vs.
11 DG Corp. All counsel are here. Good morning. Welcome
12 back, Mr. Basile, Mr. Sullivan, Mr. Schumann, Mr. Reid.

13 MR. REID: Thank you, Your Honor.

14 THE COURT: How was your weekend?

15 MR. REID: Good.

16 MR. SCHUMANN: All work, no play.

17 THE COURT: So I've experienced all different
18 phases of the desert summer if you weren't familiar
19 before. So welcome to the latter stage.

20 MR. REID: The monsoon.

21 THE COURT: Yes. I prefer the dry heat, as
22 they say.

23 Okay. So we left off last week with we were
24 going to come back to the verdict forms and then revisit
25 CACI 450C. So let's take a look at 450C first and then
26 we can go and finalize the verdict form.

27 So was there any agreements reached on the form
28 of 450C?

1 MR. SCHUMANN: No, Your Honor.

2 THE COURT: So one of the Court's inquiries
3 last time was on Element Number 5. It's -- there's --
4 it can be pled in the alternative there. It's A, B or
5 C. I noticed that it looked like, on the verdict form
6 at least, that all three were listed on there as well,
7 on the instruction you want me to read to the jurors.

8 Any thoughts, Mr. Sullivan?

9 MR. SULLIVAN: Yes, Your Honor. In looking at
10 the use notes and the case law that developed 450C, it's
11 pretty clear that the party, if they're pursuing that
12 type of claim, needs to just prove one of those
13 particular elements. Given the state of the evidence,
14 we believe that there's evidence that supports a finding
15 for each one of the alternatives that are listed there.
16 And since it's only required that we prove one in order
17 to prevail on our case, we want to make sure that the
18 jury has the opportunity to see all of the alternatives
19 and consider all of the alternatives when they make
20 their decision in this case.

21 THE COURT: So your request would be to leave
22 in the "or"?

23 MR. SULLIVAN: Yes.

24 THE COURT: That DG Corporation failure to
25 exercise reasonable care was a substantial factor in
26 causing Daniel Collins' death, and either that failure
27 to use reasonable care added to the risk of harm, or
28 Diamond Generating Corporation services were rendered to

1 perform a duty that DGC Operations owed to the workers
2 at the Sentinel Energy Center, or that Daniel Collins
3 was killed through the DGC Operations, or Daniel Collins
4 relied on Diamond Generating Corporation's services.

5 MR. SULLIVAN: Yes, Your Honor.

6 THE COURT: Mr. Reid, I'm looking at the
7 version that your office submitted now, although it
8 doesn't look like...

9 No, it looks like -- looks -- I don't have any
10 specific defense motion on 450C. It's just premises
11 liability and the ultrahazardous activities in the 400s.

12 MR. REID: I'm sorry, Your Honor. You didn't
13 receive all of the...

14 THE COURT: I didn't receive any proposed
15 language on 450C, but I have a joint as to request --
16 joint instruction as to it. And then under defense ones
17 there's certain instructions that defense requested, but
18 I don't see -- I don't see it in there. There's four --
19 there's --

20 MR. REID: Well --

21 THE COURT: Sorry.

22 MR. REID: -- Your Honor, we left it alone,
23 understanding that we believed they would have to pick
24 one. But -- and we're also concerned about the
25 rendering services language still too.

26 THE COURT: I'm cross-referencing that now with
27 the CACI instructions. So that's what I was looking at,
28 But I wanted to see what language you had proposed.

1 MR. SCHUMANN: Your Honor, part of the problem
2 for us with 450C was we still don't know what service it
3 is that we are supposed to have rendered, and I think
4 they have to pick it. They have to tell the jury what
5 is that service. It can't just be a "service,"
6 quote/unquote. That could be anything in the world.
7 They can't undertake everything in the world. You have
8 to -- when you -- if there's an undertaking, you have to
9 state what that specific undertaking was. So once that
10 "service," quote/unquote, has been decided, then I think
11 that'll eliminate two of the "or" sections under
12 Subsection 5.

13 THE COURT: The bench notes say, "Select one or
14 more of the three options for Element 5 depending on the
15 facts." According to Mr. Sullivan, he's selecting --
16 wants to select all three.

17 MR. SCHUMANN: And we don't think C has --
18 there's not any facts to C, for sure. Daniel Collins
19 was killed because Operations, or Collins relied on our
20 client's alleged services. There's been no testimony
21 that Ops or Collins relied on anything coming from our
22 client. There's been the opposite testimony, that Ops
23 was in charge of safety, training, et cetera.

24 THE COURT: So the Court's okay with the first
25 one, 5(a), that failure to use reasonable care added to
26 the risk of harm. I mean, again, I'll leave this to the
27 other judicial officers and members of the bar that
28 formulated these instructions. So I'm not going to

1 question their language. That's for pay grades above
2 mine, but it seems like it's pretty broad language as to
3 (a). So I don't -- it's going to be hard to get around
4 that the evidence, you know, couldn't arguably fit into
5 that one, that failure to reasonable care added to
6 the -- added to the risk of harm is pretty -- I would
7 say a pretty broad scope there.

8 So, (b), that "Diamond Generating Corporation
9 services were rendered to perform a duty that DGC
10 Operations owed to third persons." So they -- so
11 plaintiff has said put "workers." So the only
12 modification I would see with 450C(b), the second one,
13 render the duty that DGC Operations -- and I do think
14 the evidence supports that -- owed to Sentinel Energy
15 workers, including Daniel Collins. That would be the
16 Court's proposed revision to that.

17 MR. SULLIVAN: Plaintiffs would agree with
18 that, Your Honor.

19 THE COURT: And I'm just trying to keep it as
20 close to the CACI instructions as possible. Once we
21 really start to tinker with the language there, we're
22 creating even more issues. Mr. Reid?

23 MR. REID: Your Honor, during the argument on
24 the motion for nonsuit, you pointed out two particular
25 areas that you were concerned about: the fact that
26 they -- not so much that they hired, but they were
27 supervising the plant manager, and then that they
28 provided safety policies.

1 I went through yesterday the allegations of
2 what plaintiffs claim our client performed. There's 12
3 separate things, including those two. Rendering
4 services is so broad and it doesn't comply with the case
5 law, which is specific task. So I don't know how we
6 phrase this a little differently to communicate that.
7 There should be some limitation as we can't -- you know,
8 they can't hold us responsible for 12 separate things
9 when it's supposed to be a specific task. That's why
10 that rendering services language is a struggle somewhat.

11 THE COURT: The language for all three of them
12 is pretty -- it doesn't -- let's just put it this way:
13 It doesn't appear to be narrowly tailored. But again,
14 I'm not trying to revise the CACI instructions. They
15 seem pretty broad. However, going to your point about
16 those services, I took those more as factors, is the way
17 I took those in terms of whether the -- let me go back
18 to my notes here -- whether it exceeded the type of
19 practice that would -- one would normally not expect in
20 a corporation/subsidiary relationship -- or sorry,
21 parent corporation to subsidiary.

22 It's not dispositive, but exercising day-to-day
23 control over employment decisions, I think there has
24 been arguably some evidence that it looks like DG
25 Corporation was involved in some of the aspects,
26 particularly employment decisions, that the -- it does
27 appear there was some evidence that DG Corporation and
28 DG Operations were in some way interrelated to where DG

1 Corporation exercised greater control over DG Operations
2 from that which a parent corporation would normally
3 exercise over its subsidiary. And none of these alone
4 the Court found were dispositive.

5 And then another factor, but not dispositive in
6 and of itself, is that it did appear that the two
7 corporations, DG Corporation and DG Operations, did
8 appear to have some degree of common management. At
9 least that -- even with -- among some of the witnesses,
10 it appeared that DG Corporation employees were ipso
11 facto DG Operation employees and vice versa. I think --
12 no, I'm sorry, it's the other way around, that DG
13 Operations employees, even some of them were under the
14 belief that they were DG Corporation employees even
15 though their actual titles were with a subsidiary.

16 MR. REID: Well, again, Your Honor, you just
17 listed three potential factors.

18 THE COURT: I'm quoting from case law. I
19 haven't --

20 MR. REID: Understand. I understand, Your
21 Honor.

22 THE COURT: But I'm just taking -- I'm
23 substituting the party names in those cases for the
24 party names here. So -- but...

25 MR. REID: And the jury isn't going to have the
26 benefit of that filtering that you've just conducted.
27 So that -- again, that's our concern. This is such a
28 broad -- such broad language, rendering services, and

1 it's inconsistent with the case law that's specific to
2 this negligent undertaking.

3 THE COURT: What would you propose, then,
4 Mr. Reid?

5 MR. REID: Well, we would propose one specific
6 task, but --

7 THE COURT: Well --

8 MR. REID: -- if we're going to call it
9 "several," then it's going to be, you know, Diamond
10 Generating -- or Diamond Generating Corporation failed
11 to exercise reasonable care in supervising the plant
12 manager and providing safety policies.

13 THE COURT: So if we go back to Element
14 Number 1, that DG Corporation voluntarily or for a
15 charge rendered services to DGC Operations, again, so
16 it's not just 5 -- Element 5 and these alternates. It's
17 the whole instruction.

18 MR. SCHUMANN: It is.

19 THE COURT: So I understand. And I mean,
20 it's hard -- as a preliminary matter, I understand
21 you're opposed to the whole instruction. But once we're
22 past there, then what do you propose?

23 MR. SCHUMANN: Well, there has to be a link
24 between the alleged undertaking and the incident. So,
25 so what if we undertook -- let's -- I'll bring an
26 extreme. We under -- we brought water to the plant
27 every day. Okay. Well, that would -- that's part of
28 one of those 13 that they have listed, but that's

1 irrelevant whether we undertook that compared to what
2 happened. So the allegation is we failed to -- we
3 undertook safety and failed to keep him safe. Well,
4 that's a link -- that could be a link to Mr. Collins'
5 death. Whether we failed to properly interview and do
6 an annual review of Mr. Walker, that has zero to do with
7 how or why he died, right?

8 So they want to list all the bad things
9 allegedly and they all tally up somehow, but that's a
10 negligence cause. That's a negligence instruction.
11 That's just you were just negligent and here's all the
12 things you were negligent about. An undertaking -- I
13 mean, every time you read about the undertaking, it's --
14 it's just like the Good Samaritan. You get to a scene,
15 you try and help someone and then you kill them. Well,
16 that's what this instruction is in a commercial sense.
17 You take over some kind of act affirmatively, not
18 hanging out in the air, oh, there was an e-mail about
19 safety. Well, that's not an affirmative act of taking
20 over safety, right?

21 What is the affirmative act that we're supposed
22 to do? We don't even know from the defense side. We
23 don't know what we allegedly undertook. I can't even
24 argue to the jury -- I don't know what I have been
25 alleged to have undertaken, not yet. I guess I'll know
26 tomorrow, I'll hear about it. But the instructions
27 somehow for us has to say what it is we specifically
28 allegedly undertook and --

1 THE COURT: What about substituting -- I'm
2 sorry, Mr. Schumann.

3 MR. SCHUMANN: No, that's fine, just ranting.

4 THE COURT: No, no, no, you're brainstorming.
5 Go, please. Was there anything else?

6 MR. SCHUMANN: No, I think that covers it.

7 THE COURT: Okay. No, I hear your concerns,
8 and as I mentioned, the scope kind of -- it doesn't --
9 it definitely doesn't appear to be narrowly tailored.
10 But that is an instruction here. I'm trying to, you
11 know --

12 MR. REID: Well --

13 THE COURT: -- merely to apply -- I'm -- in my
14 role, I'm merely to apply the law.

15 MR. REID: Yes.

16 THE COURT: Like I said, I want to take out
17 "merely," but I'm supposed to apply the law. So this is
18 the law I'm looking at. I -- your concern from a
19 logical point of view, that -- it does resonate with me.

20 MR. SCHUMANN: I think it normally -- this
21 instruction normally applies in a situation. Like
22 normally it's a situation. Something happened, a thing
23 happened, and therefore the instruction is easy to
24 understand. It's one item or two items. Here, it's
25 this broad, touchy-feely thing that we allegedly
26 undertook.

27 THE COURT: Isn't it the safety of the plant
28 that the DG Corporation, I mean, couldn't decide whether

1 hey, we're going to run this or we're not. I mean, they
2 kept coming in and out, and ultimate -- that allegation
3 is ultimately they were too involved.

4 MR. SCHUMANN: Then say that. Then say safety
5 at the plant.

6 THE COURT: So I was going to -- and I'm sorry,
7 when I interrupted you a second ago, I was going to
8 suggest what if we substitute or do something with
9 rendering services? And services is the term that keeps
10 being repeated in the elements and we substitute
11 services with something in terms of safety.

12 MR. SCHUMANN: That's what we would ask, that
13 the services, exactly, is the one that needs to be
14 specific.

15 THE COURT: That would seem to narrow it down a
16 little bit more without also, I think, impairing your
17 ability to argue, Mr. Basile and Mr. Sullivan, because
18 we're trying to modify this instruction to this
19 particular situation. But it does leave, you know, a
20 little bit to be desired in terms of narrowing the scope
21 of the jurors' task.

22 MR. SULLIVAN: Well --

23 MR. BASILE: What's the proposal?

24 THE COURT: Sorry, Mr. Sullivan.

25 MR. SULLIVAN: I would say that we would be
26 opposed to changing any of the language because this is
27 an instruction that has been around a long time. It
28 comes directly from a Supreme Court case in the State of

1 California, and the problem that they seem to have is
2 actually covered by the subsections. You know, the jury
3 is entitled to look at all the evidence and make a
4 determination as to whether or not they rendered
5 services. Then they need to look at those services that
6 they decided that they -- they determined were provided
7 and make a determination. Were those services of the
8 type that they should have recognized that they were
9 needed for the protection of the workers at the plant.

10 Now it's starting to get narrowed down based
11 upon the analysis that the jurors are doing as part of
12 the instruction itself. It then goes further and talks
13 about did they exercise those services in an
14 unreasonable manner or did they exercise them
15 reasonably. Again, it's narrowing it down, it's
16 focusing on those services. There's plenty of room for
17 them to make their arguments about, you know, if they
18 don't believe that they overtook safety and that they,
19 you know, didn't involve themselves, that they can argue
20 those particular points in there.

21 And then the last three are like the coup de
22 grace as it relates to, all right, have we narrowed this
23 down specifically enough so that we satisfy all the
24 elements with -- with respect to a negligent undertaking
25 theory.

26 So I think that we're just asking for trouble
27 if we want to try to modify what has been an established
28 jury instruction that's been around for a long time that

1 clearly gives the jurors a road map to follow in order
2 to determine -- or determine whether or not DG Corp.
3 should be responsible in this case.

4 THE COURT: Thank you, Mr. Sullivan. I
5 disagree with that last part that the Element Number 5
6 kind of tailors it all down. Number 5 basically throws
7 a bunch of options on the board and tells the jury just
8 pick one. So I don't think that's tailoring it down. I
9 think that's really giving, you know, multiple choices
10 here.

11 MR. SULLIVAN: All right.

12 THE COURT: So --

13 MR. SCHUMANN: Can I just add, Your Honor --

14 THE COURT: Mr. Schumann.

15 MR. SCHUMANN: -- on the use notes, that 450C
16 is based on the Paz case.

17 THE COURT: I see that, yes.

18 MR. SCHUMANN: All right. So it says that the
19 Court said the negligent undertaking is sometimes
20 referred to as the Good Samaritan rule by which a person
21 generally has no duty to come to the aid of another and
22 cannot be liable for doing so unless the person's aiding
23 acts increased the risk to the person's -- to the person
24 aided or the person aided relied on the person's actions
25 or aiding. So that, again, goes to there is a specific
26 fact that occurs, not a broad allegation of all kinds of
27 factors.

28 What is the act? We don't know yet what this

1 alleged act is. If they want to say failed to provide
2 safety or undertook safety at the plant, okay. Then
3 they can bring in whatever evidence they want to bring
4 in that they believe proves safety. But it has to be
5 some word other than "service," right? Because it's not
6 that we provided service. We provide plenty of
7 services. They'll find we provided services, obviously.
8 We obviously did.

9 THE COURT: Which are inherent in a parent
10 corporation/subsidiary relationship.

11 MR. SCHUMANN: And thus we lose immediately.
12 So -- but they have to prove something like the Good
13 Samaritan rule. You pull the guy out of the burning
14 car. You da, da, da, da, da. So -- and they've always
15 talked about you took over safety and training at the
16 plant. Okay, then say that. And then they can use
17 their circumstantial evidence to prove it.

18 THE COURT: Right. There's counterpoints.
19 There's some of the safety trainings you gave -- or your
20 client, were related to other areas not involving the --

21 MR. SCHUMANN: Correct.

22 THE COURT: -- what's it called? The
23 depressurization or --

24 MR. REID: The LOTO, Your Honor.

25 THE COURT: The LOTO. What was the exercise
26 they were doing again?

27 MR. REID: It's the Lock Out/Tag Out. So it's
28 the annual outages.

1 THE COURT: The annual outages.

2 MR. REID: Thank you, Your Honor.

3 THE COURT: Thank you, Mr. Reid.

4 MR. SCHUMANN: And then both sides can then say
5 what is it? Well, they claim this under safety and
6 training and we claim this under safety and training.

7 THE COURT: They're saying you went too far.
8 You're saying that we didn't -- there was a line that we
9 didn't cross, so --

10 MR. SCHUMANN: Exactly.

11 THE COURT: Okay. Isn't the law supposed to be
12 black and white?

13 Okay. So I think what makes the most sense to
14 me and still kind of keep -- and still keeping true to
15 the way the instructions are but then also kind of
16 tailor it a little bit more to our specific fact
17 pattern, I'm going to make this modification. Beginning
18 with the first paragraph, it says "Denise Collins and
19 Christopher Collins claim that Diamond Generating
20 Corporation is responsible for Daniel Collins' death
21 because Diamond Generating Corporation failed to
22 exercise reasonable care in rendering services."

23 Here's the modification. I'll put related --
24 rendering services related to worker safety. I could be
25 more specific. I'm inclined to put "related to Sentinel
26 Energy workers' safety." At least that way we know it's
27 the actual -- the workers at this particular power
28 plant, even though I don't think there's any evidence

1 that DG operations was overseeing anything other than
2 Sentinel Energy. Am I correct in that?

3 MR. REID: That's correct, Your Honor.

4 THE COURT: All right. But I guess for jurors,
5 let's not -- let's try to be as specific as possible.
6 "Related to Sentinel Energy workers' safety," that's the
7 modification, and then it continues to DGC Operations.
8 "To establish this claim, Denise Collins and Christopher
9 Collins must prove the following: One, Diamond
10 Generating Corporation voluntarily or for a charge
11 rendered services" -- again, here comes the modification
12 same as before -- "related to Sentinel Energy workers'
13 safety to DGC Operations; that these services related to
14 Sentinel Energy workers' safety were of a kind that
15 Diamond Generating Corporation should have recognized as
16 needed for the protection of workers at the Sentinel
17 Energy Center; that Diamond Generating Corporation
18 failed to exercise reasonable care in rendering these
19 services; that Diamond Generating Corporation's failure
20 to exercise reasonable care was a substantial factor in
21 causing Daniel Collins' death."

22 And 5(a), "Diamond Generating Corporation's
23 failure to use reasonable care added to the risk of
24 harm -- added to the risk of harm to Sentinel Energy
25 worker -- workers; (b), Diamond Generating Corporation
26 services" -- and I can put the modification in there
27 again -- "related to Sentinel Energy workers' safety
28 were rendered to perform a duty that DGC Operations owed

1 to workers at Sentinel Energy Center." And then -- or
2 that "Daniel Collins was killed because DGC Operations"
3 or "Daniel Collins relied on Diamond Generating
4 Corporation services related to Sentinel Energy workers'
5 safety."

6 That's still a pretty big umbrella, but it does
7 put some parameters around the types of services we're
8 talking about.

9 MR. BASILE: Just for the record, Your Honor,
10 note our objection. Just stick with that. Just so
11 that's on the record, that's all.

12 THE COURT: Your objection, of course, is
13 noted, Mr. Basile. Thank you.

14 And just -- I'm -- the Court's curiosity's
15 just -- it seems like that's what your argument's going
16 to be related to safety. It's going to have to fall
17 within that scope. It's still a pretty -- like as I
18 mentioned a second ago, it's still a pretty big
19 umbrella. But at least it's related to safety, not the
20 accounting practices or, you know, all -- there's all
21 these other things that DG Corporation could be involved
22 in, but that in any universe would not directly impact
23 the workers' safety there, including that of Daniel
24 Collins, and doing an annual outage or the LOTO
25 procedures, you know, like I said, financial matters,
26 other expansions of the plant, other things that a
27 parent corporation may be involved in with its
28 subsidiary.

1 MR. BASILE: I appreciate that, Your Honor.
2 Probably some day when you're on the Court of Appeals,
3 it'll be a good decision.

4 THE COURT: Well, just stick -- thank you, but
5 let's just address the points.

6 MR. BASILE: I'm just -- I'm just noting our
7 objection because that's what CACI says. And I'm not
8 necessarily disagreeing with you, is what I'm saying.
9 I'm just noting the objection because it varies from
10 CACI, that's all.

11 THE COURT: Okay. Mr. Schumann, I know it's
12 probably not as specific as you'd like it to be.

13 MR. SCHUMANN: Correct.

14 THE COURT: But at least from the way I read
15 it, I'm trying to make it so it makes sense and it is a
16 little bit more narrow, but it's still pretty broad in
17 scope. But it is specific to hopefully that it helps
18 you in addressing any defenses you feel are appropriate
19 related to workers' safety.

20 MR. SCHUMANN: It certainly helps. It's not as
21 narrow as we think it should be. So again, also just
22 for the record, we believe it should be more narrow and
23 so I assume Your Honor will accept it over our
24 objection.

25 THE COURT: Both sides' objections are noted.
26 We're working in the gray, so...

27 MR. SCHUMANN: Thank you.

28 THE COURT: Thank you.

1 MR. REID: Your Honor, do you want us to fix
2 this instruction or you got it?

3 THE COURT: I was going to ask, actually, if
4 you could -- if you could either -- is that something
5 you could fix here on the spot and print out or not?

6 MR. REID: I can't print it out.

7 MR. SCHUMANN: Yeah, we can have it e-mailed.

8 THE COURT: Either that or if you can fix it
9 and then e-mail it to us and we'll print it out. The
10 problem is -- I don't mind because I have enough here
11 where I know I can read it to the jurors, but I'd like
12 to send a clean copy with them back. I think it would
13 be both sides' preference that I not send something
14 with -- as material as this with my handwritten notes as
15 opposed to --

16 MR. SULLIVAN: Your Honor?

17 MR. SCHUMANN: We'll e-mail it.

18 THE COURT: Okay.

19 MR. SULLIVAN: Your Honor, can I have my
20 assistant work on it right now while we discuss other
21 matters, give her my notes and have her modify it and we
22 can make sure that it comports with what --

23 THE COURT: Sure. If you can send it in Word
24 format and then -- do they have our e-mail address?

25 THE CLERK: Yes, Your Honor.

26 THE COURT: That's right. You've served
27 several briefs. If you could e-mail it in Word format
28 and then I'll make sure it's clean, and then I'll give

1 you -- I'll provide you with the final copies before the
2 jurors get theirs.

3 MR. SULLIVAN: All right. Do you want me to
4 modify it first and then e-mail it? Because --

5 THE COURT: Modify it, please, and then I'll
6 just give it one last review. Thank you for that.

7 MR. BASILE: Your Honor want to change the
8 verdict form, I take it then, to the questions on the
9 verdict form that follow 450C?

10 THE COURT: Yes. We're going to move on to the
11 verdict form now.

12 MR. BASILE: Okay.

13 MR. SULLIVAN: How about 406? We were going to
14 discuss that one as well.

15 THE COURT: Oh, 406, yes.

16 MR. SULLIVAN: Yeah, we need to discuss that
17 before we get to the verdict form.

18 THE COURT: Yes, absolutely.

19 Okay. So 450C will be given as modified, both
20 sides with their respective objections. And then, yes,
21 in the 400 series the Court still had a question on 406.
22 So this is definitely one where we're going to need to
23 look at argument on. So let me read the way it's
24 currently proposed by defense. I'm not going to read --
25 you both have it. So there's several parties named here
26 in 406. So the Court is inclined to name some of these
27 other parties, however, not all of them. The Court's
28 not going to name -- include any names on a verdict form

1 that the jury would have no basis from which to make a
2 determination about -- in terms of apportionment of
3 fault or responsibility.

4 So since it is your requested instruction -- or
5 let me start with plaintiffs first since maybe there's
6 some that they would concede to.

7 Mr. Basile, Mr. Sullivan?

8 MR. SULLIVAN: Thank you, Your Honor.

9 As the Court is aware, in asking for a name to
10 be put on the special verdict form, the burden is on
11 them. They have to submit substantial evidence that
12 both the proposed party was negligent and that it was a
13 substantial factor in bringing about the harm.

14 As it relates to Mott MacDonald and Gemma Power
15 Systems, it appears that those folks are trying to get
16 them on based upon a lack of warning. The issue that we
17 have with that is, is that there's not any substantial
18 evidence that would establish that those folks actually
19 had the duty to put a warning on there.

20 There is some testimony from Mr. Lane that, you
21 know, he has seen that some designers put warnings on
22 things, that some people that constructed put things on
23 things, but there was no foundation established that
24 Mr. Lane had the knowledge as it relates to whether or
25 not somebody that's working in the industry of designing
26 a power plant, whether or not that duty is imposed upon
27 them to put a warning on it. Because when these folks
28 are designing power plants, they're designing power

1 plants for professional companies that deal with power
2 plants. And they certainly would expect that those
3 folks that are designing the power plants would know
4 that the equipment is dangerous and that they would most
5 likely leave that up to them as to what warnings they're
6 going to put and not put. The same would apply -- the
7 same argument would apply to Gemma Power Systems as it
8 relates to the warning issue.

9 So there's not any substantial evidence as it
10 relates to giving that instruction. They might also try
11 to argue that there was somehow a design defect based
12 upon a lack of a double block and bleed. There really
13 wasn't any substantial evidence at all as it related to
14 that particular potential theory. That was a theory
15 that the plaintiffs had early on that they ended up
16 abandoning and ended up settling with those parties
17 because it didn't seem like a viable cause of action
18 because the lack of connection between the lack of a
19 double block and bleed in the incident that happened.
20 There's no causal relationship between the two.

21 So what we're left with is, is some vague
22 allegation that these people at one time were parties to
23 this suit, a vague reference to a declaration that had
24 been filed by Mr. Stevick that was a requirement in
25 order to pursue an action against a designer of a power
26 plant without any specifics as it relates to what a
27 double block and bleed was, why it would have been
28 necessary, where it would have related in -- with

1 respect to this equipment and how it played a part in
2 there. So as it relates to those two folks, we clearly
3 believe that they should not be included on the -- on
4 the verdict form.

5 Why don't we stop there? They can discuss
6 that, then we can move on to the other parties after
7 that. How's that sound, Your Honor?

8 THE COURT: Fine. Thank you, Mr. Sullivan.
9 Mr. Reid, as to Mott MacDonald/Gemma Power
10 Systems?

11 MR. REID: Well, here's our concern, Your
12 Honor. So Dr. Krauss testified that the warnings on the
13 filter tank would not have made a difference. So the
14 jury may believe that, the jury may not. If the jury
15 doesn't believe that, Mr. Lane testified that he
16 believed that Mott MacDonald, as the designer of the
17 plant, would have been responsible or at least partially
18 responsible for placing those warnings. He also
19 attributed fault to Sentinel -- we haven't gotten there
20 yet -- and he also attributed potential fault to Ops.

21 So on that warning issue, there's three
22 potential parties that could be liable for this warning
23 issue. They keep claiming that the warning would have
24 made a difference. They've elicited testimony from
25 multiple people. The one party that is not involved in
26 the warnings, according to Mr. Lane, is DG Corp. So if
27 we take these other parties out and they're still
28 harping on the warning, who are they going to place the

1 blame on? The one party that has no blame. That's why
2 we want to include at least Mott MacDonald.

3 As far as Gemma goes, Your Honor, there was
4 also testimony elicited from multiple witnesses that
5 there were no labels on the valves on the fuel filter
6 skid and that that's part of why Mr. Collins allegedly
7 became confused because there's no labeling. And then
8 theirs is this isolation valve two or is this isolation
9 valve three, and that labeling contributed to his
10 confusion.

11 Mr. Lane, again, testified that -- well,
12 Sentinel, not particularly Gemma, but -- and Gemma,
13 actually, are the ones that would have been responsible
14 for labeling those valves. And again, these are factors
15 that they claim are contributing to Mr. Collins' death,
16 but they are not things that DG Corp. can be held liable
17 for because Mr. Lane said he wasn't -- or they weren't,
18 excuse me.

19 THE COURT: One moment.

20 (Pause in proceedings.)

21 THE COURT: Who cross-examined Mr. Lane? Was
22 that you, Mr. Schumann?

23 MR. REID: It was me, Your Honor.

24 THE COURT: Oh, Mr. Reid. Okay. That's what I
25 thought. So this is a different witness, then.

26 MR. REID: Are you looking at the transcript,
27 Your Honor?

28 THE COURT: Yes.

1 MR. REID: It's July 6th, 2022.

2 THE COURT: Okay. Let me go back to that one.

3 MR. REID: Yeah. It starts approximately
4 page 51 with the question at line 26, "Who had
5 responsibility for placing warnings on the fuel filter
6 assembly," and it goes on for several pages. I had to
7 read back Mr. Lane's deposition testimony, at which
8 point he agreed that he had placed the responsibility on
9 Mott MacDonald and Ops and potentially Sentinel.

10 (Pause in proceedings.)

11 THE COURT: So regarding the warning, I do see
12 that Mott MacDonald was the designer and Gemma was the
13 construction company.

14 MR. REID: Yes, Your Honor.

15 THE COURT: So the warning -- the -- well, I
16 guess lack of a warning on there would be for Mott
17 MacDonald --

18 MR. REID: Yes, Your Honor.

19 THE COURT: -- based on Mr. -- Dr. Krauss --
20 that's your human factors expert, right?

21 MR. REID: Yes, Your Honor.

22 THE COURT: Okay. So if I understood his
23 testimony correctly, essentially, it's that the warnings
24 would have made a difference specifically as to someone
25 like Mr. Collins because this was an experienced person.
26 He's task oriented and it wouldn't have made a
27 difference because he's done this task numerous times
28 and so he's not going to pay attention to warning labels

1 as opposed to somebody who finds themselves in a new,
2 strange or foreign environment that the warning labels
3 may resonate with them more. But not someone like
4 Mr. Collins who's like, I've done this, I don't need to
5 read the instructions, I know what I'm doing. So --

6 MR. REID: That was the gist of Mr. Krauss's
7 testimony, and it also included an extra line on the
8 LOTO sheet, you know, asking him to check the pressure.

9 So again, Your Honor, it's is the jury going to
10 believe that testimony, and if they do then the warnings
11 aren't an issue, or are they going to discount that
12 testimony in which case the warnings are an issue.

13 THE COURT: So I'm inclined to leave Mott
14 MacDonald in. Anything final on Mott MacDonald,
15 Mr. Sullivan?

16 MR. SULLIVAN: Simply that there's not any
17 substantial evidence before the Court that shows that
18 Mott MacDonald actually had that duty to put that on
19 there. And obviously, this was -- this plant was
20 completed in 2013. The plant was in operation for over
21 four years. I think that there's actually a statute of
22 limitations issue as it relates to failure to place a
23 warning on when you're dealing with people that would
24 have potentially expired before this actually happened.

25 And then the other thing is that there's
26 substantial law that says that when the designer
27 delivers the property to the owner and they accept it,
28 they're basically accepting it as is and the ability to

1 then make that argument against them is going to cease.
2 I think that the only appropriate potential party that
3 you could find as a matter of law would have that duty
4 would have been Sentinel Energy, LLC, the actual owner
5 of the plant, not the designer and not Gemma, the people
6 that constructed it. So if they're going -- if they
7 want to point the finger at somebody as far as a lack of
8 warning, then that would be the appropriate party to
9 point that at.

10 Otherwise, what's happening is just that, you
11 know, you're throwing these people -- you know, this
12 name of this -- of these two companies on there that
13 they heard maybe three times in the entire trial with no
14 substantial explanation as to, you know, what's going on
15 here with these people and it's just going to lead to
16 confusion. And, you know, jurors are --

17 THE COURT: The opposite -- thank you,
18 Mr. Sullivan, but the opposite, though, is that by not
19 narrowing things down, now you're -- any potential areas
20 where there's been a -- you know, where there's been
21 negligence, all of that's going to fall on
22 DG Corporation. So if it was more limited to
23 DG Corporation, you know, didn't do X, Y or Z, then
24 probably going to need to look at these other entities.

25 But because it's a bigger scope, you're
26 necessarily going to kind of swallow up some of these
27 other potential parties because -- I see the concern.
28 Otherwise, if there's no one else, it's either

1 Mr. Collins, it's either -- there's definitely the
2 arguments for comparative fault here for the plain --
3 the decedent, I'm sorry, but then you're trying to leave
4 only DG Corporation in there with shouldering the rest.

5 MR. SULLIVAN: Well, we just believe that the
6 evidence does not support having those people on there.
7 They have the burden. They could have brought an expert
8 in who -- as it relates to the design of -- or the
9 construction of power plants and had them testify that,
10 you know, the standard of care and the design of a
11 construction plant is that you put a warning on a tank
12 like this because it's dangerous and you want to make
13 sure that people know that they need to do that. They
14 chose not to do that. They didn't bring anyone in as it
15 relates to the construction to say something along those
16 lines either. They chose not to do that.

17 Instead, what they wanted to do was they wanted
18 to try to, you know, get it in through an expert that we
19 called who really wasn't qualified to testify on that
20 particular topic.

21 THE COURT: I mean, Mr. Lane, didn't he testify
22 he worked on nuclear submarines and definitely worked
23 around --

24 MR. REID: Multiple power plants.

25 THE COURT: -- multiple power plants, high
26 pressure energy systems.

27 MR. SULLIVAN: He's obviously familiar with
28 power plants, Your Honor. But as far as -- he never

1 built a power plant and he never designed a power plant.
2 And if you look at his testimony, and you have it in
3 front of you, he, you know, says that he's seen it
4 different ways. Sometimes the manufacturers put it on
5 there, sometimes the designers put it on there.
6 Oftentimes it's the coordination between the owner.

7 So really, that kind of testimony doesn't
8 establish an affirmative duty, which is the very first
9 thing that you have to do if you're going to show
10 negligence. And they have the burden of proving the
11 negligence and they haven't shown that those two people,
12 who they want to get their name on there, owed the duty
13 to put it on there.

14 MR. SCHUMANN: So if they're saying that this
15 expert, their own expert is not sufficient to prove a
16 duty, that we had a duty to put on warnings, then that
17 cuts both ways. Then we got to remove the warning
18 allegation from this case. Because if their expert, who
19 is the only expert they have, who testified to there has
20 to be warnings, labels and this and that, and if he's
21 not -- you just heard it now. If he's not qualified to
22 testify about warnings, then warnings got to go, that
23 they cannot claim in this case that warnings had
24 anything to do with us.

25 MR. SULLIVAN: Your Honor, he's twisting what
26 it is that I said around. I said that he wasn't
27 qualified to testify whether or not he knew if the
28 designer of the power plant owed the duty or if the

1 person constructing it owed the duty. Those are
2 different things, Your Honor.

3 MR. SCHUMANN: And it's very contrary to their
4 entire case from the beginning, Your Honor. This is
5 disingenuous. They have -- from the get-go they sued
6 Mott, they sued Gemma. They claimed dangerous hidden
7 defects in this plant and now they're claiming some kind
8 of statute of limitation? That's completely
9 disingenuous.

10 THE COURT: Dennis Johnson, in his direct
11 examination, he was asked by Mr. Basile, "Would you
12 agree a warning should be on the filter tank?" I'm
13 looking at the rough draft here, but "operate to go
14 check the pressure gauge on the tank before attempting
15 to remove the lid." "Answer" -- he was reading back
16 from his deposition -- "Yes." "Now, another part of the
17 safety system, which was called near miss reporting,
18 you're familiar with that?" The witness says, "I am."

19 So it wasn't just with -- it wasn't just with
20 Mr. Lane. It's through other witnesses where they bring
21 up -- where plaintiffs have brought up the issue of
22 warning in place with the actual equipment.

23 MR. SULLIVAN: Right. And then plaintiffs do
24 not contend that a warning -- we certainly contend that
25 a warning should have been on there. The only issue
26 that we have as it relates to those -- getting those two
27 people on the verdict form is that there's no issue to
28 show that those people had the duty to do that.

1 THE COURT: Now, a duty to the workers where
2 the -- where the equipment's being delivered to and will
3 be used by the workers? You're saying it cuts off once
4 the -- once the equipment is installed and the plant
5 takes over?

6 MR. REID: Your Honor, if I may?

7 THE COURT: Yes.

8 MR. REID: They've mentioned what's called the
9 Completed and Accepted Doctrine, which is when a
10 construction project is completed and it is accepted by
11 the owner. And I'm sure you're familiar with it.

12 THE COURT: No, Your Honor -- or, Mr. Reid,
13 actually.

14 MR. REID: Okay. Well, it cuts off the owners'
15 ability to come back and sue the contractor. It doesn't
16 cut off third parties' ability to sue the contractor.

17 THE COURT: I'm thinking of more in a
18 regular consume -- and I guess maybe it's a different
19 context, more in a consumer application. If you buy
20 something from a store and the product's defective, you
21 know, if something catches on fire at a consumer's home,
22 I mean, you don't go back to go directly to Best Buy or
23 Home Depot; you can go directly to the manufacturer. So
24 that's kind of how I'm looking at it. But I did hear
25 Mr. Sullivan saying that it would end once it's
26 delivered and it's up and running. But --

27 MR. REID: That's the Completed and Accepted
28 Doctrine and it's not as to third parties like

1 Mr. Collins.

2 THE COURT: This goes back to a passerby.
3 Sorry. This was to a worker actually using the
4 equipment. So if a duty's owed, it would certainly be
5 to a worker. I'm sorry. Go ahead, Mr. Reid.

6 MR. REID: That's fine, Your Honor. I was just
7 going to say this failure to warn was an allegation in
8 their complaint against both Gemma and Mott MacDonald.

9 THE COURT: Thank you. So I hear your
10 concerns, Mr. Sullivan, and they -- they do give the
11 Court some pause because you're right, you need to be
12 able to point to something in the evidence that jurors
13 need to be able to make decisions that are founded -- as
14 we tell them all the time, don't read anything outside
15 this courtroom. Don't do your own research. The only
16 evidence is based -- what you received here in court.

17 However, there is -- there's numerous instances
18 here about talking about warnings on this -- on the skid
19 and on the equipment on it. So there needs to be some
20 option here for apportionment of fault as to the
21 warnings. And so that goes to Mott MacDonald, the
22 designer. I think it would be appropriate to leave them
23 in.

24 MR. SULLIVAN: All right.

25 THE COURT: Remember this isn't -- I mean, I
26 guess correct me if I'm wrong. This isn't going to any
27 future judgment against Mott MacDonald. This is merely
28 to -- for this jury, based on what they've heard, to

1 apportion fault amongst the different entities and then
2 ultimately, if any of it is left, for DG Corporation.
3 Am I mistaken in that, Mr. Sullivan?

4 MR. SULLIVAN: No, Your Honor, you're accurate.
5 It would just go to reduce the plaintiffs' damages in
6 this case if they found some responsibility.

7 THE COURT: Well, ultimately, how many -- how
8 much of the damages you can collect on, correct?

9 MR. SULLIVAN: Yeah. I mean, there's going to
10 be a credit from the prior settlements with them and it
11 was a complicated formula that would come into play.

12 MR. REID: Your Honor, if I might. There's no
13 claim for economic damages being made. There's no
14 apportionment to their settlement.

15 THE COURT: It was only general damages being
16 sought here, correct?

17 MR. REID: Correct, Your Honor.

18 MR. SULLIVAN: Yeah, and those are the only
19 damages that can be apportioned pursuant to fault, is
20 general damages not economic damages, Your Honor.

21 THE COURT: Well, we'll cross any post-judgment
22 motions if we get there.

23 So okay. Mott MacDonald will be left in for
24 406. Gemma Power Systems will be out.

25 Briefly, what about Sentinel Energy Center?
26 Because again, this is one of those issues where DG
27 Corporation owns 50 percent of the entity that owns
28 Sentinel Energy Center or I can't remember.

1 MR. SCHUMANN: Some. In various investments it
2 totals 50, correct.

3 MR. REID: So the Court has excluded the
4 Privette instructions. So we're not talking about
5 ownership issues. We're talking about Sentinel hired
6 DGC Ops and they also hired the asset manager to
7 supervise safety at this plant. They've already
8 conceded that Ops -- or not Ops but Sentinel at least
9 would also have some liability for the warnings.

10 THE COURT: Mr. Sullivan?

11 MR. SULLIVAN: Again, it goes to the same issue
12 about evidence. And in this one here, Mr. Lane
13 testified that he didn't know whether or not the owner
14 would have the responsibility. He even talked about how
15 he would suggest that he -- that the owners didn't even
16 know about how that equipment operated. I know it's not
17 in evidence, but there was no employees for this
18 corporation. It's simply a shell company that generated
19 the revenues.

20 MR. REID: There's no evidence of that in the
21 case, Your Honor.

22 THE COURT: I can --

23 MR. SULLIVAN: You just informed the Court
24 that.

25 MR. REID: And --

26 MR. SULLIVAN: So without, again, having
27 evidence to show that these owners had the duty, I think
28 if they'd have introduced the evidence that they could

1 have established that there was a duty. But they didn't
2 submit any evidence that there was a duty, and since
3 they didn't submit any evidence that there was a duty,
4 this -- their names should not be on the verdict form.

5 THE COURT: So --

6 MR. BASILE: Back door and Privette is what
7 they're doing.

8 THE COURT: Well, the way the Court sees it,
9 outside of the little org chart that I think both sides
10 at some point started introducing, that Sentinel Energy
11 operated -- or hired DG Ops and then DG -- or I can't
12 remember. Was it Sentinel Energy?

13 MR. REID: The asset manager company, Your
14 Honor, CPV Sentinel Management.

15 THE COURT: Outside of that, I don't think
16 there's much other evidence as to their involvement.

17 MR. REID: Your Honor, again going back to
18 Mr. Lane's testimony, page 53, it's the same issue about
19 the warnings, Your Honor. I had to read back his
20 testimony from his deposition starting at line 25 and
21 then going through line 5 on page 54.

22 THE COURT: Isn't -- okay.

23 "Question: What about the Sentinel owner is
24 physically -- did they have responsibility to ensure
25 that there were appropriate warning being -- warning
26 signs, including warning on the natural gas filter
27 skid?"

28 And your answer was "Probably. It'd have to --

1 I'd have to think about that a little bit, but I would
2 think so. On the high pressure system, if there was a
3 very dangerous high pressure system, I would say yes.

4 "So it was your testimony that the Sentinel
5 owner facility also had responsibility to place a
6 warning on that filter tank?

7 "It isn't."

8 MR. REID: So he testified in deposition one
9 way and then tried to change it on the stand, Your
10 Honor.

11 MR. SCHUMANN: For the very reason to attempt
12 to keep it out so that the jury wouldn't know that they
13 had settled with them.

14 MR. REID: Well, this is --

15 MR. SCHUMANN: It clearly goes to his bias. It
16 goes to his bias. He says two things. They can't have
17 it -- they can't have it both ways. He has -- he has
18 said both. I get to tell the jury that he is
19 wishy-washy about his opinions.

20 (Pause in proceedings.)

21 THE COURT: Mr. Sullivan, on that last point, I
22 am looking at his testimony here. It's kind of going
23 back and forth on it, kind of saying, well, I think
24 everyone holds some responsibility, essentially. If it
25 wasn't for this testimony, I'm left with my recollection
26 of this hierarchy that you guys keep mentioning.
27 That's -- but it seems like there was testimony on it
28 with your expert.

1 MR. SULLIVAN: Well, again, he openly admits
2 that he doesn't know about the responsibility as to
3 whether or not to do that. He even talks about how
4 that's a legal question that he doesn't know the answer
5 to. And again, it's -- it's their burden; it's not
6 ours. They could have brought somebody in to tell the
7 folks on the jury that these people owned the plant,
8 they had a duty and an obligation to put a warning on
9 there and they didn't do it. Instead, they want to try
10 to get it in through some wishy-washy evidence that
11 doesn't amount to substantial evidence and --

12 THE COURT: Should I give more -- more weight
13 to the -- that of an ex -- of one specific expert
14 opinion?

15 MR. SULLIVAN: You're talking about ownership
16 issues that are outside his purview as an expert. He's
17 talking about safety issues as it relates to how these
18 plants should be safely operated.

19 THE COURT: Isn't the whole crux of the case
20 safety and who's responsible for it and who overstepped
21 their -- you know, their bounds here in terms of, you
22 know, assuming responsibility for safety?

23 MR. BASILE: But that doesn't mean everybody
24 comes in as they want just because someone's mentioned.
25 There has to be evidence of that, Your Honor. And
26 that -- you know, they have to have evidence that
27 somebody's involved. They can't just come in here and
28 say -- they would even like to have the State of

1 California on here if they could with their review
2 afterwards. It's just a broad-reaching thing that is
3 just to knock it down. There's no evidence that
4 Sentinel, other than that complicated chart, that they
5 were involved at all. There's no experts on it.
6 Certainly, on cross you can get -- Lane's answering
7 honestly. So Sentinel should not be on there, Your
8 Honor. They can't just throw in everybody in the world
9 by making stuff up.

10 MR. REID: And, Your Honor, I'd just refer to
11 Mr. Lane's testimony again, page 55 starting at 21 going
12 through 25. Okay, we get to that.

13 "Who, in your opinion, should have been placing
14 labels on those valves?

15 "That should have been done at new construction
16 by the owner/operator, the group commissioning the
17 plant."

18 That's Sentinel, Your Honor.

19 MR. SCHUMANN: It's funny they want to blame us
20 who are 50 percent owners, but they don't want to blame
21 the actual company that owns it. I mean, that -- that
22 doesn't make sense even, and their testimony by their
23 own expert that the actual owner has a responsibility so
24 they should be on there. If we're on there, then they
25 should certainly be on there.

26 THE COURT: That's interesting that I -- I can
27 see the arguments in my head for each side to disregard
28 whatever I'm about to do, but I suppose I'd keep those

1 to myself.

2 Okay. So Sentinel Energy Center will be left
3 in under 406. Sentinel Energy Center is in. Mott
4 MacDonald is in. Mr. Reid, Mr. Schumann, you're allowed
5 to make your respective arguments. Obviously,
6 Mr. Basile and Mr. Sullivan, likewise, Gemma Power
7 Systems is out.

8 DGC Operations -- so I have a question about
9 DGC Operations. There's also some individuals named
10 afterward: Thomas Walker, Jason King, Mike Delaney,
11 Albert Palalay. Are some of these not DGC Ops
12 employees?

13 MR. REID: They're all DGC Ops employees.

14 THE COURT: Oh, okay. So why are they listed
15 separately from DGC Operations?

16 MR. REID: Because DGC Operations had the
17 overall duty at the plant to provide for safety and
18 these individuals specifically did things on the day of
19 the incident that were individually negligent.

20 THE COURT: But within the scope of their
21 duties, right?

22 MR. SCHUMANN: Correct.

23 THE COURT: All right.

24 MR. SCHUMANN: So to follow Your Honor's
25 thinking, they could fall under Ops, and that would --
26 we agree that would limit the amount of people on there.
27 Then -- and then the defense can argue that the
28 employees are part of Ops' negligence.

1 THE COURT: I guess the counterpoint to that
2 would be that DG Corporation was the one really
3 operating things.

4 MR. SULLIVAN: Exactly, Your Honor, and that's
5 the point. First off, because -- because each of those
6 people were all acting within the course and scope of
7 their employment with DGC Ops, those individual
8 employees don't get their name on the verdict form
9 because their responsibility would flow to DGC Ops. So
10 if you're going to put anybody on there, the only one
11 that could be on there is DGC Ops. Obviously, Daniel
12 Collins is different because he's an actual party to the
13 matter.

14 But as it relates to DGC Ops in this particular
15 case here where we have evidence that shows that Diamond
16 Generating Corporation undertook and they were the
17 people in charge of safety at the plant, and if the jury
18 determines -- and that's what we're going to be asking
19 them to do as we walk through this verdict form --
20 determines that those folks were the ones that were
21 responsible for safety at the plant, then anything that
22 happened underneath them would be a direct result of
23 their negligence in the manner in which they over, you
24 know, saw what was happening as it relates to safety at
25 the plant. And therefore, they don't get the benefit of
26 having DGC Ops' name on the verdict form in an effort to
27 try to deflect responsibility because it happened
28 because it was on their watch. And that's the way that

1 it works when you deal with a situation like that.

2 So first off, none of the individual employees
3 would be on there; and secondly, we don't even think DGC
4 Ops belongs on there based upon the state of the
5 evidence, Your Honor.

6 THE COURT: But -- so the Court agrees with you
7 on the former with -- I don't think any of the employees
8 should be on there. However, I'm having difficulty not
9 seeing DGC Ops being involved on the 406 or on the
10 verdict form. Because if DGC Ops -- if the jury thinks
11 they were the ones really running the show, then there's
12 obviously -- you know, they could find negligence there.
13 But if they think DGC Ops is kind of there just as a --

14 MR. BASILE: Your Honor?

15 THE COURT: -- puppet of DG Corp., then really
16 it's going to fall back on DG Corp.

17 MR. BASILE: Yes, Your Honor, if I may. You
18 see that's why in the verdict form if they answer those
19 first questions, did they provide services like 1
20 through 6, if they answer no to any of those, the case
21 is over, we're out. But if they answer yes to those,
22 then DGC Ops should not be on there because they have
23 found that they undertook safety at the plant. This is
24 essentially giving them two bites of the apple.

25 First, the beginning, we didn't provide
26 services. We didn't do anything like that. Then, even
27 though we're providing these services for safety, if
28 those people that we're overseeing that were undertaking

1 safety mess up, well, we get a reduction on that too.
2 It's two bites at the apple. Once they find those first
3 answers, if they find they undertook, DGC Ops should not
4 be on there.

5 THE COURT: So the way I see the verdict
6 form -- we'll get there in a couple minutes,
7 hopefully -- as you mention, you go first, is this
8 defendant, you go through the elements, you know, do
9 they -- were they negligent in this case. Then you move
10 on to --

11 MR. BASILE: Damages.

12 THE COURT: -- the damages. And then after you
13 know what the damages are, then you start your
14 reductions essentially after that, and that's where --
15 that's what we're dealing with now. So I don't think it
16 precludes you from -- at the very beginning from DGC
17 Corp. being found liable. It's just whether there's,
18 you know, some of -- there's some other entities
19 responsible as well. But if they don't -- again, I
20 mean, with juries you never know what -- the logic
21 behind it sometimes.

22 But if they find for the negligence on DG
23 Corporation, there's also an argument to be made that so
24 then there isn't any liable here on DG Ops's part
25 because there really -- doesn't seem like DGC Ops was
26 really doing anything anyways.

27 MR. SCHUMANN: That's not correct, Your Honor.
28 Right? Because negligence can be a group of many things

1 that are heard, and it could be that they find DGC,
2 Diamond Generating, undertook a duty to train but they
3 didn't undertake a duty to keep -- for safety on the day
4 of; that it was comparative fault by Ops to do X, Y and
5 Z. Because if plaintiff wants it the way that -- if DGC
6 assumed anything under 450C, then we are equal to Ops.
7 Well, then, let's do that right now because in work comp
8 it's the exclusive remedy and we're apparently the
9 employer. So I'm fine with that, then. Let's just
10 stipulate to that and the case is over. So they don't
11 get it both ways. If they don't want exclusive remedy,
12 then they have to have a comparative fault verdict.

13 THE COURT: Yeah, the Court had -- thank you
14 for that. The Court had, I guess, some curiosity about
15 that, but I'm only ruling on what's in front of me. The
16 whole workers' comp issue with -- well, Mr. Collins was
17 an employee of DG Ops, but then there's the other one,
18 well, exclusive remedy should apply because he was an
19 employee of DG Corp. So I was trying to reconcile that.

20 MR. BASILE: Your Honor, we did specific
21 discovery on who was -- the request for admissions,
22 admit Daniel Collins -- we can submit these post trial
23 post verdict motions, specific request for admissions:
24 Admit Daniel Collins was an employee of DGC Ops,
25 admitted. Admit Daniel Collins was not an employee of
26 Diamond Generation Corporation, admitted. That's
27 coming.

28 MR. SCHUMANN: So I'm sorry, I don't understand

1 it. So what -- if they disprove it, they disprove it.
2 Right? Just because someone says A, if the jury
3 believes B, then the jury believes B.

4 THE COURT: I don't think they want to disprove
5 that, right? Won't that take them back --

6 MR. SCHUMANN: Well, exactly. No, I know, but
7 it's just -- I don't know what that argument -- where
8 it's going.

9 THE COURT: No, it's because the Court was
10 getting on -- sidetracked here.

11 So okay. The Court's going to leave DGC
12 Operations in without the -- without the individuals.

13 MR. REID: Thank you, Your Honor.

14 THE COURT: Which leaves us with -- well,
15 there's two left. What about Mark McDaniels? Isn't
16 Mark McDaniels DGC Corp.?

17 MR. REID: No, Your Honor.

18 MR. SCHUMANN: At the time, he was a CPV
19 Sentinel Management employee.

20 MR. REID: He's -- yeah, he's never been a DG
21 Corp. employee. He's currently employed by DGC Ops, but
22 that's post incident, Your Honor. At the time of this
23 incident, he was -- at the time of this incident, he was
24 employed by Competitive Power Ventures, CP -- and CPV
25 Sentinel Management is a subsidiary of Competitive Power
26 Ventures.

27 THE COURT: Okay. He was there when the
28 Sentinel Project started in 2008?

1 MR. REID: Yes, Your Honor.

2 MR. SCHUMANN: Then he moved over to oversee
3 Ops.

4 THE COURT: Okay. We'll get to Mark McDaniels
5 in a second. CPV Sentinel Management, Mr. Sullivan?

6 MR. SULLIVAN: What evidence have they
7 submitted that they were negligent? They introduced
8 a -- one line in a contract that says that they were
9 responsible for oversight of safety, but I haven't heard
10 about -- any evidence about what they did, what they
11 failed to do. Nothing at all.

12 THE COURT: Mr. Reid?

13 Thank you, Mr. Sullivan.

14 MR. REID: Mr. McDaniels testified that in his
15 role as the asset manager for CPV Sentinel Management,
16 he reviewed the initial policies and procedures and that
17 he was involved in safety at the plant on a nearly daily
18 basis based on the office he had there. So --

19 THE COURT: Mr. Sullivan, on that point?

20 MR. SULLIVAN: The testimony from Thomas Walker
21 was that he never inquired about safety. There was no
22 specific testimony from Mark McDaniels as it related to
23 safety, the things that he did. There's no testimony
24 about his involvement in the LOTO program. There's no
25 testimony that showed that he was reviewing Tom Walker's
26 performance. There's absolutely no evidence that they
27 have submitted in this case that shows that Mark
28 McDaniels, as he was fulfilling his duties for CPV

1 Sentinel asset management, was negligent in any way.

2 MR. BASILE: And let's talk about the elephant
3 in the room here, Your Honor. They've called him as
4 their witness. I mean, it -- this is pretty unique that
5 the defendant calls someone as their witness to try to
6 fall on the sword for them and he's now employed by
7 their wholly-owned subsidiary. So not only -- I mean,
8 let's consider that portion of this whole case too,
9 what's going on there.

10 MR. SULLIVAN: And they represented him during
11 the trial in his testimony.

12 THE COURT: Well, I was left with the
13 impression that Mr. McDaniels, a very diligent employee,
14 40 years of experience in this field, nuclear power,
15 gas, wind, power, and then you go back to Tom Walker's
16 initial testimony where he said that he didn't report to
17 to Mark McDaniels, he reported to Auden Aberg --

18 MR. BASILE: Right.

19 THE COURT: -- the VP of Ops for DG
20 Corporation. So as far as I can tell, at least from my
21 notes and my impression of Mr. McDaniels, was that he
22 was a diligent employee, which means I didn't make too
23 many notes then on cross because I don't think he really
24 got too into it, Mr. Basile, with him on those points.
25 I think you tried -- you actually just tried to bolster
26 your initial thing, well, if you're supposed to be in
27 charge, how come Tom Walker said he never reported to
28 you.

1 So -- okay. So as to -- we're talking about
2 CPV Sentinel Management, though, so same entity that
3 Mr. McDaniels worked or was employed for.

4 MR. SCHUMANN: Yes.

5 THE COURT: Okay. Refresh -- I'm sorry,
6 refresh my recollection again. CPV Sentinel Management
7 was responsible for?

8 MR. REID: Asset management and --

9 THE COURT: Asset management, but not the --
10 and Paul Sheppard was the portfolio management?

11 MR. REID: Correct, Your Honor.

12 THE COURT: Okay. So one's the money guy and
13 the other one's the --

14 MR. REID: Overall supervision.

15 THE COURT: -- the liberal meaning of
16 management, like managing --

17 MR. REID: Correct.

18 MR. SCHUMANN: Day-to-day operations of the
19 plant, a designated representative, oversee the
20 operate -- the operating agreement and the delegation
21 and responsibilities for on-site environmental
22 compliance and safety.

23 THE COURT: Okay. And for him to carry out
24 those duties, that's when he went ahead and hired
25 DG Operations.

26 MR. SCHUMANN: No. So DG Operations was hired
27 by the owners to run the plant.

28 THE COURT: Sentinel Energy?

1 MR. SCHUMANN: Yeah.

2 THE COURT: Okay.

3 MR. SCHUMANN: And then Sentinel also hired him
4 to oversee Ops. So Ops is running it and he's
5 overseeing Ops, and he's there three to -- two to three
6 times a week overseeing them. Whether Ops thinks that
7 he is overseeing them or not, that's -- he -- in all
8 honesty, he doesn't really care because he knows what
9 his job is.

10 So his job is to oversee it. His job is to be
11 on top of them regarding safety, et cetera, et cetera.
12 So that was his job. Whether I -- whether we blamed him
13 while he was here on the witness stand or we chose to
14 blame him later, that's really a tactical decision. I
15 don't have to call him out on it on cross-examination.

16 MR. REID: Or direct, for that matter.

17 THE COURT: I'm sorry, Mr. Reid?

18 MR. REID: I -- he was on direct for us, Your
19 Honor, not cross, but yeah.

20 THE COURT: No, I was talking about -- I was
21 talking -- I was telling Mr. Basile I didn't write too
22 many notes down on cross because it didn't seem like
23 there was any -- too many things I knew and kind of
24 putting the blame on him, it was more he was bringing up
25 the fact that -- well, I guess I mentioned the thing
26 with Tom Walker. So I know Mr. Basile was on cross. So
27 he was your witness, Mr. McDaniels, correct?

28 MR. BASILE: And, Your Honor, here's another

1 thing. Don't -- well, you can read it however you want.
2 This whole thing of McDaniels was overseeing the
3 day-to-day operations and Paul Sheppard was just the
4 financials guy like this and that, that's their
5 interpretation of this. That's not what the evidence
6 is. The evidence is there's a thick agreement that was
7 signed that had that one paragraph that's supposed to be
8 about safety or overseeing things with McDaniels.
9 McDaniels, if you recall, represented two groups of
10 investors, 25 percent and 25 percent. He was the asset
11 manager for them. In spite of Paul Sheppard denying
12 being an asset manager at Sentinel, Walker says he was
13 the asset manager he'd always be in touch with and they
14 had that 50 percent interest in the revenue there.

15 So this, oh, well, McDaniels was the guy day to
16 day and Sheppard was just back in the high-rise and all
17 that, that could be an interpretation of the evidence.
18 But there's another interpretation of that too. CPV
19 Sentinel, with all these other ones, is just another
20 distraction and distortion that they're trying to do
21 here.

22 THE COURT: Was there any evidence -- thank
23 you. Was there any evidence in terms of Mark McDaniel
24 being involved? We had those e-mails about the -- you
25 know, the upcoming -- you know, they wanted like input
26 from the safety procedure review.

27 MR. BASILE: I think, if I recall, I pointed
28 that out on cross. It was another point. It may not

1 have got your attention, that he wasn't involved in any
2 of that where they're reviewing safety policies, where
3 Walker and all the other plant managers are sent in to
4 Kromer, all that stuff that's gone on through the fall
5 of 2016. McDaniels is nowhere. Then that quarterly
6 meeting in January, McDaniels isn't there. Who's there
7 presenting it? Who's there talking about updates and
8 changes? Paul Sheppard. Paul Sheppard was at that
9 meeting in January of 2017. McDaniels is not even in
10 the picture.

11 MR. SCHUMANN: That proves my point, Your
12 Honor. The asset management agreement is so clear that
13 he is supposed to be -- to supervise -- I'll just refer
14 to the page. It's page 21, the very first paragraph.
15 "The asset manager will be responsible to supervise and
16 manage the operator." If he's not on those e-mails,
17 that is a mistake by this manager. They've proven my
18 point. If he is not part of the safety that he is
19 supposed to be part of, that's on that manager. Why did
20 he not do his job? If he is supposed to oversee safety
21 and oversee Ops, he should be part of these safety
22 discussions.

23 THE COURT: Wasn't that just the DG Corp.
24 arguably subsumed the safety?

25 MR. SCHUMANN: If they prove it. So let them
26 attempt to prove it. I get to attempt to disprove it
27 that I have this guy who's supposed to be the boss of
28 safety. They want it to be another one. I can't be

1 precluded -- it's directly in the language of the
2 agreement that's signed.

3 THE COURT: Because he wasn't included on an
4 e-mail that he didn't draft himself?

5 MR. SCHUMANN: Well, that was their -- his
6 argument just now, that he is not part of safety because
7 he wasn't on these e-mails.

8 MR. REID: And didn't attend the meeting.

9 MR. SCHUMANN: And he didn't attend the
10 meeting. But they just said that. That's why he should
11 be out. But that also proves that he didn't do his job,
12 if that's the evidence they have.

13 THE COURT: It sounds like -- well, okay.

14 MR. SCHUMANN: His testimony is I was there two
15 to three times a week to oversee the operations. I've
16 reviewed the LOTOs, all of that. Well, that's
17 supervision, and if he didn't do his job, he didn't do
18 his job and I get to say he didn't do his job.

19 THE COURT: Was there evidence that he was
20 supposed to be involved in safety at the plant?

21 MR. SCHUMANN: In the asset management
22 agreement, yes. It's all over it. The language is all
23 over it.

24 MR. REID: It's not just one paragraph.

25 MR. SCHUMANN: It's multiple places.

26 THE COURT: Well, it feels like the evidence
27 was that he was cut out of doing that.

28 MR. SCHUMANN: That's the way they would like

1 to play it. I get to play that he knew what his role
2 was, he had the asset management agreement, he did the
3 job that he thought he needed to do. And whatever other
4 people think, if this is my job, I don't care what you
5 think. I'm going to do my job the way I think I need to
6 do my job. It's for me to testify what my job was, not
7 for someone else to claim it wasn't that even though
8 I've testified to it. Then they can -- then they can
9 shoot him down saying he was just full of it. But I get
10 to say he didn't do his job per the agreement.

11 THE COURT: Mr. Sullivan?

12 MR. SULLIVAN: If Mark McDaniels was
13 responsible for safety at the plant, there would have
14 been evidence that he was actually involved in it. They
15 didn't submit any evidence other than his testimony that
16 oh, before the plant opened, I reviewed the policies
17 because it referenced in a paragraph in there that he
18 was supposed to do that. That's the only testimony that
19 they got from him that he had any involvement at all.
20 They didn't submit a single e-mail, not a single
21 document that had his name on it that suggested that he
22 was involved in safety at all at any point in time. The
23 testimony about, you know, looking at those policies was
24 before the plant opened, way back in 2012 or early 2013.
25 This plant had been operational for four years leading
26 up to Daniel Collins being tragically killed. And
27 there's not one shred of evidence that shows that Mark
28 McDaniels was involved in safety.

1 If they want to stand up there and they want to
2 tell those folks in that jury box that Mark McDaniels
3 was negligent, they should have to be able to point to
4 some proof that showed that. What really happened here,
5 Your Honor, is that because Diamond Generating
6 Corporation were the big boys that had the biggest
7 interest in the revenues that were coming from that
8 plant, they decided that they wanted to be the ones in
9 charge of oversight for safety. So they engaged in this
10 course of conduct that started even before the plant
11 opened and continued, all the way up until the time that
12 Daniel Collins was killed.

13 And Mark McDaniels was there with a front row
14 seat of all of that and that's why Mark McDaniels wasn't
15 involved in any of that stuff, even though there may
16 have been a provision in a contract that said that he
17 was because he knew that this company, this company
18 that's in the business, a worldwide leader in the safe
19 generation of electricity, was taking care of and in
20 charge of safety at the plant. So he didn't engage in
21 any conduct.

22 And since there's no evidence that shows that
23 he had, you know, assumed that responsibility pursuant
24 to that -- the terms of the contract and was exercising
25 any actions along those lines, there's no evidence that
26 showed that he ever engaged in any negligent conduct.
27 You can't argue that it would have been negligent for
28 him not to do that because he was relying on those other

1 folks that, you know, were, you know, to him at least
2 knowledgeable and skillful in operating a power plant.
3 And the burden is on them. I mean, they want to make
4 these arguments. Well, introduce some evidence that
5 allows you to make the arguments other than just that
6 contract with no other evidence at all. And based upon
7 those things, I think it's going to be, you know,
8 prejudicial and unfair to have the jury be sidetracked
9 on an issue when there's not any evidence to support it.

10 MR. SCHUMANN: I have direct testimony --

11 THE COURT: No, that's fine, Mr. Schumann. The
12 Court's going to leave -- so Tom -- Mark McDaniels, I'm
13 sorry, falls under CPV Sentinel?

14 MR. SCHUMANN: Yes.

15 MR. REID: Yes.

16 MR. SCHUMANN: Management, LLC.

17 THE COURT: Okay. So we're going to -- Mark is
18 out. We'll leave CPV Sentinel in. Whether -- whether
19 his lack of carrying out -- and I go back to an earlier
20 point you were making, Mr. Sullivan, and thank you.

21 Your arguments are -- I really appreciate your
22 arguments. Well, maybe not so because they always cause
23 me to -- the extra moment to reflect. But I go back to
24 something you said earlier this morning about, you know,
25 whether there's a duty, and it sounds like there was a
26 contractual duty here for Mr. McDaniels to be overseeing
27 this. It sounds like ultimately, he was -- the Court --
28 from the evidence the Court was presented with, it seems

1 like he wasn't carrying that duty out, and whether that
2 was a substantial factor leading to Daniel Collins'
3 death is probably -- is certainly a different question.

4 But I don't think there's any way around that
5 he had a contractual duty. He should have been doing
6 that. Why he wasn't, I think, is obviously something
7 you'll probably bring up in your argument.

8 So we have Sentinel Energy Center in. Mott
9 MacDonald, DGC Operations, CPV Sentinel. The only other
10 person I see here is that of -- I'm sorry.

11 MR. REID: I think that actually covers it,
12 Your Honor. Mr. -- yeah.

13 THE COURT: Well, and then --

14 MR. REID: Well, just Daniel Collins.

15 THE COURT: Daniel Collins isn't listed in
16 here.

17 MR. SULLIVAN: That's on 405 though.

18 THE COURT: Is it on 405? Let me see. Go
19 back.

20 MR. REID: In 406, that fourth paragraph down,
21 Daniel Collins is listed but --

22 THE COURT: Okay. If either one side --
23 Mr. Sullivan, I hate to burden you, but if you could
24 please send the revised with only those parties in it.

25 MR. SULLIVAN: Does the Court want me to add
26 Daniel Collins and combine it with 406 or do you want me
27 to still keep a separate one for 405?

28 THE COURT: No, I apologize. It looks like

1 you're right. Let me look here. It looks like there is
2 a --

3 MR. REID: 407.

4 THE COURT: -- 407 comparative fault of
5 decedent. So that's actually coming up. So --

6 MR. SULLIVAN: We'll keep that one separate.
7 We'll make the changes to this.

8 THE COURT: As I mentioned, 407 will be
9 given -- actually, there was a bit of discussion about
10 that on -- from evidence presented by the defense.

11 Okay. That --

12 MR. REID: Your Honor, we had an inquiry about
13 414. Your tentative is to deny it and --

14 THE COURT: Okay, one second.

15 MR. REID: -- we'd just like to understand why.

16 THE COURT: 406 will be given but as modified.
17 Any additional -- you need additional clarification on
18 406, Mr. Reid?

19 MR. REID: No, Your Honor.

20 THE COURT: Okay. That'll be e-mailed in.
21 I'll review it and then I'll give you the final copies
22 that will be read to the jurors.

23 MR. REID: Thank you, Your Honor.

24 THE COURT: So the next one, I apologize, was?

25 MR. REID: 414.

26 THE COURT: 414. Let me go back and refresh my
27 recollection. I did deny that one when I looked at it.

28 MR. SULLIVAN: The use notes specifically says

1 it's not applicable, Your Honor.

2 THE COURT: So the Court relied on the second
3 paragraph of the bench notes that "This instruction
4 should not be given at the same time as an instruction
5 pertaining to the standard of care form. Employees have
6 to work in dangerous situations."

7 MR. REID: That would have been 415 is that
8 alternative instruction, and we didn't request that one.
9 Plaintiffs didn't request it either.

10 THE COURT: So the Court's still not inclined
11 to give 414. 415 seems to be a more appropriate
12 instruction.

13 MR. REID: Your Honor, Daniel Collins, as
14 they've just finished pointing out, was not a DG Corp.
15 employee. Why would he not be responsible in what
16 they've described as a highly dangerous situation with
17 natural gas and explosives and all these things to
18 exercise extreme caution?

19 THE COURT: I'm saying 415 appears to be a more
20 appropriate instruction over 414.

21 MR. SCHUMANN: One second, Your Honor. But
22 again, he's not our employee, Your Honor.

23 THE COURT: Is 415 specifically saying he's
24 a --

25 MR. SCHUMANN: You're right, Your Honor. It
26 doesn't matter because we can explain this. Yeah.

27 MR. REID: They haven't asked for it.

28 MR. SCHUMANN: No. So we would ask for that if

1 you don't want to give 414, Your Honor.

2 THE COURT: Mr. Sullivan?

3 MR. SULLIVAN: I'm calling it up as we speak,
4 Your Honor.

5 (Pause in proceedings.)

6 THE COURT: 414 seems more akin to somebody
7 using fireworks or some other activity. 415
8 specifically seems to be tailored to somebody working
9 under dangerous conditions as, obviously, you know --
10 unfortunately, we learned about in this case. But I
11 don't read 415 to say -- imply that he's an employee of
12 the defendant in this case. It just says he was
13 employed and he was required to work under dangerous
14 conditions.

15 MR. REID: Well, if the Court's inclined to
16 deny 414, which is what I'm hearing, then we would
17 request 415.

18 MR. SULLIVAN: Well, plaintiffs would obviously
19 object to them asking for an instruction in the final
20 jury instruction conference without having an
21 opportunity to look at this instruction and research the
22 applicability of it.

23 THE COURT: Okay. So the Court's going to deny
24 414, also deny 415. Any -- let me see if there's any
25 other question marks. I don't have anything else. The
26 only other note I mentioned was 5007, removal of claims
27 or parties, and that is being given.

28 MR. BASILE: Your Honor, the -- just a logistic

1 thing. The packet of instructions that goes back, you
2 have the CACI numbers on them?

3 THE COURT: Let me see. They're your
4 instructions just without my notes.

5 MR. BASILE: Okay.

6 THE COURT: So yes. They have the headings and
7 the --

8 MR. BASILE: Good. Because for argument I'll
9 be referring to them so they can follow. The second one
10 that we're about there, I hope and assume that the
11 juror -- each juror will be given a copy of the verdict
12 form. And then there will be an official verdict form
13 given, of course, to whoever they choose as the
14 foreperson so that the jury, number one, can follow
15 along in argument; but, number two, that other judges
16 have pointed out it really makes it much more easier
17 when polling occurs, when they each have their own
18 verdict form to mark how they voted.

19 So when they're polled, it will be a lot
20 more -- I've been all the way to the Supreme Court on
21 inconsistent polling on a case, Your Honor. It's Keener
22 is the name of the case. And so it helps with following
23 both counsel's argument that they each have it. You can
24 pass them out at the beginning of closing and then have
25 an official -- certainly an official one that you can
26 give to them. This is the one who's supposed to do it,
27 but the other ones are just for you guys to follow
28 argument.

1 THE COURT: We'll come back to that. Remind
2 me, we'll revisit that. Let's finalize --

3 MR. SULLIVAN: We can supply the Court paper to
4 print them all if that's an issue of supplies.

5 THE COURT: No. There's -- we can address it
6 in a certain way, but let's finish up the verdict form
7 first.

8 MR. REID: Your Honor?

9 THE COURT: Mr. Reid, yes.

10 MR. REID: We had asked for a number of special
11 instructions, but those were all submitted to the Court.

12 THE COURT: Which ones?

13 MR. REID: Defendants' Special Instruction
14 Number 1, Number 2, and then there was a --

15 THE COURT: Oh, yes. I did see those here.
16 One moment.

17 MR. REID: And then two -- two filings, Your
18 Honor. Special Instruction Number 1 goes to the
19 elements of the negligent undertaking, Your Honor, and
20 things that the case law talks about.

21 THE COURT: Okay. So Special Instruction
22 Number 1 will be denied. That's pretty much the
23 discussion we had this morning when we made the
24 modification to 450C, Special Instruction Number 2. The
25 Court's going to deny Special Instruction Number 2. I
26 think it's implied that in order for them to find each
27 element to be proven by a preponderance of the evidence,
28 that defendant actually undertook that specific, you

1 know --

2 MR. REID: Your Honor, I hate to be --

3 THE COURT: No, no. Please, Mr. Reid, make
4 your record.

5 MR. REID: I hate to be contrary, but with
6 Special Instruction Number 1, the first two elements of
7 that we've probably discussed. The third element,
8 Diamond Generating Corporation, having performed this
9 specific task at some point in time, was required -- in
10 the past was required to continue performing that
11 specific task. Should be "was not required." It's a
12 typo. That goes to the -- cutting off the duty, Your
13 Honor.

14 So two examples of this would be the original
15 safety policies that were reviewed by Mr. McDaniels. DG
16 Corp. had no particular duty to come in and review
17 those. The policies that were addressed in November of
18 2016 -- or November 2016 for Mr. Johnson had nothing to
19 do with the LOTO. Another example of that would be the
20 fact that Mr. Walker's last performance review occurred
21 in April of 2016 and Mr. Lane specifically testified
22 that DG Corp. would have not had any opportunity to
23 review any LOTO sheets or anything along those lines
24 after that date. And he specifically said they don't --
25 they couldn't have reviewed the ones for 2017.

26 So that's that Good Samaritan's duty being cut
27 off. He's -- the Good Samaritan's duty doesn't extend
28 forever.

1 MR. SCHUMANN: Your Honor, I think what we're
2 doing is we're asking for some instruction that tells
3 the jury that the duty doesn't last forever.

4 THE COURT: I see.

5 MR. SCHUMANN: Whether we cut out a portion of
6 it, we would certainly ask that an instruction be given
7 that it cuts off at some point in time. Because without
8 it, they might think it's forever.

9 MR. REID: This was all briefed, Your Honor, as
10 part of Motion in Limine Number 14. We had put in all
11 this case law. It also goes to the fourth point that
12 the Peredia case supports the idea that the
13 parent/subsidiary relationship is different than the
14 normal relationship where some outside contractor comes
15 in and provides services. And the parent/subsidiary
16 relationship case law indicates that the parent must
17 have completely overtaken or undertaken that duty.

18 THE COURT: As we've talked about at length
19 now, yes.

20 MR. SULLIVAN: Yeah, and that's a complete
21 falsehood that they're stating to the Court, Your Honor.

22 THE COURT: Which part?

23 MR. SULLIVAN: That they have to completely
24 have overtaken the task, it says, as opposed to
25 supplementing. They cite a case that is a -- from
26 another jurisdiction that indicated that that was the
27 case, but the Peredia court specifically found that you
28 didn't have to completely under -- or overtake the

1 responsibility, that you could supplement. So they've
2 been misquoting that case since they filed their motion
3 in limine and they're continuing to do it at this point
4 in time.

5 MR. REID: Your Honor, Peredia did not address
6 the parent/subsidiary relationship because that's not
7 what was at issue in the case. They just noted that
8 there was a split in -- a split regarding how the
9 companies were treated. So we're not misrepresenting
10 the law, Your Honor. It's Peredia vs. HR Mobile
11 Services, 25 Cal.App.5th 680 at 699 to 700.

12 THE COURT: I hear you. It was one of the
13 first cases I printed out.

14 MR. REID: Yeah.

15 THE COURT: Because I specifically remember
16 because it was like a mobile -- it was a mobile home or
17 something, right?

18 MR. SULLIVAN: No, Mobile Services company.

19 THE COURT: Peredia vs. HR Mobile Services 25
20 Cal.App.5th 680 2018 case. So come first -- full
21 circle.

22 Okay. Regarding the special instructions,
23 though, that'll be denied as to Number 1 and 2. I think
24 Element 4 addresses it with whether the task undertaken
25 was a substantial factor in causing death. So they may
26 have done something five years ago to undertake this
27 task, but did that -- was that a substantial factor in
28 the death. That's where the arguments are to be made in

1 terms of whether the proximity of the alleged negligent
2 undertaking and the result.

3 MR. REID: So -- I'm sorry. So --

4 THE COURT: So it'll be denied on those. The
5 Court finds, for the record, that it believes Element
6 Number 4 would address the proximity argument in terms
7 of the temporal aspect.

8 Mr. Sullivan?

9 MR. SULLIVAN: Yeah, one other issue on the
10 Instruction 3921. When I was looking over it over the
11 weekend, Your Honor, I saw that there was one element
12 that was left out on this as it related to Denise
13 Collins, the element of training and guidance. So I've
14 corrected it and I've got a copy of the new instruction
15 that I'd like to get to the Court.

16 THE COURT: Okay. One moment. 3921, that's
17 damages, right?

18 MR. SULLIVAN: Yes, and it's under the column
19 relating to Denise Collins' claims. Just the words
20 "training" and "guidance" were left out. So --

21 THE COURT: So you want to take out training
22 and guidance?

23 MR. SULLIVAN: No, I want to add training and
24 guidance.

25 THE COURT: So the one I have has training and
26 guidance.

27 MR. SULLIVAN: For Denise Collins?

28 THE COURT: Oh. So after the loss of enjoyment

1 of sexual relations and Daniel -- I'm sorry, and Daniel
2 Collins' training and guidance?

3 MR. SULLIVAN: Yeah. Actually, I had added it
4 after moral support, training and guidance and the loss
5 of enjoyment of sexual relations as being the last one.

6 THE COURT: That's fine. If you want to e-mail
7 it in as well, Mr. Sullivan.

8 Mr. Reid, anything on that point?

9 MR. REID: No, Your Honor.

10 MR. SULLIVAN: Here's a copy if you want it.

11 MR. REID: Thank you. And again, I apologize
12 for going back, Your Honor. I understood you on
13 Defendants' Special Jury Instruction Number 1 to say
14 that Number 4 --

15 THE COURT: Oh, no, I apologize. Element
16 Number 4 of Instruction 450C, at least in this Court's
17 opinion, addresses your temporal concern --

18 MR. REID: Okay.

19 THE COURT: -- in terms of time. So both
20 instructions are denied.

21 MR. REID: Thank you, Your Honor.

22 THE COURT: I'm sorry.

23 MR. REID: And then as to Supplemental
24 Instruction Regarding Employer Duties and the Effect of
25 the Parent's Subsidiary Relationship --

26 THE COURT: Denied as well. So I have them
27 down as Special -- Defendants' Special Instruction
28 Number 1, denied. And then Special -- it's on the

1 second -- separate page, it looks like they're little --
2 your little excerpts from two different cases, that's
3 also denied.

4 MR. REID: Okay. But there were some
5 additional ones, Your Honor.

6 THE COURT: Oh, there's more after 2?

7 MR. SCHUMANN: Yeah.

8 MR. REID: Yes, Your Honor.

9 THE COURT: Okay.

10 MR. REID: And we --

11 THE COURT: I have 1 and 2.

12 MR. SCHUMANN: And then we filed --

13 MR. REID: And then we filed supplemental
14 briefing asking for additional instructions, Your Honor.

15 MR. SCHUMANN: It was on -- it's called
16 Defendant Diamond Generating Corporation's Pro
17 Supplemental Instructions Regarding Employer of Duties
18 and Effect of Parent/Subsidiary Relationship. It's
19 filed in the beginning before we started.

20 MR. REID: Yeah, that was filed June 27th, Your
21 Honor.

22 THE COURT: Okay. Let me pull it -- I have
23 June 29th here, July 1st, July -- June 27th, I have
24 defendant reply to the supplemental brief for Privette,
25 Privette --

26 MR. REID: Yeah, the Privette ones have been
27 dealt with, Your Honor.

28 THE COURT: So I'm -- it probably got lost in

1 between there, but I'm looking. Privette. Oh, okay.
2 Here it is. Okay. I think one of the first ones behind
3 everything else. Okay. So special instruction,
4 employer has nondelegable duty to provide for the safety
5 of its employees in the work environment.

6 MR. SCHUMANN: That's exactly what this case is
7 about for us, Your Honor. The Ops have a nondelegable
8 duty to Mr. Collins, and we do not believe there's any
9 proof that that duty was assumed by anyone.

10 THE COURT: Mr. Sullivan?

11 MR. SULLIVAN: I'm trying to find that
12 instruction so that I can comment intelligently, Your
13 Honor.

14 MR. SCHUMANN: It's just a Labor Code quote.

15 THE COURT: So in terms of the special
16 instruction regarding effect of a parent/subsidiary
17 relationship, that'll be denied. That's really --
18 that's more really getting in some nuanced case law
19 there for the jurors because that -- I mean, that's --
20 yes, that's a general rule, but then to give it to them
21 without the whole body of case law I don't think would
22 be appropriate. So that'll be denied.

23 Then there's special instruction on employers
24 duty to its employees. Again, so the Court will deny
25 the special instruction on employer's duty to its
26 employees, the one about the nondelegable duty. Again,
27 that is a -- that is a general principle of law, but
28 obviously you've got a whole body of case law dealing

1 with, you know, when that doesn't happen.

2 However, the Court's inclined to grant it on
3 the employer's duty to its employees, the ones citing
4 Labor Code Section 6403. It reads "No employer shall
5 fail or neglect to do any of the following," and then it
6 goes through there. I suspect, though, that's going to
7 probably correlate with arguments that defense would
8 likely make, so -- and then plaintiff, I'm sure, would
9 have some counterpoints to that.

10 So did you find that one, Mr. Sullivan?

11 MR. SULLIVAN: I did. Plaintiffs would object
12 to the giving of that. One, it wasn't submitted to the
13 Court timely. I mean, it was provided ten days after
14 the trial date on this. It was buried in an e-mail with
15 briefings regarding other stuff. So I haven't had a
16 chance to do any research on this particular topic to
17 find out under what types of circumstances it's
18 appropriate to give that instruction.

19 In this case here, I don't think that the
20 instruction is necessary in that, you know, they're
21 going to be entitled to argue that DGC Ops was
22 negligent. Negligence is the failure to use reasonable
23 care. Now what they're trying to do is they're trying
24 to back door an instruction to basically try to place
25 some, you know, emphasis on what DGC Ops had to do in
26 this particular case, which I think is not appropriate
27 given the circumstances.

28 THE COURT: Okay. Again, the -- I believe the

1 issue for the jurors is going to be is who was actually
2 running the show. So this may be something that's, you
3 know, a general principle of law here, but whether it
4 was DG Ops actually in charge or DG Corporation I
5 suppose is ultimately the question of fact for the
6 jurors.

7 So the Court's inclined to give that one,
8 Mr. Reid, but without the authority section below. We
9 don't give the bench notes when we give other
10 instructions, so we won't do it on this one either.

11 MR. BASILE: Your Honor?

12 THE COURT: So if you could submit that one as
13 is and go -- so, Mr. Sullivan, the Court -- I did hear
14 your concern about it wasn't submitted timely. For
15 future -- I'm going to be very clear at the beginning
16 about adhering to the rules, but I'm not going to say
17 you -- the plaintiffs have benefitted, but the Court has
18 overlooked that as well in certain motions the
19 plaintiffs have brought through this case.

20 So I have to -- I have to be equal to both
21 sides in that if I -- if it was a hard-line rule, then
22 believe me, there -- both sides would have already had
23 witnesses excluded, right, Mr. Reid?

24 MR. REID: Yes, Your Honor.

25 THE COURT: And some other things for
26 plaintiffs. So --

27 MR. BASILE: Your Honor?

28 MR. SCHUMANN: Thanks.

1 THE COURT: Mr. Basile?

2 MR. BASILE: Thank you, Your Honor.

3 Your Honor, special instructions are the number
4 one thing where there's error at the appellate level.
5 This special instruction, essentially what it does is
6 instructs the jury on a defense -- on their defense on
7 what it is. It's a special instruction. It's already
8 covered by the negligence instructions, by negligence of
9 third parties, by all that. This is giving more
10 emphasis to something that is not necessary through a
11 special instruction. There's no CACI on this. There's
12 nothing. So I think we're starting to walk on some thin
13 ice on this one, Your Honor.

14 THE COURT: All right. Mr. Reid?

15 MR. REID: Nothing further, Your Honor.

16 MR. SULLIVAN: One other point, Your Honor, if
17 the Court decides to give it. Having the words "special
18 instruction" up there calls special attention to the
19 instruction itself. The words special instruction
20 should be removed and it should be entitled "Employer's
21 Duty of -- to its Employees."

22 MR. SCHUMANN: It will be removed.

23 THE COURT: Okay. Mr. Reid, if you could just
24 submit it with the heading, "Employer's Duty to its
25 Employees."

26 MR. REID: We will, Your Honor.

27 THE COURT: And then I will -- where do you
28 propose I give this in terms of the order of

1 instructions? Remember we left off the -- we concluded
2 the 200 series.

3 MR. SCHUMANN: Go in the 400s?

4 MR. REID: Go in the 400s, Your Honor.

5 THE COURT: So maybe after 450C?

6 MR. SCHUMANN: Yeah.

7 MR. REID: Yes, Your Honor.

8 THE COURT: Okay. So the last point I want to
9 make -- because we're going to come back briefly after
10 lunch on the verdict forms. So you have the information
11 now for the verdict forms. I'm just going to tell you
12 the order I'd like to see the verdict forms in.
13 Plaintiffs, I'm going to ask if you could please submit
14 this. I have yours, but if you could please just remove
15 your --

16 MR. SULLIVAN: Yeah, we --

17 THE COURT: -- your firm name in there -- from
18 the upper left-hand corner.

19 MR. SULLIVAN: We've already done that.

20 THE COURT: Thank you. And then let's go in
21 that order, which would be first the elements for
22 negligent undertaking.

23 MR. BASILE: You made a -- just as it's -- how
24 is it supposed to read so we're all on the same page?

25 THE COURT: Sure.

26 MR. BASILE: What do you want it to read, Your
27 Honor?

28 THE COURT: I'll take a look now.

1 So the same language that we incorporated
2 earlier for 450C, make sure it -- that it tracks with
3 that for the verdict form. So for an example, Number 1,
4 "Did Diamond Generating Corporation voluntarily or for a
5 charge render services related to Sentinel Energy
6 workers' safety," so have -- track it so it follows
7 450C.

8 Then what you'll want to do, Mr. Sullivan,
9 with -- once you get to Element Number --

10 MR. BASILE: Question Number --

11 THE COURT: -- Number 5, I don't know if you
12 want to break that up and put like a big "or"
13 underneath. So make it clear that it's just -- you
14 know, it's one of these and then they move on to the
15 following question.

16 MR. BASILE: That's how we have it here. Like
17 we have 5, 6 and 7. And then we have, if you answered
18 yes to any questions 5, 6 or 7, answer the following.

19 THE COURT: Okay. That's fine. Then,
20 Mr. Sullivan, on Question Number 8, you have leave to
21 include that -- oh, it looks like you have the training
22 and guidance already in here.

23 MR. BASILE: Yes.

24 THE COURT: But if you wanted, you could make
25 it there. It looks like you don't have to make that
26 change then, so you're fine.

27 MR. SULLIVAN: Yeah. I noticed when I was
28 looking at it this morning there were a couple of others

1 that were left out on the verdict form. I think
2 assistance and protection were left out, so I've added
3 those so that they mirror what's in 3921.

4 THE COURT: Exactly. Just have it track what's
5 in 3921.

6 MR. SULLIVAN: Perfect. I'll make sure of
7 that, Your Honor. Thank you.

8 (Pause in proceedings.)

9 THE COURT: Okay. So we're going to leave here
10 in a minute, but -- so make sure your verdict form --
11 double-check it, both of you, e-mail each other, e-mail
12 the Court. We'll see you here at 1:30. But -- the
13 courtroom supervisor has -- it says answer Question 6
14 and then the following question is 7 and they're not
15 lined up correctly. However, the version I'm working
16 off of in my binder is correct. It says answer Question
17 6, then Question Number 6 is next. Answer Question
18 Number 7, Number 7's next.

19 So mine's okay. But we're supposed to have
20 identical binders. So whatever you're working off, just
21 make sure we double-check it after lunch. Everything
22 looks fine, but once you get to Question Number 12, that
23 series, we have Daniel Collins in there, which is fine.
24 And then --

25 MR. SULLIVAN: Just add the same questions for
26 the other people that the Court has ruled upon?

27 THE COURT: Exactly. And then Question Number
28 14 or whatever it ends up being, you're going to have

1 those different things or entities there and then
2 ultimately leading up to 100 percent. So --

3 MR. SULLIVAN: Will do, Your Honor.

4 THE COURT: So we'll see you after lunch with
5 the verdict form. What else am I printing out?

6 MR. SCHUMANN: We're going to e-mail you that.

7 MR. REID: The portion one, 406.

8 THE COURT: 406.

9 MR. SCHUMANN: And the special --

10 MR. REID: And we've got to fix the special
11 verdict forms.

12 MR. SCHUMANN: Special instructions.

13 THE COURT: Special instruction and verdict
14 form. Okay. Plus we have 450C as well.

15 MR. SULLIVAN: Yes. We'll e-mail that to the
16 Court so that it can look over the changes over the
17 break.

18 THE COURT: Great.

19 MR. SULLIVAN: I'll also e-mail 3921.

20 THE COURT: Okay, great. Have a nice lunch.
21 We'll see you then.

22 MR. REID: Thank you, Your Honor.

23 (Off the record at 11:59 a.m.)
24
25
26
27
28

1 PALM SPRINGS, CALIFORNIA; JULY 25, 2022

2 AFTERNOON SESSION

3 --o0o--

4 (On the record at 1:32 p.m.)

5 THE COURT: Okay. Let's formally go on the
6 record, DG Corp. -- I'm sorry, Collins vs. DG Corp. All
7 counsel are present.

8 I went ahead and looked at the instructions.
9 So we've handed back 450C with the modifications, 406
10 with the modifications and then defense special
11 instruction and then 3921 which wasn't so much a
12 modification; it was a correction on the typo or
13 omission. The only thing pending now is that verdict
14 form.

15 MR. SULLIVAN: It should be in the inbox. It
16 just came through on mine. We were getting in the car
17 as she sent it, so apparently it took a couple of
18 minutes for it to send.

19 THE CLERK: I just got it, Your Honor.

20 THE COURT: It looks like we just got it.
21 Otherwise, the rest of them I worked on during lunch.

22 MR. SULLIVAN: As the Court can imagine, there
23 was a lot involved in changing the verdict formatting,
24 all those lines and stuff. So --

25 THE COURT: Of course. So let me take a look
26 at it. So you have your originals. So any changes I'll
27 make here and then I'll print it out in chambers and
28 I'll come right out. Let me see.

1 MR. SCHUMANN: Okay.

2 THE COURT: Mr. Reid, Mr. Schumann, do you have
3 a copy to work off of?

4 MR. SCHUMANN: I have it right here.

5 THE COURT: Okay. Great.

6 MR. BASILE: I think that first question ought
7 to end after the word "safety," Your Honor.

8 THE COURT: So I noticed that on the -- on 450C
9 that it had DGC Operations and then DGC Operations was
10 like in bold. I took the bold off of the instruction,
11 and then I -- I think I took that part off too for
12 Element 1. Let me take a look. Yes, so -- but I was a
13 little bit confused. Weren't those from you,
14 Mr. Sullivan, or from your office?

15 MR. SULLIVAN: I believe so.

16 THE COURT: Okay. So anyhow, Element Number 1
17 will end -- not Element 1, Question 1 on the verdict
18 form, the finding will end after worker safety, question
19 mark.

20 (Pause in proceedings.)

21 THE COURT: So Finding Number 2 would be "Were
22 the services rendered of the kind that Diamond
23 Generating Corporation should have recognized as needed
24 for the protection of workers at the Sentinel Energy
25 Center?" Number 3, it's fine as is.

26 MR. SCHUMANN: I'm sorry. Did you change
27 Number 2, Your Honor?

28 THE COURT: I did.

1 MR. BASILE: How does it read now, Your Honor?
2 Could I have it again?

3 THE COURT: Sure. "Were the services rendered
4 of the kind that Diamond Generating Corporation should
5 have recognized as needed for the protection of workers
6 at the Sentinel Energy Center?"

7 MR. BASILE: Okay. We're just typing it and
8 getting it right.

9 THE COURT: Oh, I'm going to print it out right
10 now and I'll give you the copies.

11 MR. BASILE: All right. I thought we were --

12 THE COURT: So you can have it ahead of time.

13 MR. BASILE: Got you. Which one you at now,
14 Your Honor?

15 THE COURT: 5.

16 MR. BASILE: 5?

17 (Pause in proceedings.)

18 THE COURT: I'm just going to make the changes
19 and then I'll -- I'll print it out and give you a copy.

20 MR. REID: Thank you, Your Honor.

21 (Pause in proceedings.)

22 THE COURT: I still have the document open if
23 you want to take a look at the proposed special verdict.
24 It's on -- it's on double-sided paper, but I'm assured
25 that the jurors will receive the less
26 environmentally-conscious version, single-sided.

27 (Pause in proceedings.)

28 MR. BASILE: Your Honor?

1 THE COURT: Yes, Mr. Basile.

2 MR. BASILE: I've seen this come up before on
3 Question 22 and it's particularly, I think, something we
4 need to talk about in a case like this with so many
5 parties named to attributed percentages. And the
6 problem that I've seen in the past is a jury may find
7 yes or no on some of these, but then they go down here
8 and they still put percentages. So then the Court has
9 to send them back, try to straighten it out.

10 I think a remedy for that may be "What
11 percentage of responsibility for Daniel Collins' death
12 do you assign to the following?" Or wait. It should be
13 "What percentage of responsibility for Daniel Collins'
14 death among those that you found both negligent and a
15 substantial factor" -- somehow we got to instruct them
16 that those are the only ones that get percentages on
17 here because we don't want them deliberating twice.
18 Like if they cross someone off and then they're here and
19 they see these, then they're going well, do we got to
20 put a percentage or what?

21 So 22 needs to be -- we need to put our heads
22 together on how to do that. And I wish I had something
23 off the top of my head but --

24 MR. SULLIVAN: There might be something in one
25 of the CACI instructions that deal with multiple
26 parties. I didn't get a chance to look at that over the
27 limited time I had over the lunch.

28 THE COURT: This pretty much mirrors the

1 special verdict form, I think Version 2, that's in the
2 CACI instructions. Also, I'm fresh back from judicial
3 college and my much wiser colleagues in San Francisco,
4 we went through hypotheticals like this. So there was
5 actually some that were identical that's got to do
6 with --

7 MR. BASILE: Hold on a second. Do you really
8 mean that, much wiser in San Francisco? Strike that.

9 THE COURT: So we're on the record, so I'm
10 going to stick with what I said. But the verdict form
11 does reflect that, and specifically, I remember that we
12 went through cases where you had parties that had
13 previously settled out or were not actually part of that
14 case but there was evidence in order for the jury to
15 potentially assign liability. So that's what this
16 mirrors. To your concern, Mr. Basile, though, on that I
17 understand your concern.

18 Mr. Schumann?

19 MR. SCHUMANN: I think it's fine. I think we
20 can talk to the jury about it if we have to. Like in
21 closing we can remind them.

22 THE COURT: If they come back and they find,
23 for example, Mott MacDonald was negligent but it wasn't
24 a substantial factor, say, they -- you know, whatever
25 piece of evidence, they're like a warning would have
26 made a difference, I suppose we could send them back.
27 That'll take time. I mean, we could also -- if they do
28 it correctly, then, you know, you picked a fairly, you

1 know, intelligent jury that was able to figure that out.
2 Otherwise -- but I understand your concern if they don't
3 find substantial factor for both of them and they start
4 filling in percentages, we're going to have to send them
5 back and correct it.

6 MR. BASILE: Right. I've had that come up
7 before and then --

8 THE COURT: No, I --

9 MR. BASILE: -- had to send it back. You see
10 how it can happen.

11 THE COURT: I -- you do enough jury trials, you
12 see all kinds of things, yes.

13 Mr. Schumann, Mr. Reid, do you agree, though,
14 that if -- if that were to happen, if they attribute a
15 percentage to a defendant, although they end up finding
16 in the negative, that -- a substantial factor, that we
17 would have to send them back?

18 MR. SCHUMANN: Yeah.

19 MR. BASILE: There's one other alternative.
20 The Court has, I think, the power to correct that
21 verdict at that point. You may not need it. If they
22 find no substantial factor on any of those, you can --

23 THE COURT: I mean, I don't know how they would
24 like to -- assuming that's being done in the context of
25 all of the other potential parties too. So if they
26 needed to, you know, reassign some of the percentages,
27 I'd feel more comfortable sending them back as opposed
28 to just striking one of them.

1 MR. BASILE: That's something we'll have to
2 cross that bridge. I just brought it to the Court's
3 attention.

4 THE COURT: Well, you have Mr. Schumann on the
5 record -- although I think he just sat back.
6 Mr. Schumann, do you agree that if that were to
7 happen -- what I mentioned about the percentage being
8 assigned to a defendant, that the jury finds in the
9 negative about being a substantial factor in
10 Mr. Collins' death, that we would send them back and
11 tell them to reevaluate; that they can't assign -- they
12 cannot assign percentage to a defendant they don't find
13 both in the affirmative way?

14 MR. SCHUMANN: I agree with that.

15 THE COURT: Okay. There you go, Mr. Basile.
16 The defense is in agreement. We wouldn't have an
17 argument over that. The only other thing I can think of
18 is to put in brackets there, "Only assign to defendants
19 you have found both to be negligent and their negligence
20 was a substantial factor in Mr. Collins' death or Daniel
21 Collins' death."

22 MR. SULLIVAN: That's what I would propose,
23 Your Honor. I think that's the safest way to go.

24 MR. SCHUMANN: I think it becomes too verbose.
25 It's already verbose as is.

26 THE COURT: Well, it's civil though. But the
27 criminal verdict forms are much simpler.

28 MR. SCHUMANN: Yeah, they are.

1 MR. BASILE: Guilty/not guilty.

2 MR. SCHUMANN: Yeah. I think I can easily talk
3 to the jury about it. I don't think we need more
4 language. It's simple as it is.

5 THE COURT: You can have so many potential
6 parties here, we could have just done a special verdict
7 form, done away with special. The general's much
8 easier, it just says it.

9 Okay. We'll leave it as is, but we have an
10 understanding amongst us that we will send them back if
11 that ends up being the case. Let's give this jury the
12 benefit of the doubt that they'll figure it out on their
13 own.

14 MR. BASILE: I think with the brackets they can
15 definitely figure it out, you know.

16 THE COURT: Let me take another look at it. I
17 don't doubt that. I can easily see how that would
18 happen. And if you were to ask the Court to bet on --
19 the Court doesn't bet, but whether this might happen, I
20 can easily see this happen because then it -- after that
21 series of questions it just skips to percentages.

22 MR. BASILE: That's why the brackets, I think,
23 would be so important because they're going to spend so
24 much time getting to that. And then if they start all
25 over on the percentages, those brackets give them
26 direction, Your Honor. I think that's important.

27 THE COURT: Okay. Mr. Schumann, I'm going to
28 go back. I'm going to put -- I'm going to put some

1 language in brackets underneath. We already have our
2 next trial lined up to start in here, so --

3 MR. SCHUMANN: Good luck to them.

4 THE COURT: Thank you, Mr. Schumann. So --

5 MR. SCHUMANN: Where are you going to put it,
6 Your Honor? Just under --

7 THE COURT: Just under 22.

8 MR. SCHUMANN: Yeah.

9 THE COURT: And it'll be in the bracket.

10 MR. SCHUMANN: Just one bracket, not one by
11 each party?

12 THE COURT: No, no, no, just one underneath
13 Question Number 22.

14 MR. SCHUMANN: Got it.

15 THE COURT: If that helps us save time, the
16 sooner we can call this case that we're trailing to come
17 in.

18 MR. SCHUMANN: Got it.

19 THE COURT: Another case that counsel seemed
20 happy to be in here, so -- but we haven't started yet.

21 MR. REID: They haven't lost jurors to COVID
22 yet either.

23 THE COURT: No, we made a -- we were fortunate.
24 We had a situation where it's a -- almost a month-long
25 bench trial. So considering the -- kind of our
26 experience here, I think it was probably a good idea to
27 proceed.

28 MR. REID: That was the good luck reference,

1 Your Honor. We weren't impugning you at all, if you
2 understand.

3 THE COURT: Oh, no, no. But with the COVID
4 situation, yes, we were -- we figured a bench trial
5 would probably be wiser. We can help another set of
6 counsel with their case and also probably see if we can
7 ride out this current wave. Okay.

8 (Pause in proceedings.)

9 THE COURT: Okay. So I have it in the bracket
10 underneath. I italicized the text within to say "Please
11 only assign a percentage to a party, entity or
12 individual you found was both negligent," and then in
13 all caps, "and their negligence was a substantial factor
14 in Daniel Collins' death."

15 MR. BASILE: That's fine.

16 THE COURT: Anything different? We'll
17 probably -- we may still have to send them back, but at
18 least we tried.

19 MR. SCHUMANN: They never understand
20 substantial factor anyways.

21 THE COURT: That's the factual finding. Okay.
22 I'll be right back.

23 MR. BASILE: Your Honor, are we going to do --
24 are we going to do the environmental-friendly type for
25 each juror? We can do that and then that would be a
26 good way for them to differentiate from the -- excuse
27 me, Your Honor, from the actual verdict form and their
28 follow on.

1 THE COURT: So our practice is I think we give
2 them -- I don't think we do one, we do what, three?

3 THE CLERK: No, Your Honor. I -- for the
4 verdict forms, I send back one original that has a "Sign
5 here" tab. And then I send back 12 copies, and they're
6 clearly marked as copies. I mark them "Copy" on the top
7 of it.

8 MR. BASILE: Oh, that's perfect. The only
9 thing if they could be passed out during argument,
10 then -- so they could follow the argument.

11 THE COURT: We're going to honor tradition and
12 not do that.

13 MR. BASILE: Oh, okay.

14 THE COURT: And then with the verdict -- with
15 the jury instructions, we send back three copies?

16 THE CLERK: Yes, Your Honor.

17 THE COURT: So this department sends back three
18 copies, and I've been in other departments where they
19 send back one. Usually what happens is if the jurors
20 are very particular they'll send something back saying
21 we want one set for each juror or something. And then
22 at that point we'll accommodate them. But if they don't
23 ask, we're not going to send back multiple copies.

24 Jurors -- juries -- civil juries I've been on
25 before. I mean, I've been a foreperson on a civil case
26 before. I remember they sent back two or three and then
27 we were working in little groups, sharing the thing as
28 we -- you know, threw the instructions around the table.

1 I'm sure you've seen it in your focus groups.

2 So give me a second. Let me go print out this
3 last one. Anything else with the special verdict form?

4 MR. SCHUMANN: No, only if we can get it
5 e-mailed when it's all done.

6 THE COURT: Yes.

7 MR. SCHUMANN: Great.

8 MR. SULLIVAN: That would be great, Your Honor.
9 Thank you.

10 THE COURT: Would you like a printed copy now,
11 or do you want --

12 MR. SULLIVAN: Just e-mail it is fine. We
13 don't need a printed copy.

14 THE COURT: Okay.

15 (Pause in proceedings.)

16 THE COURT: You look perplexed, Mr. Basile.
17 Why would you want me to send -- or give each jurors a
18 verdict form or something in the middle of your closing
19 argument? Won't that take away from --

20 MR. BASILE: From me? No, just so that we
21 could follow along. But it's fine. I'm going to have
22 the questions on my PowerPoint.

23 THE COURT: I say that smiling, but I don't
24 want to take away from your argument. Don't you want
25 their attention?

26 MR. BASILE: I don't know. I kind of think I'm
27 going to have their attention, Your Honor.

28 THE COURT: Oh, okay. Okay. So we're going to

1 e-mail you the verdict form. That is it. We will start
2 at 10:00 a.m. tomorrow morning. I'm going to come --
3 pick up with the first instructions 401, then 406, and
4 I'll go in order with the remaining instructions. If it
5 takes me -- I don't think it's going to take me more
6 than 30 minutes. It should be even less than that at my
7 speed too. We'll have a different court reporter
8 tomorrow.

9 But, Mr. Basile, you -- do you need any time to
10 set up or if -- once I conclude, you'll be ready?

11 MR. BASILE: Yeah, I'll be ready. I'll come in
12 a few minutes early. I just got to set up the tripod,
13 that's all.

14 THE COURT: Okay. I just want to make sure.
15 Sometimes I know counsel wants a little break so they
16 can set up in between. But if you'll be ready to go,
17 then I'll turn it over to you. I just don't want to --
18 I don't want to catch you off guard or anything.

19 MR. BASILE: No, I'll be ready, Your Honor.

20 THE COURT: Okay. So then let's -- I think I'm
21 definitely going to finish that within -- less than
22 30 minutes. So then I'm going to turn to you and we
23 will take a brief recess in between plaintiffs' argument
24 and then defense. I always think it's kind of better.
25 I'm sure you would probably prefer it too, Mr. Schumann
26 and Mr. Reid.

27 MR. SCHUMANN: Yes, Your Honor.

28 THE COURT: So kind of restart and then when

1 you come back in, then you can go. Anything else?

2 MR. SCHUMANN: I just -- if -- do we have --
3 you think you'll be done tomorrow?

4 THE COURT: Mr. Basile?

5 MR. SCHUMANN: Are you taking all day or --

6 MR. BASILE: I will be done tomorrow, yes.

7 THE COURT: No, Mr. -- and that's a fair
8 question, Mr. -- I'm not sure if he's superstitious or
9 anything, if there's a favorite tie he likes to wear or
10 something for closing argument, he wants to plan
11 accordingly.

12 MR. BASILE: No, no. My closing will not be
13 any longer than my opening. I think that was an hour
14 and 20 minutes. I suspect it'll be less from what I've
15 been working on. I'm going to try and keep it around an
16 hour.

17 THE COURT: You have your focus groups. You
18 know what works or what the studies show. So --

19 MR. BASILE: How'd you know?

20 THE COURT: -- I'll leave that peach to you.

21 So -- but Mr. Schumann can plan on closing
22 tomorrow. But I assure you I'll take a break in between
23 plaintiffs' closing and yours so you can get set,
24 whatever you need.

25 MR. SCHUMANN: Thank you, Your Honor.

26 MR. BASILE: How'd you know we did focus
27 groups?

28 THE COURT: I suspect both sides do.

1 MR. SCHUMANN: We all do.

2 THE COURT: Yes.

3 Okay. Thank you. Have a nice day and we'll
4 see you tomorrow.

5 MR. REID: Thank you, Your Honor.

6 MR. BASILE: Thank you.

7 (The proceedings adjourned at 2:05 p.m.)

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SUPERIOR COURT - STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

)	
)	
DENISE COLLINS; CHRISTOPHER)	
COLLINS,)	
)	
PLAINTIFFS,)	
	)	Case No. PSC1901096
v.)	
)	
CPV SENTINEL ENERGY CENTER,)	
LLC; MOTT MACDONALD, LLC;)	
GEMMA POWER SYSTEMS, LLC; and)	
DOES 1 to 15, Inclusive,)	
)	
DEFENDANTS)	

Shayna Montgomery

I, SHAYNA MONTGOMERY, REPORTER PRO TEMPORE OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF RIVERSIDE, DO HEREBY CERTIFY THAT I DID CORRECTLY REPORT THE PROCEEDINGS CONTAINED HEREIN AND THAT THE FOREGOING PROCEEDINGS PAGES 2401 THROUGH 2600, INCLUSIVE, COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE PROCEEDINGS AND TESTIMONY TAKEN IN THE MATTER OF THE ABOVE-ENTITLED CAUSE ON MONDAY, JULY 25, 2022.

DATED THIS 3RD DAY OF MARCH, 2023.

SHAYNA MONTGOMERY, CSR NO. 13452

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COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT - DIVISION TWO
APPEAL FROM THE SUPERIOR COURT OF RIVERSIDE COUNTY

-oOo-

DENISE COLLINS; CHRISTOPHER)
COLLINS,) DCA NO. E080233
)
Plaintiffs/Respondents,) Riverside County
) Case No. PSC1901096
vs.)
) Volume 15 of 19
DIAMOND GENERATING CORPORATION,) Pages 2601-2724
)
Defendant/Appellant.)
_____)

REPORTER'S TRANSCRIPT OF APPEAL
BEFORE THE HONORABLE MANUEL BUSTAMANTE DEPARTMENT PS2
JULY 26, 2022

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SUPERIOR COURT - STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

DENISE COLLINS; CHRISTOPHER COLLINS,)	
)	
PLAINTIFFS,)	
	)	Case No. PSC1901096
v.)	
)	
CPV SENTINEL ENERGY CENTER, LLC; MOTT MACDONALD, LLC; GEMMA POWER SYSTEMS, LLC; and DOES 1 to 15, Inclusive,)	
)	
DEFENDANTS.)	
)	

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS
BEFORE THE HONORABLE MANUEL BUSTAMANTE
July 26, 2022

(APPEARANCES OF COUNSEL ON NEXT PAGE.)

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1 PALM SPRINGS, CALIFORNIA; JULY 26, 2022

2 MORNING SESSION

3 --o0o--

4 THE COURT: Good morning.

5 COLLECTIVE: Good morning, Your Honor.

6 THE COURT: Welcome to Department PS2. Back on
7 the record, Collins vs. DG Corp. All counsel are
8 present. All parties are present, and most importantly,
9 all members of the jury are present. It is 10:02. My
10 apologies, I was discussing something with my colleague
11 next door. I know we're off to a two-minute late start.

12 Okay. So I have a couple instructions for you
13 to read. Counsel and I were both here yesterday. We
14 finalized everything. So as soon as I read the
15 instructions, which should be about 20 minutes or so, we
16 will begin with plaintiffs' closing argument.

17 (Pause in proceedings.)

18 THE COURT: Okay. 401, Basic Standard of Care.

19 Negligence is the failure to use reasonable
20 care to prevent harm to one's self or to others. A
21 person can be negligent by acting or by failing to act.
22 A person is negligent if that person does something that
23 a reasonably careful person would not do in the same
24 situation or fails to do something that a reasonable,
25 careful person would do in the same situation. You must
26 decide how a reasonably careful corporation would have
27 acted in Diamond Generating Corporation's situation and
28 how a reasonably careful person would have acted in

1 Daniel Collins' situation.

2 406, Apportionment of Responsibility.

3 Diamond Generating Corporation claims that the
4 negligence of Sentinel Energy Center, LLC; Mott
5 MacDonald, LLC; DGC Operations, LLC; CPV Sentinel
6 Management, LLC also contributed to Dennis -- I'm sorry,
7 Denise Collins' and Christopher Collins' harm. To
8 succeed on this claim, Diamond Generating Corporation
9 must prove both of the following: that either Sentinel
10 Energy Center, LLC; Mott MacDonald, LLC; DGC Operations,
11 LLC; CPV Sentinel Management, LLC were negligent; and
12 that the negligence of either Sentinel Energy Center,
13 LLC; Mott MacDonald, LLC; DGC Operations, LLC; CPV
14 Sentinel Management, LLC was a substantial factor in
15 causing Denise Collins and Christopher Collins harm.

16 If you find the negligence of more than one
17 person, including Diamond Generating Corporation; Daniel
18 Collins; Sentinel Energy Center, LLC; Mott MacDonald,
19 LLC; DGC Operations, LLC; CPV Sentinel Management, LLC
20 was a substantial factor in causing Denise Collins and
21 Christopher Collins harm, you must then decide how much
22 responsibility each has by assigning percentages of
23 responsibility to each person listed on the verdict
24 form. The percentages must total 100 percent. You will
25 make a separate finding of Denise Collins' and
26 Christopher Collins' total damages, if any. In
27 determining any amount of damages, you should not
28 consider any person's assigned percentage of

1 responsibility. A person can mean an individual or a
2 business entity.

3 407, Comparative Fault of Decedent.

4 Diamond Generating Corporation claims that
5 Daniel Collins' own negligence contributed to his death.
6 To succeed on this claim, Diamond Generating Corporation
7 must prove both of the following: one, that Daniel
8 Collins was negligent; and, two, that Daniel Collins'
9 negligence was a substantial factor in causing his
10 death. If Diamond Generating Corporation proves both of
11 the above, Daniel Collins' damages are reduced by your
12 determination of the percentage of Daniel Collins'
13 responsibility. I will calculate the actual reduction.

14 430 -- sorry, one moment.

15 411, Reliance on Good Conduct of Others.

16 Every person has a right to expect that every
17 other person will use reasonable care and will not
18 violate the law unless that person knows or should know
19 that the other person will not use reasonable care or
20 will violate the law.

21 430, Causation, Substantial Factor.

22 A substantial factor in causing harm is the
23 factor that a reasonable person would consider to have
24 contributed to the harm. It must be more than a remote
25 or trivial factor. It does not have to be the only
26 cause of harm.

27 431, Multiple -- I'm sorry -- 431, Causation,
28 Multiple Causes.

1 A person's negligence may combine with another
2 factor to cause harm. If you find that Diamond
3 Generating Corporation's negligence was a substantial
4 factor in causing Daniel Collins' death, then Diamond
5 Generating Corporation is responsible for the harm.
6 Diamond Generating Corporation cannot avoid
7 responsibility just because some other person, condition
8 or event was also a substantial factor in causing Daniel
9 Collins' death.

10 450C, Negligent Undertaking.

11 Denise Collins and Christopher Collins claim
12 that defendant, Diamond Generating Corporation, DG
13 Corp., is responsible for Daniel Collins' death because
14 Diamond Generating Corporation failed to exercise
15 reasonable care in rendering services related to
16 Sentinel Energy worker safety.

17 To establish this claim, Denise Collins and
18 Christopher Collins must prove the following: one, that
19 Diamond Generating Corporation voluntarily or for a
20 charge rendered services to DGC Operations related to
21 Sentinel Energy worker safety; two, that these services
22 were of a kind that Diamond Generating Corporation
23 should have recognized as needed for the protection of
24 workers at the Sentinel Energy Center; three, that
25 Diamond Generating Corporation failed to exercise
26 reasonable care in rendering these services; four, that
27 Diamond Generating Corporation's failure to exercise
28 reasonable care was a substantial factor in causing

1 Daniel Collins' death; and, five: A, Diamond Generating
2 Corporation's failure to use reasonable care added to
3 the risk of harm to Sentinel Energy Center workers; or,
4 B, that Diamond Generating Corporation's services
5 related to Sentinel Energy worker safety were rendered
6 to perform a duty that DGC Operations owed to workers at
7 the Sentinel Energy Center, including Daniel Collins;
8 or, C, that Daniel Collins was killed because DGC
9 Operations or Daniel Collins relied on Diamond
10 Generating Corporation services related to Sentinel
11 Energy worker safety.

12 Employer's Duty to Its Employees.

13 No employer shall fail or neglect to do any of
14 the following: A, to provide and use safety devices and
15 safeguards reasonably adequate to render the employment
16 and the place of employment safe; B, to adopt and use
17 methods and processes reasonably adequate to render the
18 employment and the place of employment safe; and, C, to
19 do every other thing reasonably necessary to protect the
20 life, safety and health of employees.

21 3900, Introduction to Tort Damages Liability.

22 If you decide that Denise Collins and
23 Christopher Collins have proved their claim against
24 Diamond Generating Corporation, you must also decide how
25 much money will reasonably compensate Denise Collins and
26 Christopher Collins for the harm that was caused by
27 Daniel Collins' death. This compensation is called
28 damages. The amount of damages must include an award

1 for each item of harm that was caused by Diamond
2 Generating Corporation's wrongful conduct, even if the
3 particular harm could not have been anticipated. Denise
4 Collins and Christopher Collins do not have to prove the
5 exact amount of damages that will provide reasonable
6 compensation for the harm. However, you must not
7 speculate or guess in awarding damages.

8 The following are the specific items of damages
9 claimed by Denise Collins and Christopher Collins caused
10 by the death of Daniel Collins.

11 3921, Wrongful Death, Death of an Adult.

12 If you decide that Denise and Christopher
13 Collins have proved their claim against Diamond
14 Generating Corporation for the death of Daniel Collins,
15 you must also decide how much money will reasonably
16 compensate Denise Collins and Christopher Collins for
17 the harms caused by the death of Daniel Collins. This
18 compensation is called damages. Denise Collins and
19 Christopher Collins do not have to prove the exact
20 amount of these damages. However, you must not
21 speculate or guess in awarding damages. You will be
22 asked to state the amount of noneconomic damages
23 separately on the verdict form for each plaintiff.

24 Denise Collins claims the following past and
25 future noneconomic damages: the loss of Daniel Collins'
26 love, companionship, comfort, care, assistance,
27 protection, affection, society, moral support, training
28 and guidance and the loss of enjoyment of sexual

1 relations. Christopher Collins claims the following
2 past and future noneconomic damages: loss of Daniel
3 Collins' love, companionship, comfort, care, assistance,
4 protection, affection, society, moral support and the
5 loss of Daniel Collins' training and guidance.

6 No fixed standard exists for deciding the
7 amount of noneconomic damages. You must use your
8 judgment to decide a reasonable amount based on the
9 evidence and your common sense. In determining Denise
10 and Christopher Collins' losses, do not consider Denise
11 or Christopher Collins' grief, sorrow or mental anguish.

12 3924, No Punitive Damages.

13 You must not include in your award any damages
14 to punish or make an example of Diamond Generating
15 Corporation. Such damages would be punitive damages and
16 they cannot be a part of your verdict. You must award
17 only the damages that barely compensate Denise Collins
18 and Christopher Collins for their losses.

19 3925, Arguments of Counsel Not Evidence of
20 Damages.

21 The arguments of the attorneys are not evidence
22 of damages. You must -- your award must be based on
23 your reasoned judgment applied to the testimony of the
24 witnesses and the other evidence that has been admitted
25 during the trial.

26 3932, Life Expectancy.

27 If you decide Denise Collins and Christopher
28 Collins have suffered damages as a result of Daniel

1 Collins' death, you must determine how long Daniel
2 Collins would have probably lived if he had not been
3 killed in this incident. According to a life expectancy
4 table, a 47-year-old male is expected to live another 32
5 years. This is the average life expectancy; some people
6 live longer and others die sooner. This published
7 information is evidence of how long a person is likely
8 to live but is not conclusive. In deciding a person's
9 life expectancy, you should also consider, among other
10 factors, a person's health, habits, activities,
11 lifestyle and occupation.

12 3964, Jurors Not to Consider Attorney's Fees
13 and Court Costs.

14 You must not consider or include as part of any
15 award attorney's fees or expenses the parties incurred
16 in bringing or defending this lawsuit.

17 5000, Duties of the Judge and Jury.

18 Members of the jury, you've now heard all the
19 evidence, in a few minutes here, closing arguments. The
20 attorneys will have one last chance to talk to you in
21 closing argument. Before they do, it is my duty to
22 instruct you on the law that applies to this case. You
23 must follow these instructions, as well as those that I
24 previously gave you. You will have a copy of my
25 instructions with you when you go to the jury room to
26 deliberate.

27 You must decide what the facts are. You must
28 consider all the evidence and then decide what you think

1 happened. You must decide the facts based on the
2 evidence admitted in this trial. Do not allow anything
3 that happens outside this courtroom to affect your
4 decision. Do not talk about this case or the people
5 involved in it with anyone, including family and persons
6 living in your household, friends and coworkers,
7 spiritual leaders, advisors or therapists. Do not do
8 any research on your own or as a group. Do not use
9 dictionaries or other reference material.

10 These prohibitions on communications and
11 research extend to all the forms of electronic
12 communications. Do not use any electronic devices or
13 media such as a cell phone or smartphone, PDA, computer,
14 tablet device, the Internet, any Internet service, any
15 text or instant messaging service, Internet chat room,
16 blog or website including social networking websites or
17 online diary to send or receive any information to or
18 from anyone about this case or your experience as a
19 juror until you have been discharged from your jury
20 duty.

21 Do not investigate the case or conduct any
22 experiments. Do not contact anyone to assist you, such
23 as a family accountant or a doctor or a lawyer. Do not
24 visit or view the scene of any events involved in this
25 case. If you happen to pass by the scene, do not stop
26 or investigate. All jurors must see or hear the same
27 evidence at the same time. Do not read, listen to or
28 watch any news accounts of this trial. You must not let

1 bias, sympathy, prejudice or public opinion influence
2 your decision.

3 I will tell you the law that you must follow to
4 reach your verdict. You must follow the law exactly as
5 I give it to you, even if you disagree with it. If the
6 attorneys have said or state anything different about
7 what the law means, you must follow what I say. In
8 reaching your verdict, do not guess what I think your
9 verdict should be from something I may have said or
10 done. Pay careful attention to all the instructions
11 that I have given you. All the instructions are
12 important because together they state the law you will
13 use in this case. You must consider all of the
14 instructions together.

15 After you decide what the facts are, you may
16 find that some instructions do not apply. In that case,
17 the instructions that do not apply -- I'm sorry, in that
18 case, follow the instructions that do apply and use them
19 together with the facts to reach your verdict. If I
20 repeat any ideas or rules of law during my instructions,
21 that does not mean that these ideas or rules are more
22 important than the others. In addition, the order in
23 which the instructions are given does not make any
24 difference.

25 5001, Insurance.

26 You must not consider whether any of the
27 parties in this case has insurance. The presence or
28 absence of insurance is totally irrelevant. You must

1 decide this case based only on the law and the evidence.

2 5002, Evidence.

3 You must decide what the facts -- what the
4 facts are in this case only from the evidence you have
5 seen or heard during trial, including any exhibits that
6 I admit into evidence. Sworn testimony, documents or
7 anything else may be admitted into evidence. You may
8 not consider as evidence anything that you saw or heard
9 when court was not in session, even something done or
10 said by one of the parties, the attorneys or witnesses.

11 What the attorneys say during trial is not
12 evidence. In their opening statements and closing
13 arguments, the attorneys talk to you about the law and
14 the evidence. What the lawyers say may help you
15 understand the law and the evidence, but their
16 statements and arguments are not evidence. The
17 attorneys' questions are not evidence. Only the
18 witnesses' answers are evidence. You should not think
19 that something is true just because an attorney's
20 question suggests that it was true.

21 However, the attorneys for both sides have at
22 times agreed that certain facts are true. This
23 agreement is called a stipulation. No other proof is
24 needed and you must accept those facts as true in this
25 trial. Each side had the right to object to evidence
26 offered by the other side. If I sustained an objection
27 to a question, ignore the question and do not guess as
28 to why I sustained the objection. If the witness did

1 not answer, you must then -- you must not guess what he
2 or she might have said. If the witness already
3 answered, you must ignore the answer.

4 5003, Witnesses.

5 A witness is a person who has knowledge related
6 to this case. You will have to decide whether you
7 believe each witness and how important each witness's
8 testimony is to the case. You may believe all, part or
9 none of a witness's testimony. In citing whether to
10 believe a witness's testimony, you may consider among
11 other factors the following: How well did the witness
12 see, hear or otherwise sense what the witness described
13 in court? How well did the witness remember and
14 describe what happened? How did the witness look, act
15 and speak while testifying? Did the witness have any
16 reason to say something that was not true? For example,
17 did the witness show any bias or prejudice or have a
18 personal relationship with any of the parties involved
19 in the case or have a personal stake in how this case is
20 decided? What was the witness's attitude towards this
21 case or about giving testimony?

22 Sometimes a witness may say something that is
23 not consistent with something else the witness said.
24 Sometimes different witnesses will give different
25 versions of what happened. People often forget things
26 or make mistakes in what they remember. Also, two
27 people may see the same event but remember it
28 differently. You may consider these differences but do

1 not decide this testimony as untrue just because it
2 differs from other testimony. However, if you decide
3 that a witness did not tell the truth about something
4 important, you may choose not to believe anything that
5 witness said. On the other hand, if you think the
6 witness did not tell the truth about some things but
7 told the truth about others, you may accept the part you
8 think is true and ignore the rest.

9 Do not make any decisions simply because there
10 were more witnesses on one side than the other. If you
11 believe it is true, the testimony of a single witness is
12 enough to prove a fact. You must not be biased, in
13 favor of or against any witness because of the witness's
14 disability, gender, race, religion, ethnicity, sexual
15 orientation, age, national origin or socioeconomic
16 status.

17 5006, Nonperson Party.

18 Diamond Generating Corporation is the party in
19 this lawsuit. Diamond Generating Corporation is
20 entitled to the same fair and impartial treatment that
21 you would give to an individual. You must decide this
22 case with the same fairness that you would use if you
23 were deciding the case between individuals. When I use
24 words like "person" or "he" or "she" in these
25 instructions to refer to a party, those instructions
26 also apply to Diamond Generating Corporation.

27 5007, Removal of Claims Or Parties and
28 Remaining Claims and Parties.

1 The only claim that you will be asked to
2 resolve is the claim of plaintiffs, Denise and
3 Christopher Collins, against DG Corp. Mitsubishi should
4 not play -- oh, sorry. Mitsubishi should play no part
5 in your consideration of the evidence and should play no
6 part in your deliberations.

7 5010, Taking Notes During Trial.

8 If you have taken notes during the trial, you
9 may take your notebooks with you into the jury room.
10 You may use your notes only to help you remember what
11 happened during the trial. Your independent
12 recollection of the evidence should govern your verdict.
13 You should not allow yourself to be influenced by the
14 notes of other jurors if those notes differ from what
15 you remember. At the end of the trial, your notes will
16 be collected and destroyed by the court but not as a
17 part -- at the end of the trial, your notes will be
18 collected and destroyed.

19 5009, Predeliberation Instructions.

20 When you go to the jury room -- I'm actually
21 going to hold this instruction until we finish
22 arguments.

23 Okay. Counsel, I have 5009, 5011 and 5012.
24 I'm going to hold those until closing arguments are
25 completed. Okay?

26 Members of the jury, that concludes the
27 instructions that we started last Wednesday. I have
28 three more instructions for you before we send you back

1 to deliberate. At this time, we're going to begin first
2 with plaintiffs' counsel. In a moment here, they'll
3 have their opportunity to do closing argument. Then
4 we'll take a brief recess when Mr. Basile has concluded,
5 and then we'll continue with either Mr. Schumann or
6 Mr. Reid for defendants' closing arguments.

7 Mr. Basile, when you're ready, permission to
8 use the well. Do you need us -- do you need the
9 overhead or anything --

10 MR. BASILE: We're all set.

11 THE COURT: All set? Okay. When you're ready.

12 MR. BASILE: May it please the Court.

13

14 PLAINTIFFS' CLOSING ARGUMENT

15 MR. BASILE: You know, over a month ago is when
16 we started. That's kind of hard to believe. And, you
17 know, we talked in jury selection about what an
18 important case this is and I think you see that now, to
19 judge corporate conduct and determine what's full
20 accountability. I can't tell you how proud I am that we
21 got 12 left here. There was 15 when we started and you
22 three have taken the place. And I must say my hands
23 were a little sweaty this morning when I was hoping that
24 12 would show, but it shows your commitment to this case
25 and I thank you and appreciate you for that.

26 I know some of you have been jurors before, but
27 I want to talk to you a little bit about juries. You
28 see, juries go way back with this country, way back.

1 And it was -- a lot of people don't realize this, but
2 the right to a jury trial was one of the primary reasons
3 for the Revolutionary War to break away from England. I
4 know freedom of religion was a big one. But what was
5 happening was England was controlling the colonies and
6 overtaxing them and forcing on them oppressive laws,
7 tyranny. And juries weren't putting up with it. Juries
8 were letting people go that the king would bring. And
9 so the king said no more juries. And the founding
10 father says no, wait a minute.

11 That was a motivating factor for the
12 Revolutionary War. And the reason is, this is the
13 purest form of democracy that we have today because it's
14 not represented democracy. None of you are running for
15 office. None of you are getting paid much for on here.
16 None of you are seeking political contributions or
17 anything. You're members of the community. And what I
18 like to believe and what a lot of people consider, you
19 are the conscious of the community to make these
20 decisions.

21 So I wanted to start off just to tell you the
22 importance of juries and the power that comes with it.
23 That was in the Constitution, not in the Bill of Rights
24 once but twice in the Sixth and Seventh Amendment.

25 Now, we said your job was going to be judging
26 corporate conduct. So I wanted to say something about
27 corporations before we begin. There's a lot of good
28 corporations. Right here in Palm Springs you have the

1 Betty Ford Center; Jonas Salk Institute over in
2 San Diego doing tremendous research in the vaccines and
3 cancer research; St. Jude's Hospital back in Nashville
4 treating children's cancers. Many civil rights
5 organizations are incorporated in corporations.

6 But we've seen there's another side of
7 Corporate America. There's corporations that will use
8 the corporate structure to hide from their
9 responsibility. There are some corporations that will
10 use the corporate structure to distort the facts, to
11 distort the facts on who's really responsible. There's
12 corporations that will use the corporate structure to
13 get the benefit from the business but use that structure
14 to avoid the responsibility that should come with it.
15 That's something I wanted to say about corporations
16 before we begin.

17 Now, this case began almost over five years ago
18 when a wife and a son learned that a man got blown up at
19 a power plant and they were told that gas was trapped
20 while he was removing a lid and he was killed. Seven
21 months or so went by and they still wondered why they
22 weren't getting any answers. Family friends led them to
23 Mr. Sullivan. Mr. Sullivan asked me to help him.
24 That's all we knew. Daniel Collins was blown up and
25 someone said gas was trapped at this big power plant
26 while he was removing a lid.

27 We had to begin somewhere. Who built the
28 plant? Who designed the plant? Who's operating the

1 plant? After years of depositions, after years of
2 deposing people on the corporate structure, who's who
3 and who's what, we found the responsible party hiding
4 behind that corporate structure and we brought them here
5 to you, Diamond Generating Corporation. There will be
6 no other jury to ever hear this case. There will be no
7 other opportunity for you to decide. This is the one
8 and only time that this case will be decided, and we go
9 back to the power that you will have.

10 So you're going to be given a verdict form like
11 this to answer. There's 22 questions on it. And I'm
12 going to go through some of those now, but the judge is
13 going to give you that packet he read. I know they were
14 long and you were wondering, but he's going to give you
15 three different packets of those instructions that you
16 guys can -- can refer to and I'm going to go over some
17 of them.

18 But I want to point out two -- probably the
19 most important one of them all, and that's this one
20 about the burden of proof. Those are just legal numbers
21 up on top, but you can refer to those, CACI 200. The
22 burden of proof is when you're deciding any of these
23 questions that we're going to go over, is it more likely
24 true than not, and that's only 51 percent. And nine of
25 you have to agree. But here's the key. When you're
26 deliberating and looking at answers for those questions,
27 once you reach yeah, that's 51 percent, yeah, it's more
28 likely true than not, you can move on. You don't have

1 to keep weighing the evidence and going up more and
2 more, further and further.

3 Likewise, only nine of you need to agree on
4 each question. So if nine of you go yeah, more likely
5 than not, that's it, you can move on. And I know you
6 might want to bring your friends along or your friends
7 might have a different opinion, which you should respect
8 everyone's opinion when discussing this, but once you
9 reach 51 percent you can move on to the next question.
10 So it's 22. Once nine agree, move on to the next one.
11 So that's -- that applies to all the questions.

12 So let's start here. How many witnesses did I
13 ask in this case on that witness stand that agreed with
14 me businesses, corporations in the business of producing
15 and selling electricity should pay as much attention to
16 the safety as they do production and profits? Every
17 executive that was in here, every expert, Mr. Forsyth,
18 Mr. Johnson, even the current plant manager, they all
19 agreed to that.

20 But let's look at the evidence. Actions speak
21 louder than words, don't they, in this case? Actions
22 speak louder than words. They all said yeah, we should
23 pay as much attention to safety as we do production, but
24 let's look at some of the evidence. The first question
25 on this verdict form that you're going to get -- and
26 each of you are going to get one of these verdict forms
27 to keep track of your answers on it and there will be
28 one official one that the foreperson, whoever you

1 select, will put your official -- but you guys will each
2 have one of these to follow.

3 And the first question there is this one: "Did
4 Diamond Generating Corporation voluntarily or for a
5 charge render services related to Sentinel Energy Center
6 worker safety?" That's pretty clear on this. They
7 hired Mr. Walker. They gave him safety policies. They
8 established all the LOTO sheets were reviewed by them.
9 Their LOTO sheets had -- were Diamond Generating
10 Corporation documents on there. They reviewed him,
11 Walker, annually. Many other services were provided.
12 They were directly involved in that whole thing. In
13 fact, you can almost see that Diamond Generating
14 Corporation Operations were one. Walker even said about
15 that.

16 So I wanted to point out this exhibit, though,
17 when you're looking at that question. It's Exhibit 172.
18 Exhibit 172. You may want to look at it closely because
19 it says -- this is their fact sheet, this is what they
20 put out -- "DGC's role is." And it tells about other
21 project benefits and things here, but you should read it
22 carefully. And they acknowledge -- they acknowledge
23 that they had an ownership and owned it, ownership and
24 maintenance. So they were directly involved.

25 Did they render services? Yes to the first
26 question. Second question: "Were the services rendered
27 of the kind that Diamond Generating Corporation should
28 have recognized as needed for protection of the workers

1 at the Sentinel Energy plant?" That's another gimme. I
2 mean, that's all these policies were about. That's all
3 these things were was about safety at that fuel filter
4 skid. It was about the safety process whenever they'd
5 have the annual shutdowns.

6 And if you remember Mr. Forsyth, this is from
7 the trial transcript testimony. We asked the reporter
8 to provide us actual trial testimony from here. And
9 Mr. Forsyth, who is the safety and compliance manager
10 for Diamond Generating Corporation, and I asked him, And
11 in September, remember those e-mails that were going
12 back and forth, we were reviewing safety policies,
13 safety procedures -- in the fall of 2016 leading up to
14 January '17, Diamond Generating Corporation was
15 reviewing safety procedures at Sentinel Energy facility;
16 isn't that true? And he said yes. We all know that.

17 But this is their head of corporate -- of
18 compliance and safety was saying that. What else did he
19 say? Right here, and you can keep this in mind through
20 the whole thing -- through this whole -- whatever I'm
21 saying and whatever's going on. And I didn't mention
22 this at the beginning. This is more years than I'd like
23 to acknowledge doing this, 41 years. And I know -- I
24 know they call it argument, but I'm trying to do --
25 let's reason together about this. You can take -- and
26 I'm an advocate, I'll give you that, but I'm trying to
27 present this, let's come together and reason together
28 about this.

1 So he said, "Diamond Generating Corporation was
2 responsible for safety at the Sentinel Energy Center
3 when Daniel Collins was killed. Is that what you're
4 telling us? Yes. Yes. Then, Up to the date when
5 Daniel Collins was killed, are you aware of any evidence
6 that there was annual review of the Lock Out/Tag Out
7 procedure? No. Talked about production, not safety.

8 So were the services rendered of the kind that
9 Diamond Generating Corporation should have recognized as
10 needed for the protection of the workers? Yes.

11 Question 2.

12 Question 3, Did they fail to exercise
13 reasonable care in rendering those services? Well,
14 let's take a look. Remember opening statement I put
15 this same slide up here and I was telling you this is
16 about a safety system. This is about a plant that they
17 claim is the largest high-pressure gas plant of its kind
18 in the world. And so you need a safety system in place.
19 And safety starts at the top. Some of them even
20 acknowledged it when I was asking them. And you need to
21 develop the policies, train the workers and review and
22 enforce those policies, those audits and reviews. We
23 talked about those.

24 So you guys heard the evidence. I'm going to
25 go through this quickly because I trust you, I saw you
26 guys paid attention. It always troubles me when --
27 being a lawyer here, you know, we got to stand here and
28 watch you walk in and I try to watch you while we're

1 asking questions. Man, I wish I knew what he was
2 thinking, or I wish I knew what she was doing. Is he
3 really with me or is he following this, or geez, should
4 I ask this again? All that stuff runs through my head.
5 But I trust you guys to do this, and so I'm not going to
6 go over in detail but you guys have heard it.

7 That training, the training was crazy. I mean,
8 they did it at the beginning with that SMP-3 where they
9 went out and they did the hands-on training. And they
10 did it in 2013 but then it was never done again. It was
11 never done again. Their own standard said it was to be
12 done annually. It was to be hands-on annually. And it
13 wasn't done. And then the records that showed up close
14 were just people sitting at a computer screen going
15 through routine stuff over and over.

16 And so one question we might ask is, where are
17 the records of training? You know, they haven't -- this
18 is all we found. They gave us a big stack. This is it.
19 There was none. You heard Mr. Gonzalez say he never had
20 training when that thing -- when the ISO valve two was
21 changed. I'm going to go over that. So that was one
22 failure, the training.

23 There was no separate energy control procedure,
24 everyone agreed to that. Remember, down here is that
25 fuel filter skid. Everyone said there should have been
26 a separate energy control procedure just for that.
27 Instead, they had this outage shutdown on that LOTO
28 sheet that covered all these systems where workers would

1 have to be gone from one place to another to another and
2 then back over there, then again and move and back. And
3 you saw -- I'm going to talk a little bit about their
4 animation. But you saw their animation, how crazy it
5 was, how they got it running around everything. So
6 another failure was no separate procedure because that's
7 where that high pressured gas is coming into that fuel
8 filter. Of all the places you need a separate energy
9 control procedure, that's it. And they didn't have it.
10 And even their current plant manager admits that they
11 should have had it on that.

12 Those annual reviews was another thing that
13 was, you know, just head shaking. Walker was required
14 to do it by their own standards to review that policy to
15 make sure that the Lock Out/Tag Out was being done
16 properly and how it was supposed to be done, like we
17 talked. First, the installer goes out, puts the tag,
18 locks it. Then after he's done with all the steps, then
19 the verifier comes out and they're recording it. And
20 they're recording the times on the sheets and that's
21 supposed to be reviewed.

22 In opening statement they were trying to say
23 that they go out together. And the first witness says
24 no, no, that's not how it's supposed to be done like
25 that. And even in their animation they're showing them
26 still gone together. But the point being is why weren't
27 there any audits and reviews? That's a critical safety
28 system. And we're going to talk about what they were

1 looking at in a few minutes, but that was another.

2 That near miss. Four years before, the exact
3 same thing that's going to kill Daniel Collins happens
4 and nothing is done about it. Ben Stanley is very
5 critical about that. When there's failures like that,
6 there has to be a root cause analysis done then, not
7 after someone dies.

8 Communicate the change, you know, we went over
9 that a lot. It was so interesting they'd gone through
10 all those e-mails with the corporate executives, with
11 Kromer, with Aberg, and even Sheppard was on that agenda
12 for the 27th where we're going to talk about changes.
13 Remember, the workers aren't there. The managers of the
14 plants are there at that 27 -- January 27th meeting.
15 And on that agenda is how are we going to communicate
16 change. And nothing was ever communicated to them.

17 So there's more, and this confusion, it goes
18 back to -- I mean, different valves aren't marked. And
19 this one up here is -- which was the old ISO valve two,
20 is now halfway down and this one is close. This is
21 after the fact. All that confusion and the unusual
22 venting on that date. If the system had been in place,
23 it would have been properly marked. And whenever there
24 was that unusual venting, if a safety system was in
25 place, we're shutting this down. They didn't do that
26 because we don't want these outages to be too long. We
27 don't want these outages to be too long. And you're
28 going to hear about that in a minute.

1 So it was a systems failure, safety systems
2 failure. And the interesting thing to note, you guys
3 may remember, who all said it was a systems failure?
4 Their head of safety said it was a systems failure.
5 Dennis Johnson, the current plant manager, said it was a
6 systems failure. Ben Stanley, their manager that did
7 the root cause analysis, said this was a systems
8 failure. And then the only safety expert that was
9 called was by us and that was Mr. Lane. The only -- it
10 was a systems failure.

11 So what was going on? What was going on? We
12 went back when we found him and took Walker, the plant
13 manager at the time this happened, his deposition for it
14 was -- it's a deposition, but we noticed it as trial
15 testimony because he was so far away. When witnesses
16 are more than 150 miles from the courthouse you can tell
17 the other side I'm going back and we're going to take
18 his trial testimony, and you have to tell them weeks
19 ahead of time that you're going to do that. So Diamond
20 Generating's corporate lawyer knew we were going to do
21 this. They had weeks' notice.

22 Before I began his deposition --

23 MR. SCHUMANN: Improper argument, Your Honor.

24 THE COURT: Sustained on the facts not in
25 evidence.

26 MR. BASILE: Okay. We went back there, and you
27 heard at the beginning of his deposition that I played
28 for you, I asked him have you had time to meet with

1 Mr. Reid? And he said yes. Do you need any more time
2 to meet with Mr. Reid? He said no. I played that for
3 you guys, what you saw. And then these reviews, annual
4 reviews were for safety. No one else was reviewing them
5 for safety. None of those other people that they're
6 mentioning, all those other corporate layers and stuff,
7 none of them are reviewing it for safety. Diamond
8 Generating corporate executives are reviewing it for
9 safety. Not only that, but that's who his boss are
10 [sic]. Diamond Generating corporate executives are his
11 boss who he's reporting to.

12 So what's going on with Mr. Walker? So we
13 asked him, you know, what about these reviews? I mean,
14 they were good reviews. You know, what's -- what's the
15 story? You know, what was going on?

16 (The video deposition played in open court.)

17 MR. BASILE: Yes, it was Diamond Generating
18 Corporation. What's more likely true than not? Who's
19 doing the reviews? Diamond Generating Corporation. And
20 he said did that tell you you were doing a good job? He
21 says I got high -- not just a bonus, high bonus and a
22 high salary increase every year. What was the only
23 item? Even though Mr. Walker said -- if you remember
24 his testimony when we asked him, you know -- well, when
25 they were doing his reviews, did they have access to all
26 the information at the plant? Yes. Could they review
27 the LOTO sheets? Yes. Could they review the procedures
28 and safety? Yes. They had free access to everything,

1 he said.

2 But when they reviewed him for safety, it looks
3 on the reporting in his review the only thing they're
4 asking is, was there any reportable incidents during the
5 past year, reportable injuries? And we asked him well,
6 what's a reportable injury? And he said a reportable
7 injury is if someone has to go to the urgent care or the
8 hospital. And as long as no one is going to the urgent
9 care or the hospital, here's a bonus, here's a raise,
10 keep up the good work, Mr. Walker. That was Diamond
11 Generating Corporation. So the reportable incident that
12 happened wasn't -- wasn't an urgent care visit or a
13 hospital visit. It was a trip to the morgue in pieces
14 before they do anything.

15 So Mr. Sheppard, he was who Walker was
16 reporting to, along with Aberg, all corporate executives
17 and Kromer that were doing the reviews. And you might
18 ask yourself where's Mr. Kromer? Where's Mr. Aberg?
19 Why didn't they call Mr. Kromer and Mr. Aberg to come in
20 and say oh, we weren't really reviewing them for safety
21 or we weren't whatever? Where is he? We don't have
22 that burden. We got their stack of documents and we saw
23 these reviews. Where's Kromer and that -- and hearing
24 Sheppard say he was the VP of asset management at 14 of
25 these plants. Walker got a big bonus, big raise. You
26 can infer that someone else was getting bonuses and
27 raises with that production too.

28 MR. SCHUMANN: Argumentative. Not in evidence.

1 Improper arguments.

2 THE COURT: Overruled.

3 MR. BASILE: Thank you, Your Honor.

4 Now I just want to touch this dangerously
5 different change, and I want to say this up front to you
6 folks. You know, they took, I don't know, hours on --
7 going through printouts and pressure gauges and
8 pressure -- pressure in the tank and pressure at the
9 skid and pressure in the turbine and all this and what
10 time this was read and what time that was read.
11 Remember all that time they spent doing that? All that
12 time they spent doing that?

13 The mere fact that they're taking that time to
14 do all that tells you there was a problem with the
15 system. If there wasn't a problem with this system,
16 they could have come in and said look, here's the LOTO
17 sheet, here's how everybody should have done it, this is
18 what is done, here's our training records, here's
19 everything. Instead, they continue with that pattern
20 from the beginning to distract, to distort, to deny and
21 to blame everybody from looking at their own corporate
22 self.

23 So that's just the mere fact we're talking
24 about it, the orders and all that thing tells you there
25 was a system. But let me address that for a moment.

26 This ISO valve two, ISO valve one, close,
27 close, open these vents, everything gets drained nice
28 and clean here. Now, over here ISO valve two gets

1 changed to down here on this. Delaney and Gonzalez are
2 two witnesses, I think -- you know, Judge gave you those
3 instructions on how to weigh witnesses. Delaney and
4 Gonzalez are no longer associated with Diamond
5 Generating Corporation. Delaney doesn't work there
6 anymore. Gonzalez is off in, I think, it was South
7 Dakota or Minnesota in the Midwest. We took his
8 testimony from Zoom and played it for you.

9 And what do they say? Delaney said, "I didn't
10 know what was going on." He's an operator. He said, "I
11 don't know how this operated. I didn't know which valve
12 was which. I never had hands-on training on the thing,"
13 was Delaney. Gonzalez said, "I was confused. I was
14 never told of changes." But we know there were changes
15 on -- that ISO valve two change is way down in Step 14
16 on the sheet.

17 So they're trying to say -- I think if I was
18 following right, they were trying to say that ISO valve
19 two was never changed, that it was always down here.
20 Well, if it was always down here and they were doing it
21 the way they were doing it, it would have been like
22 another near miss or someone getting blown up. Because
23 if you close this valve and this valve and there's the
24 vents, that's the only area that's going to get drained.
25 This is going to remain pressurized.

26 So they could not -- and remember, Mr. Johnson,
27 when he took over at the plant, he wrote that e-mail.
28 It's Exhibit 60 where he's saying, you know, the problem

1 in light of the events of March 6th, everybody's doing
2 something different. Everybody's doing something
3 different. We're not on the same page. That's a
4 problem. Everybody was doing something different
5 because people were doing it this way. And then Daniel
6 Collins comes in that day and he has to ask Robert Ward
7 where's ISO valve two? And he told him on the sheet
8 look, it's further down. But no one's saying that it
9 pointed out.

10 Now I want to say something about Mr. Ward.
11 You know, he teared up and said he really liked Daniel
12 Collins and all that. But he was kind of like in
13 between on dumping on him or not. And Ward said
14 something that really stuck out to me when he said -- he
15 was like tearing up almost. He says, you know, if I'd
16 been working with Daniel that day, this would have never
17 happened. Because he knows, he knows that Daniel didn't
18 have the information he needed. He knows that Daniel
19 didn't have the information that he needed. In
20 hindsight, had he worked closer with him, he would have
21 made sure this happened.

22 And I can't help but feel that Robert Ward has
23 a little guilt inside him and it's kind of hard for him
24 to accept that he may have contributed. But he should
25 feel bad. He should feel bad because he was part of
26 that system that they had in place. If one person makes
27 a mistake in a system of operation, well, you might say
28 that's you in error. But when you have Jason King,

1 Robert Ward, all these other people making mistakes,
2 it's not human error. It's a dangerous system that they
3 let in place.

4 So that's what ended up. But like I said,
5 going back, if you're even talking about this, it shows
6 that there's a safety system. The confusion that Tony
7 Gonzalez -- he goes by Juan Tony Gonzalez. Were you
8 told on two? No. Were you trained on two? No,
9 nothing. And they had that meeting in January where the
10 executives at the 27th floor high-rise in L.A. on their
11 agenda, how are we going to communicate change with our
12 employees? Paul Sheppard was even on the agenda about
13 update on operational procedures. Wasn't it interesting
14 when Sheppard was here and I tried to ask him about
15 that? Well, I don't really remember. I don't really
16 remember. I even showed him -- Sheppard a picture of
17 the control room and he didn't even recognize Daniel
18 Collins at first in it. Maybe that's what this case
19 means to them.

20 So the verdict form, "Did Diamond Generating
21 Corporation fail to exercise reasonable care in
22 rendering those services?" Absolutely. But again,
23 51 percent, more likely than not, yes. Here's what they
24 were doing. They buried their head in the sand like an
25 ostrich. We had all those red flags that we talked
26 about. We had the near miss that they ignored. We had
27 that change, that change, where instead of being
28 together, now they've moved it here, different valve,

1 different time and different place, all that confusion.
2 And we have that aimless update, how are we going to
3 communicate change, that doesn't get communicated.

4 What were they paying attention to? It
5 certainly wasn't safety. They received daily reports.
6 Diamond Generating Corporation would get a daily report
7 from the Sentinel Energy Center. And what was on that
8 daily report? What were the outages for each of those
9 units? And when it's zero, that means no outages, no
10 duration. We're producing electricity, we're selling
11 electricity, we're making money.

12 Every day they would get these reports. And if
13 you remember, they would -- on the outages, the detail
14 that they went to on what the workers and the outside
15 contractors would have to do on an outage day, there was
16 like 178 steps. They spend their time on all the
17 details of that, and Forsyth even said well, yeah, we
18 reviewed the LOTOs. Why didn't they spend a little more
19 time on safety? All these steps.

20 And then Mr. Delaney, again, who's no longer
21 associated with the company, said they had that
22 incentive program. Remember it said that came out that
23 morning and they were scheduled Monday to have it done
24 by Saturday but they were going to try to get it done by
25 Friday because they get a bonus on availability. When
26 that unit's up and running, bonuses are tied to that.
27 So talk about a corporate mentality to put production
28 and profits ahead of safety. Corporations must pay

1 attention to safety. But as you see, actions, they do
2 speak louder than words. That's why we have you.

3 Now I want to talk a little bit about this
4 whole thing. And remember -- I might as well show you
5 this right now. I'll put this up. This is Diamond
6 Generating Corporation. This is their case outline:
7 distract, distort, deny and blame. That's what they've
8 done this whole case, and here's one of the ways they
9 did it. Now, I want you to keep in mind when you hear
10 all this, remember Ben Stanley did that root cause
11 analysis to see, you know, what the root cause was. And
12 it's Exhibit 34. If you look at his root cause
13 analysis, you will not find the name of any of those,
14 you know, the Mott MacDonald, the Sentinel CPV, the
15 other ones that are layers that I'll talk about briefly
16 in a few minutes.

17 When do they show up? They show up whenever it
18 comes to court so that they can distract you, they can
19 distort you, they can continue to deny and they can
20 blame everybody but themselves. Now they're playing
21 this asset manager thing about well, Mark McDaniels, you
22 know, he was the guy that we had this big contract and
23 then this contract. That was another thing. They took
24 a long time going through all that. He had this
25 contract and Mark McDaniels was the guy and he was the
26 one that really had safety and all that. And then I
27 asked him on cross, who are you working for now? He's
28 working for Diamond Generating -- or DGC Ops, which

1 is -- might as well say Diamond Generating Corporation.
2 It's wholly owned. That's who he's working for now. So
3 back then, you think they brought him in to kind of fall
4 on the sword here? And Sheppard too.

5 So again, when we went back there and took his
6 trial testimony, Diamond Corporation's lawyers, not me,
7 lawyers, asked him, well, did -- Mr. McDaniels, wasn't
8 he in charge of safety? Wasn't he the guy that you were
9 working with Mr. Walker at safety? Listen to this.

10 (The video deposition played in open court.)

11 MR. BASILE: It's not in the root cause
12 analysis. But whenever we show up in court and we know
13 we're in trouble -- I'm speaking about them -- now let's
14 try to distort.

15 Then Paul Sheppard, who is now the COO of
16 Diamond Generating Corporation -- and I think that
17 stands for the chief operating officer -- at the time,
18 he was the vice president of the portfolio management of
19 all their power plants and an asset manager. He come in
20 here on the stand, and I don't know if he was looking me
21 in the eye, but he said oh, I wasn't the asset manager
22 at Sentinel, that wasn't me. They're trying to distort
23 and distract and point the finger at someone else.
24 Well, Walker was the manager of the plant, and I asked
25 him who was the asset manager there?

26 (The video deposition played in open court.)

27 MR. BASILE: Was Diamond -- the fourth -- "Was
28 Diamond Generating Corporation's failure to exercise

1 reasonable care a substantial factor in the death of
2 Daniel Collins?" And I want to move on because I think
3 I addressed that other stuff enough. I want to get
4 through these questions for you. Was it a substantial
5 factor? Well, here's the instruction for this. It's a
6 substantial factor that contributed to the harm. And
7 again, you only need 51 percent. You guys could
8 probably spend hours in there listing all the factors
9 that they failed, that contributed to the harm of Daniel
10 Collins in building that -- I can't even say safety
11 system -- and having that system involved. There would
12 be multiple factors.

13 But don't take my word for it. Ben Stanley,
14 their own manager that did the root cause analysis,
15 here's what he says about this substantial factor and
16 the cause of Daniel Collins' death.

17 (The video deposition played in open court.)

18 MR. BASILE: So verdict form, "Did it
19 contribute?" Yes. Question 4.

20 Question 5, "Did Diamond Generating's failure
21 to use reasonable care add to the risk of harm to the
22 Sentinel workers?" Well, of course.

23 And this is just one that I haven't addressed,
24 but you can add them up to all the other ones we talked
25 about. All those years from when that near miss until
26 this happened, all the time from before 2017 up until
27 there, all they needed to do was put -- check the
28 pressure gauge on there. It was never added to their

1 sheet. It was never -- never had a separate energy
2 control procedure.

3 And look what Dennis Johnson said. I think
4 this is the one where like he denied it. Remember I had
5 to read from his deposition? He denied it initially,
6 then I read from his deposition. The things that would
7 have prevented -- we know there's a lot of things --
8 would have prevented this from occurring, one of them
9 would have been the reminder on the sheet that required
10 the operator to actually record the pressure on the
11 pressure gauge on the tank before they start to remove
12 the lid, is that right? Correct.

13 And about this increased risk of harm. This is
14 the last clip I believe I'm going to play of
15 Mr. Stanley. He kind of sums this up. Remember how he
16 talked about this safety person who was supposed to be
17 at the plant, Lily Cardenas? Where is she? Why didn't
18 they bring her in? And about how she was being ignored
19 there. And he also spoke of that near miss reporting.
20 But all these things that increase the substantial risk
21 of harm, here's what he said. Remember we're back there
22 and their lawyers are there and we're going to do this
23 for the jury, we're going to play this for the jury.
24 Here's what he said.

25 (The video deposition played in open court.)

26 MR. BASILE: And if I might just remind you of
27 the filings with the Secretary of State that we
28 haven't -- you know, there were three times throughout.

1 Diamond Generating Corporation has to file. Please
2 state the name of your manager. Diamond Generating
3 Corporation is their manager. Filed official document,
4 Secretary of State, who the manager was of the Sentinel
5 facility. None. In addition to Forsyth saying who is
6 responsible for safety at the plant, Diamond Generating
7 Corporation.

8 So did their failure to use reasonable care add
9 to the risk? Certainly. Number 5, yes.

10 Now, this next one is important also. "Were
11 Diamond Generating Corporation's services related to
12 Sentinel Energy worker safety rendered to perform" --
13 and here's the key -- "a duty that DGC Operations owed
14 to the workers at Sentinel Energy Center, including
15 Daniel Collins?" So was the stuff that they were
16 supplying -- the policies, the review, the managers, the
17 reporting, the boss of the managers and all that -- was
18 that rendered to perform a duty that DGC owed? Well,
19 the judge instructed you on what that duty is. It says
20 "An employer shall," down here, "adopt and use methods
21 and processes reasonably adequate to render employment
22 in place of employment safe." Diamond Generating
23 Corporation took over that duty right there.

24 So on Number 6 on the verdict form, that's yes.

25 Then there's one more question. "Was he killed
26 because DGC Operations relied on Diamond Generating
27 Corporation services?" Yes.

28 Now, 1, 2, 3, 4, those questions, and then 5, 6

1 and 7, it says to answer all of them, the ones I just
2 went through, 5, 6 and 7. But you only need one yes on
3 5, 6 or 7. You'll see what I mean on the verdict form
4 when you see it, but you can answer yes on all of them.

5 So now I'm going to share -- talk with you
6 about what is justice in this case and what is, more
7 importantly, the lack of responsibility. You see, that
8 word "responsibility" really means the ability to
9 respond. Who had the ability to respond? Who held
10 themselves out as a worldwide leader in the safe
11 production of electricity? Who hired the manager? Who
12 did all those things? Who had the ability to respond?
13 Who had the response ability but didn't do it? When
14 someone fails in their response ability, justice is to
15 hold them accountable. So -- and hold them fully
16 accountable for all the harm that they have caused.

17 We talked in voir dire about that, about being
18 fully accountable for all the harm. So how do we get
19 there? The first thing you got to do is look at who
20 this man was. And we're not looking for sympathy here.
21 This family and their friends that are here today,
22 they've provided a lot of sympathy. So we're not -- I'm
23 not putting Daniel up here and going to talk about him
24 to ask for your sympathy. Certainly, you're going to
25 feel sympathy. But that's not what justice is in this
26 case. Justice is not sympathy. Justice is what we're
27 going to talk about.

28 So who -- the first stepping thing is we got to

1 pause when you get to this in the verdict form. And
2 this is a wrongful death case. So whose death are we
3 talking about? Daniel Collins. Grew up on that farm up
4 in Whidbey Island. Bob Goodman told you about it, how
5 they went to high school and they both planned to go
6 into the military right in high school. And Daniel
7 called late and went in and had to have his parents sign
8 to go into the military, and when they graduated Bob
9 backed out but then went in the Air Force later. Daniel
10 did 25 years in the service of the country. Bob Goodman
11 has said Daniel loved two things, his family and the
12 country.

13 25 years in the service. And what did he do in
14 those 25 years? We didn't go over all them, but I had
15 Christopher tell you about some of the ribbons and
16 medals he had. Two tours of duty in Afghanistan,
17 special accomodation for his involvement in the war on
18 terror, a tour of duty in Iraq. 25 years. 25 years in
19 attaining a enlisting man's rank as chief. Just about
20 the highest you can go in the Navy as an enlisted person
21 is chief. And this is the thing that really kind of
22 twists me when you think of this case. There's a man
23 that served his country and was full of training and
24 following orders for 25 years. You heard those
25 accommodations he had for all that. Now, do you think
26 for one minute if he would have had proper training and
27 the proper orders to check gauges on that this would
28 have happened? A man like that? But they're going to

1 blame him, that man that served us.

2 So anyhow, you do need to look at who the
3 person is that was taken, and that was Daniel.

4 And I'm just going to highlight a couple of
5 things. Remember Dr. Gianna O'Hara? She's now a
6 medical doctor, a geriatrics doctor. This was her when
7 Christopher was a young boy and she was there playing
8 with Daniel on his back. And what was the thing that
9 told her that made him unique? When she was doing her
10 residency -- or I think it was an intern program in
11 Hemet, Daniel asked her to come and stay with them for
12 free and all that. And she was kind of -- at that point
13 in her life didn't feel good about marriage. There was
14 some divorces in her family, didn't feel good about
15 marriage. And she told you from the stand when she
16 lived there for those months with Daniel and Denise,
17 she'd never seen a closer marriage and it changed her
18 attitude about life partners and what it means to have
19 someone like that. And it was the best that she'd seen,
20 about their marriage.

21 Who else? Remember the young man, Brian
22 Caprino. With Gianna, it was about marriage. With
23 Brian, it was Christopher's best friend. He said he
24 never talked about it before in his life, never told
25 that story when he and Christopher and Daniel were in
26 San Diego and Christopher had to stay in San Diego. And
27 that ride back it was just Brian and Daniel. And
28 Brian's dad was a lot older than him and Daniel was

1 closer to his age. And he said, Daniel changed my
2 relationship with my dad. He talked to me about that
3 age difference and it was really something special and
4 it changed my relationship with my dad. So there's a
5 special guy. Marriage, father, two witnesses, just
6 that.

7 And the funny thing -- the thing that I heard
8 from Beth Goodman was that when I asked her, I said --
9 you know, it was the end and she gave great testimony.
10 And I was right here and I said what was his best
11 quality? You know, what was his best value that Daniel
12 had? And she said -- she hesitated and she looked down
13 and said he had lots of qualities, but he -- I'll never
14 forget what she said -- he loved out loud. Here's an
15 example.

16 (The video played in open court.)

17 MR. BASILE: So we could watch that, and I
18 heard friends back there chuckling about that. But
19 that's what the man was. He loved out loud. With his
20 son too. How about the hockey game they went to and
21 they honored him as a service member, calling him out on
22 the ice between periods? And then this aviation warfare
23 medal that Christopher earned during a deployment. And
24 he could have got it during the deployment, the award
25 pinned on him, but he waited until he got back onshore
26 so his dad could pin him with that aviation award.

27 And I want to play for you, you know, another
28 love out loud. I'm not playing this to be sad, even

1 though I am kind of getting sad. I don't mean to, but
2 talk about loving out loud. When Christopher was on his
3 way to Vegas, his dad couldn't reach him and he left
4 that voicemail. This is a dad loving out loud.

5 (The audio played in open court.)

6 MR. BASILE: It's funny. I love you, we're
7 going to the beach next weekend. Well, the next weekend
8 was their last trip to the beach that he's talking
9 about. But that's a guy that's loving his son out loud.

10 So it gets to the justice in this case. The
11 only justice, the only power to give justice in this
12 case, is this jury to come up with money. Nothing else
13 can we do to recognize this man's life and these
14 relationships. It's just money. But that's the
15 language that some people understand. It's the language
16 that some corporations understand. So those are the
17 questions for both Chris and her. What are the past
18 noneconomic damages for the loss of Daniel Collins? And
19 this is the law: the loss of love, compassion, comfort,
20 care, assistance, society. Past, from when he was
21 killed to today, over five years. And then if you just
22 go with the 32 years, that would be another 27 years
23 that was taken for this. So here's the law. I want to
24 take you through the steps to what the law provides on
25 how you come up with these numbers.

26 The first is Step 1, and the judge read this to
27 you. It's 3900. This is the jury instruction here.
28 And it says "The amount of damages must include an award

1 for each item of harm." So you must include for each
2 item of harm. So that means all these items, both past
3 and future, that I just went over. And you got to
4 determine them separately too. They don't get a
5 discount because there's two. It's not a twofer here,
6 you know. It could just be Denise if he didn't have
7 kids, or if he didn't have a spouse it could just be
8 Christopher. But they don't get a reduction. The judge
9 told you you got to evaluate both of those claims
10 separately.

11 And think about each one. You got to include
12 an award for each. Love, 32 years, companionship,
13 comfort, care, assistance, protection, affection,
14 society, enjoying life together as a couple, moral
15 support, enjoyment of intimacy, training and guidance.
16 And I think what sums up their relationship -- I'm not
17 going to go into a whole lot of it, but I think what
18 sums it up is here's a man that wrote her poems from
19 '92. For 25 years he was writing her poems. And if we
20 just look at those two poems, I got the first one and
21 the last one.

22 '92, I just want to read the second one. "Our
23 world is all brand new, not because of I, but because of
24 you. I love you, you love me. Those feelings set me
25 free." So I mean, that's in '92. And here, just weeks
26 before he's killed on Valentine's Day, he's still
27 writing her poems. And right there at the bottom, this
28 is the paragraph that I think kind of shows -- "So when

1 you feel sad, go to this beach" -- I can't read that
2 word.

3 UNIDENTIFIED SPEAKER: Grasp.

4 MR. BASILE: -- "grasp ahold of our memories,
5 making it never out of reach."

6 I think those two poems, you know, show the
7 love that he had and what they wanted for the future,
8 where they were going to move, what they were going to
9 do. And the same items all apply to Christopher, the
10 same thing.

11 Now, Step 3 -- so 1 is must for each of these
12 items. Step 2, look at all the items. Step 3, how long
13 is it? And it's 32 years. You guys might choose 40
14 years, 35, based on how it went. But let's just go with
15 32 years for each. That's 64 years taken. And you got
16 to say well, what's going to be an equal trade dollar
17 value? Nothing is higher priced in our society, nothing
18 is valued more or precious than relationships and love
19 and life. And I have this one example. For example,
20 like in the military, they have \$500 million planes.
21 And if something's blinking or going wrong in that
22 plane, they don't tell the guy to stay in the plane and
23 see what you can do. It's bail out. Let the \$500
24 million plane go. Get out. Save your life. You bail
25 on it. There's nothing higher.

26 So the question that you all are going to have
27 to answer is not how much is too much in this case,
28 because no amount would be too much for what was taken.

1 We said in voir dire how these things are priceless.
2 Nothing would be too much that you come up with. The
3 challenge we have is how much is going to be enough to
4 hold them fully accountable for all the harm? How much
5 would be enough? It's a debt that's owed for these two
6 relationships.

7 So there's two alternatives you can look at in
8 coming up with this number. One is through the eyes of
9 the people that lost Daniel. So you can ask yourself,
10 what would Chris and Denise do to have one moment back
11 with him? He went to work and was gone like that. They
12 didn't get to say goodbye. But what would they do if
13 they could just have one moment back? They'd do
14 anything. They'd clean public restrooms. They'd pick
15 up trash on the freeway. They would get second and
16 third jobs. They would sell everything they had. They
17 would do anything literally to have one moment with
18 Daniel.

19 What moment would they choose if they could
20 have one moment back? Maybe they would choose -- Denise
21 would choose like another day on the beach, a moment on
22 the beach, holding hands and watching the sunset for one
23 moment. Maybe it would be when they moved to Whidbey
24 Island and they opened up that dog rescue center that
25 they wanted to, the grand opening for that. Maybe it
26 would be that one minute. What minute would they
27 choose?

28 What minute would Christopher choose? Would it

1 be to be at one of his baseball games that he's still
2 playing that his dad set him off with when he was young
3 with the tee-ball? Would it be when Christopher is
4 going to call his dad and say, Dad, you're going to be a
5 grandfather? Would it be that moment? Would it be a
6 moment with, Hey, Dad, come over, let your son hit a
7 tee-ball like I did? Which moment would they choose?

8 Maybe Daniel -- maybe Daniel would choose the
9 last moment. Daniel's 90 years old. Time to go. He's
10 holding his hand, he's looking in his dad's eye and he
11 says, Dad, you were a great dad. Great dad. I'm going
12 to be fine, the kids are going to be fine. It's time to
13 go. Maybe he'd choose that one.

14 They've all been taken, and they're each a
15 million-dollar moment. Every moment's a million-dollar
16 moment. So now you're probably thinking, my God, what's
17 this lawyer going to do? Is he going to want a million
18 dollars for every moment he would have ever lived? No,
19 no. I want to be reasonable. No. How many
20 million-dollar moments would there be? We know there
21 would probably be at least one a year, one a month.

22 So the question you're going to have to ask is
23 not what's too much but what's enough. So I submit to
24 you the least amount for each year that was taken is a
25 million dollars, the least amount. But you folks can
26 come up with a just amount, hearing what you've seen and
27 heard in this courtroom, what is a just amount to hold
28 them fully accountable for all the harm.

1 That's one alternative through their eyes.
2 Here's another alternative. Remember they called those
3 three -- I called them paid witnesses, which they were.
4 They were paid witnesses that they called. None of them
5 were safety people. None of them were safety people.
6 None of them had put a LOTO -- had done a LOTO. I
7 think -- Mr. Krauss, I don't think he's ever got his
8 hands dirty working. He had a pretty smile when he came
9 in here and looked at you and smiled. I don't think he
10 ever got his hands dirty. Never -- he'd never been to
11 the plant, works for this company called Exponent who
12 does \$200 million a year in litigation support, mostly
13 on behalf of corporations. Corporations, you heard him
14 say, involved with asbestos, car manufacturers, tobacco.
15 Who else does he work for? This law firm of Diamond
16 Generating Corporation, 23 different cases with them.

17 And they paid him what would come out to be
18 \$50,000, having never gone to the scene or anything, to
19 come in here and say to you well, even if there had been
20 a warning on that sheet and even if there'd been a
21 warning on that tank, Daniel Collins would have never
22 paid any attention to it. I guess you get what you pay
23 for, huh? A guy 25 years in the Navy, they're going to
24 bring in a pretty boy like this to tell you oh, he would
25 have ignored that, and pay him 40,000 bucks?

26 Who else did they call? Held. He's the one we
27 stipulated to. He's the one they paid and they went out
28 there and they made that animation and everything. And

1 remember I asked Johnson, I go, well, geez, 40,000
2 bucks -- I didn't say that to Johnson, but I'm thinking,
3 they paid 40,000 bucks after someone is killed to try to
4 generate a video to play to you to distort, distract and
5 deny and confuse you with that. Why didn't they pay
6 someone to make a training video before this happened?
7 They paid him \$40,000 for that, and nothing was ever
8 done for the training before. We're still wondering
9 when are they going to come in with the training
10 records, let alone that?

11 Then Mr. Mason came in. Again, you're not a
12 safety person, are you, I said. Nope. You'd defer to
13 Mr. Lane, wouldn't you? Yeah. Mr. Lane's the safety
14 person in this case? Yes. He agreed to all that. They
15 called him in to say what? To say well, if the LOTO had
16 been followed, this wouldn't have happened. No kidding.
17 If the training would have been right, if the red flags
18 review and all that would have been right. But they
19 paid him 18,000.

20 So another way to evaluate, I figured that out,
21 what does -- this is about 600 bucks an hour that
22 they're paying him. This is about two weeks and this is
23 about two more weeks. So this is about a month's work
24 worth of paying that they've paid to avoid their
25 accountability. So you may want to take that total
26 times 12 months, comes out to about 1.3 million a year.
27 I said one million a year is the least amount. Find the
28 just amount. This is what they've paid to avoid

1 accountability. It's their evaluation of this case.

2 So what are Denise Collins' past noneconomic?
3 The least amount is one million per year. That would be
4 \$5 million for the past. But you guys can decide. Some
5 of you might think it's too much, a million bucks a
6 year. But -- and some of you might think it's not
7 enough and you go higher. Now, the other thing you
8 might be thinking is geez, \$5 million for five years,
9 that's a lot of money. Or someone would say well, gee,
10 that's a lot of money. But remember we talked in voir
11 dire, just because it's a high number that's not a
12 reason not to come up with it, just on the size of the
13 number alone, and we all agreed.

14 Another thing that they may say or someone may
15 say oh, look, they're going to get over it. You know,
16 they're going to get over it in ten years if they're not
17 over it in five. They're going to get over it. It's
18 not -- they're not going to miss him that much down the
19 road and all that. So do they get a discount because
20 they killed this guy and say oh, they'd get over it?
21 Why do they have to get over it? Because they took
22 their loved one. So don't give them a discount on that.
23 Come up -- and I submit a million bucks a year is the
24 least amount.

25 Other jurors after cases have sometimes said
26 what they do in deliberations --

27 MR. SCHUMANN: Argumentative, Your Honor.
28 Improper. Other jurors -- other juries.

1 THE COURT: Sustained. Just rephrase,
2 Mr. Basile.

3 MR. BASILE: I'll rephrase, yeah.

4 What you can do when you get to how much per
5 year, you can all in that jury room just sit there in a
6 moment of silence and think about it and each write down
7 a number that you feel is the least amount per year,
8 each of you, before you talk. What's the least amount
9 per year for Chris and Denise? And you each write it
10 down before you say anything, write it on your notepad.
11 Then after everybody does it, then you talk as a group,
12 share that and decide what's a just amount. So write
13 the least. Then as a group, come together as a just
14 amount to hold them fully accountable, fully accountable
15 for all this harm.

16 Same thing for Christopher, no discount. I
17 already talked about that. It's the same thing, least
18 is one. And, you know, this man represented a lot to a
19 lot of people and he's not coming back. And the only
20 justice is what you come up with, and we trust you that
21 you will do justice in this case.

22 Now I want to talk to you about this and about
23 their distract, distort and deny, their ultimate way in
24 what they're going to be -- distract, distort and deny.
25 They're going -- on the verdict form, they're going to
26 have each of these names and it's going to say were they
27 negligent, were they a substantial factor in causing
28 harm. They're going to have that on the verdict form

1 for each. Like I said, Mott MacDonald, I mean, they're
2 going to try to say well, they should have put a warning
3 or something on there. Mott MacDonald should have put a
4 warning? Why doesn't DGC got to put a warning? This is
5 four or five years later. So anything that they did,
6 that wasn't the substantial factor. The substantial
7 factor was, all that time, that they had to do
8 something. So Mott MacDonald, it should be nothing, it
9 should be zero that they contributed.

10 Sentinel Energy, who are they? Who are they?
11 That's one of their shell games they want you guys to
12 join in with, join in with who's who. In the root cause
13 analysis where he's finding who caused this death, none
14 of these people are mentioned other than DGC Ops, and
15 we're going to talk about them in a minute. None of
16 these people were other ones that are mentioned. Daniel
17 Collins too. But these should all be zero. CPV
18 Sentinel, that's -- they're now employing McDaniels.
19 They're going to try to get him to fall on the sword.
20 Don't fall for their shell game. It's only meant to
21 avoid being fully accountable.

22 Now, they're going to blame DGC Ops. They're
23 going to try to enlist you to join in their corporate
24 structure where you guys have found with those first
25 four or five questions that they were responsible for
26 safety at the plant, and then they want to say we did
27 such a terrible job, you should reduce our
28 responsibility because the people at DGC Ops, they were

1 the ones that screwed up, not us. Well, who was the
2 manager of Ops? Don't fall for that. That should also
3 be zero here because anything you put on there is just
4 going to be a reduction of their responsibility, of
5 their accountability that they're going to ask you to
6 buy in by their distract, distort and deny.

7 Now, what about Daniel Collins? I've already
8 talked about that. They're going to stand up with what
9 the circumstances -- under the circumstances of that
10 day, what was going on. Daniel Collins was just part of
11 that system. Daniel Collins, like I said, 25 years in
12 the Navy. Had he been properly trained and given the
13 proper orders, this would have never happened. It's all
14 on them. So this is all part of their distract, distort
15 and deny. I ask you not to fall for it like they're
16 going to talk about. Was he negligent? No. No. He
17 was part of the system, doing the system that he was
18 thrown in. No. And even if you were to say he was, it
19 certainly wasn't a substantial factor; it was all the
20 other things. So you can say no there too.

21 So that brings us to you. I was up on top of
22 your tram, that beautiful sight up there, and I took
23 this picture because that Sentinel Energy Center is
24 here. L.A. is over here with the big high-rise where
25 they're doing it, but we're here. We're here. Every
26 day you folks have come in. Every day you've come in to
27 hear this case, to have that power that no one else can
28 do, the direct democratic power, democracy, conscious of

1 the community in action, and you have it right here
2 where you sit. Chris and Denise have stood up through a
3 lot for a long time since they were just told by Diamond
4 Generating Corporation oh, there was a gas trap that
5 blew up, killed him. They fought to bring this here so
6 that you can judge corporate conduct and hold them fully
7 responsible for all the harm.

8 I'll have one last word after they speak, but I
9 trust you all to do the right thing. Thank you.

10 THE COURT: Thank you, Mr. Basile.

11 Mr. Schumann, you have approximately 18
12 minutes. I'll leave it to you if you'd like to begin or
13 if you'd like to -- well, we were going to take a break
14 regardless, so that would take us up until the noon hour
15 anyways. So I'm going to take the decision out of your
16 hands. So if it's okay --

17 MR. SCHUMANN: Sure.

18 THE COURT: -- we're going to resume after the
19 lunch hour.

20 MR. SCHUMANN: That's fine. Thank you.

21 THE COURT: Members of the jury, we're going to
22 go ahead and take our lunch recess here. We'll come
23 back at 1:30 and continue with the defense's closing
24 argument. Thank you.

25 (The jury exited the courtroom.)

26 THE COURT: We're now outside the presence of
27 the jurors. I apologize, Mr. Schumann. I lost track.
28 So no, of course I wouldn't do that to you, Mr. Basile,

1 or you, have you start like that. I did -- I promised
2 you a break yesterday. So you'll be ready to start at
3 1:30?

4 MR. SCHUMANN: Yep.

5 THE COURT: Okay. So it'll be your closing,
6 we'll go back to rebuttal and then we'll be concluded.
7 It looks like most people that were in here in the
8 gallery have left. Mr. Basile, we'll address this at
9 another point, but it looks like in your closing
10 argument you took a photo of the courtroom -- of the
11 jury box when it was empty. It's -- you know the
12 California Rules of Court. You're not supposed to
13 record or video or exhibit, you know, any digital
14 recording inside a courtroom. So we'll address it at
15 another point, but just something for I guess future
16 reference. Okay?

17 MR. BASILE: I'll be happy to address it, Your
18 Honor.

19 THE COURT: All right.

20 MR. SCHUMANN: Thank you, Your Honor.

21 THE COURT: We're in recess.

22 (Off the record at 11:46 a.m.)
23
24
25
26
27
28

1 PALM SPRINGS, CALIFORNIA; JULY 26, 2022

2 AFTERNOON SESSION

3 --o0o--

4 (On the record at 1:29 p.m.)

5 (The jury entered the courtroom.)

6 THE COURT: Back on the record, Collins vs. DG
7 Corp. All counsel are present, all parties are present
8 and all members of the jury are present.

9 Mr. Basile has concluded closing argument for
10 plaintiff. We'll now go on to defense argument,
11 Mr. Schumann.

12 MR. SCHUMANN: Thanks, Your Honor.

13 THE COURT: When you're ready, permission to
14 use the well.

15 MR. SCHUMANN: Thank you, Your Honor.

16

17 DEFENDANTS' CLOSING ARGUMENT

18 MR. SCHUMANN: Good afternoon. Thank you all
19 for being with us for 30 days. It's been tough for
20 counsel, the clients, but probably mostly tough for you
21 guys. This is our job, so we know how -- how it goes.
22 So our client thanks you for your service. I know it's
23 been long. There's a lot of stuff that's been said,
24 evidence, and I'm going to have to take a little time to
25 go through the evidence, remind you of stuff that
26 happened 30 days -- 30 days ago, 28 days ago. So just
27 bear with me. Pay attention as much as you can. I
28 would say if you get bored or tired, please tell

1 His Honor we need a break. But I have to take a little
2 bit longer than counsel did because I have to go through
3 the evidence.

4 So okay. Here we go. There's a famous saying
5 in the law that if the facts are against you, you argue
6 the law. That one, I think, got screwed up. If the law
7 is against you, you argue the facts. And if both of
8 them are against you, you pound the table and you yell
9 like hell. Right? We have not heard any single fact of
10 what happened that day from counsel. All you heard is
11 Mr. Collins died, my client is the corporation, most
12 corporations are bad and you should give him \$68
13 million. No facts were presented in their opening
14 statements about what happened. They didn't ask a
15 single witness what happened that day, and nothing in
16 their closing argument told you what happened that day.
17 All you heard were conclusions about what happened
18 afterwards, how some people might have thought that this
19 could have been a problem or that could have been a
20 problem.

21 So I have to go through the facts with you.
22 This is how the day started. Mr. Collins told his
23 friend that "I'm going to set a speed record for this
24 outage." That's not part of his job. That was not in
25 the LOTO. It was not what he had learned from 2012 all
26 the way up to 2017. As a matter of fact, what he had
27 learned was you follow the document that's called SMP-3,
28 which is the rule -- set of rules for the LOTO. You

1 follow that order by order. However we decide as a team
2 to make the LOTO for this specific outing -- outage or
3 that specific outage, a LOTO is created and we follow
4 the LOTO. He did not follow the LOTO. He was going to
5 set a speed record.

6 Now, we'll never know why he said that or what
7 his goal was, but the morning of they're in a safety
8 meeting together, the whole team who's going to do this
9 outage. Right? This outage that's going to take days,
10 and there's going to be eight of them throughout the
11 season. They have a meeting in the morning to go over
12 what's going to happen today. If he had any concerns
13 about we should do it faster, we should do it safer, we
14 should do it differently, right, now's the time to talk
15 to your team about it. You don't take it upon yourself
16 to do it faster and not tell your friend who's sitting
17 next to you who's going to work the same equipment as
18 you do. You follow the LOTO because they follow the
19 LOTO. The LOTO is there for a reason. That is the
20 safety protocol.

21 He somehow decided when he left the safety
22 meeting that he was going to do it differently. He took
23 a live LOTO with 900 pounds of pressure and decided that
24 that's when he was going to do it differently. He
25 didn't talk to Jason King about should we do it faster,
26 should we do it differently. He didn't talk to his
27 partners at the worksite about wanting to do it
28 differently or faster. He decided to do it differently

1 and not follow the LOTO.

2 In opposing counsel's opening statement, they
3 said there was no separate entity control system for the
4 fuel filter, basically meaning there's no separate
5 protocol for how we turn the fuel filter off so that we
6 can clean the fuel filter. That's not part of the
7 outage. The outage is the entire system from the gas
8 coming in right before the fuel filter all the way until
9 it goes into the turbine. That is the outage. Thus,
10 the entire LOTO sheet, which includes various stations,
11 is done in an order and that is the separate entity
12 control system. It's for one unit. The one unit is
13 that whole skid. So there was a separate entity control
14 system. Jason King testified to that.

15 No training. There was no training, right? So
16 apparently, this -- this plant ran on luck for seven
17 years -- five years. No, that's not true. What you
18 heard was Gemma, the construction company, worked with
19 the entire 10 to 12 Ops employees who had been hired in
20 2012. For one year, Gemma worked with those Ops
21 employees without the plant being operational. The last
22 year of construction finishing the project, they worked,
23 they trained them in how this entire plant was going to
24 be run. You think there was no training during that one
25 year? It was one year's worth of training.

26 There was initial training. You heard about
27 LOTO training, and then you heard about these 100-plus
28 safety control procedures done every year, literally

1 almost every other day. Whatever we're doing today, a
2 document is created about this is what we're going to do
3 today. There's a meeting. You meet and you go through
4 it. You talk about what the different jobs are, where
5 to watch out, what to do. Those are in themselves
6 trainings.

7 There was a claim that the training was just
8 general. Where did that come from? Obviously, an
9 opinion, an opinion by counsel. No documents. You
10 didn't see any evidence that training was just general.
11 You didn't see any evidence that training was not plant
12 specific. Exactly the opposite, one year of working
13 with Gemma is very specific to this plant. Working with
14 their coworkers is very specific. Having four years of
15 outages before this one is very plant specific. Counsel
16 said there was no formal training or anything. They
17 only learned that when the gas stopped, oh, okay, now it
18 was safe. There was zero evidence that the -- that what
19 Ops taught its employees was hey, when you don't hear
20 anymore gas it's safe. Zero. It's made up.

21 Counsel claimed that Mr. Collins checked the
22 noise at the turbo package and sees the gauge go to
23 zero. Okay. That's what he said. It's impossible.
24 There was no gauge. There is no gauge at the turbine
25 package. There is one gauge, and it's on Exhibit 600
26 and we'll show it. It's on the filter. There's nothing
27 in the turbine package. So what counsel is trying to do
28 is say hey, he did his job, he did check the gauge. He

1 didn't. That gauge does not exist. This is the only
2 gauge there is on this system. It's right there, right
3 next to the ladder.

4 They said no one looked at the gauge. Not
5 true. We heard testimony from both -- Collin's best
6 friend, Mr. Ward. You heard it from Dennis Johnson, and
7 I think you heard it from King as well. And again, you
8 put up the ladder, the gauge is easily visible. Hope he
9 sees it. So far from the ladder. As a matter of fact,
10 they showed you a different photo. They showed you a
11 photo from the side where the gauge was over here. And
12 yeah, in this picture I can't see the gauge, that's
13 correct. But when you are setting up this ladder and
14 you're climbing up, it's right in front of you.

15 Counsel said that the change that day was
16 unknown to Collins. Okay. The change we're talking
17 about, the one change is moving a line item down to Line
18 Item 14 on the LOTO. All right? So you got the rules.
19 These are our rules for today. We're going to do it in
20 this order. And by the way, I've moved Item Number 4
21 down to Number 14. Okay? We have the meeting. We talk
22 about it in the safety meeting. Just follow the sheet
23 as we always do.

24 It was known. He was part of the making the
25 decision with Mr. Ward. Mr. Ward said, I'd like to move
26 this thing down to Number 14 so that it's venting while
27 we finish these other stations. So that when we get to
28 14 we know it's completely vented, the system is empty.

1 He talked to Mr. Collins about it. He talked to the
2 team about it. He asked Mr. King if we can implement
3 this change. Mr. King, his supervisor, said yes, you
4 can.

5 Then on the day of when Collins takes the
6 worksheet, the LOTO sheet to go out and perform, again
7 Mr. Ward reminds him, Hey, just remember Line Number 4
8 has been moved down to 14. He does it twice after one
9 of the ventings that you heard about. Ward meets and
10 talks to Mr. Collins. And Collins says, Hey, are we
11 missing some locks? No, it's down on 14. And on top of
12 that, he had done several LOTOs -- been part of several
13 LOTOs where this specific procedure had been done.

14 And had he followed the rules, we would've been
15 here -- we would not have been here today. It's -- it's
16 unfortunately that simple. You follow the LOTO. These
17 are the safety regulations. These are the safety rules
18 for this outage. They were created for a reason.
19 There's a lot of pressure there. You got to follow the
20 rules. Mr. Collins decided to break the rules.

21 You've heard about the corporations, bad
22 corporations. They're all one in the same you heard.
23 That's not arguing the law. That's not the law. The
24 law allows people to set up corporations, to open
25 businesses, to open LLCs, to open trusts. That's the
26 society we live in. And those companies have the same
27 rights as an individual does. So you can have multiple
28 companies. It's allowed. If it wasn't allowed, no one

1 would have a company. Everyone would be self-employed.

2 Okay. So this plant built, finished,
3 operational in 2013. It was built by Gemma, designed by
4 Mott MacDonald. The company that built it and owns it
5 is Sentinel Energy, LLC. You'll see them on the form.
6 So Sentinel Energy goes through a bid process. They put
7 the running of the factory or the plant out for bid. We
8 have -- you heard from Mr. McDaniels that we had several
9 companies that bid to run this plant. They chose DGC
10 Operations. They signed a O&M agreement with DGC
11 Operations that outlines what their job duties are. You
12 have the O&M agreement in the back. It's very long. It
13 outlines everything that DGC Ops has to do, and safety
14 is big time. It's their job. It's their employees.

15 Sentinel also hires an asset manager. There is
16 a contract between Sentinel and CPV Sentinel Management,
17 LLC who's hired by the owners. This company hires this
18 company to oversee this company, right? The owner hires
19 CPV Sentinel Management to oversee Ops. Again, you have
20 this contract with you, asset management agreement. It
21 talks about the duties of the asset manager, who was
22 there two to three times a week and had the rights and
23 the obligations to oversee safety, training and
24 everything that DGC did.

25 That's the operations agreement, and this is
26 the asset management agreement clearly outlining what
27 the duties of the asset managers or manager is and shall
28 be, all including training, safety, oversight. But you

1 also heard from the asset manager, Mr. McDaniels, who
2 was the actual asset manager for this plant, was that he
3 was there. He looked at everything they did and he
4 decided whether he thought it was okay. Whether the
5 plant manager likes him or not is irrelevant. His job
6 is separate from Ops' jobs, right? This guy is
7 double-checking what Ops does, whether he likes it or
8 doesn't like it. He's hired to do it. He has a
9 contract to do it.

10 They agree to oversee safety at the plant.
11 They signed a contract. They were paid. They had
12 office. They were in charge from beginning, before
13 construction. They oversaw construction. They oversaw
14 the manager. They oversaw the safety at the plant.
15 They oversaw training at the plant, everything at the
16 plant. They had the power, you'll see that in the
17 contract. They had the power to hire outsiders to do
18 whatever you need to do to make sure this plant is being
19 run properly. They actively review and analyze the
20 LOTOs.

21 All right. Talk about what testimony you have
22 actually heard. Plant manager, he's an Ops employee.
23 It doesn't matter how many times counsel or someone says
24 that an Ops employee is not really an Ops employee. He
25 is, he was an Ops employee. Those are the only facts
26 you heard. There's been no facts that he's not or was
27 not an Ops employee. He was an Ops employee. He was in
28 charge of the plant, no one else. He was hired to be in

1 charge of this plant.

2 He took the policies and procedures from
3 another plant and he changed them to fit this particular
4 plant, the way he wanted to run this plant, the way he
5 was hired to run it. He wasn't told to run it a certain
6 way. He was hired to run it, however you want to run
7 it. He might have been asked questions about hey, how
8 are you running it? What are you doing? What's going
9 on? That doesn't mean you're taking over his job. He
10 had a job. He ran it.

11 So then we have Mr. Lane who agrees that the
12 employer, Ops, which is also the law, they had a
13 responsibility to keep Mr. Collins safe as a matter of
14 law. They had a responsibility to keep all employees
15 safe at the plant, to train Mr. Collins, to train all
16 their employees and to properly label the equipment.
17 That is on Ops to warn its employees, put warning signs
18 on if you need to. If you don't like what Mott
19 MacDonald put up or didn't put up, then you now have to
20 do it.

21 Diamond Generating Corporation did not
22 undertake or take over Ops' duty. Okay. This is what
23 their expert agreed to. Remember, he reviewed 45,000
24 pages of documents, he said. Well, in all of those, all
25 his entire review of all the documents in this entire
26 case, he did not see any contract whereby another
27 company was hired to take over the duties of employment
28 responsibility. So there was nothing in any of the

1 documents you've seen where my client agrees to take
2 over Ops' responsibility. Nothing. Innuendo,
3 arguments, bad corporations, you should have done
4 something. You had your hand in the cookie jar. You
5 send an e-mail, you hired a manager, right? That's not
6 an active duty of taking over someone else's job. Ops
7 had the job.

8 Further, he didn't see any contract where
9 another company was hired or agreed to take over the
10 employer's responsibility to keep all the employees
11 safe. This was the boring part of his testimony, I get
12 it, but this was important. He didn't see any documents
13 where another company was hired to take over the
14 employer's responsibility to train or train all the
15 employees. He didn't find any test -- any evidence that
16 our client took over responsibility to label the
17 equipment or to provide additional warnings.

18 They all remained Ops' job. We did not take
19 over training. We provided a blank LOTO form, a blank
20 one, right? It was blank. And someone put our logo on
21 it. Well, what if it said Coca-Cola on it, would it be
22 Coca-Cola's fault? Of course not. The paper was blank.
23 The people at Ops filled it in. They decided how the
24 LOTO procedure should be handled.

25 In 2013, my client allegedly provided two
26 generic training sessions, okay, four years before the
27 incident. One cannot say that if you do something four
28 years before the incident that four years later, hey,

1 you did that training four years ago, this is now your
2 fault. There is no link. There is no proof. We were
3 not at the plant that day. We didn't tell anyone what
4 to do. We didn't tell Collins to speed up. We -- it --
5 that's not taking over someone else's responsibility
6 either. We didn't create the LOTO sheets. We didn't
7 create the changes. Those were Ops employees that made
8 those changes and made the LOTO sheets. All we did was
9 provide a form and you can fill it in however you want
10 to fill it in for this particular plant.

11 Per Lane, no one knew how the system worked.
12 There were 27 LOTOs done over those years, all
13 successful. Of course, they knew how to do their LOTO.
14 Ops knew what they were doing. Ops had -- knew what
15 their jobs were. But the difference between those 27
16 LOTOs and this one was that Collins was going to set a
17 speed record and he didn't follow the LOTO. And I just
18 want to remind you that Mr. Lane didn't look at all the
19 documents. He didn't look at the agreements. He kept
20 saying he just kind of looked at stuff.

21 So when they're talking about missing
22 documents, how about you just look at all of it. You're
23 getting paid a lot. So just look at the stuff that you
24 have been hired to look at and don't come in here and
25 act as if you're holier than thou but you didn't look at
26 the documents. "I filtered through them." "I did not
27 review it." "I just glanced at it." "I haven't seen
28 that." Mr. Lane confirmed that Mr. Walker was in charge

1 of the LOTO. He had the responsibility for the Lock
2 Out/Tag Out. Was the plant manager responsible for
3 conducting the yearly audits of the LOTO? Yes. I hate
4 to keep harping on it, but he's an Ops employee. That
5 is his job. He's hired to do it.

6 And did he fail in his responsibility as a
7 plant manager? Yes. That negligence falls on Ops, no
8 one else. Mr. Lane, in all of his review of these
9 45,000 pages of documents, could not come up with any
10 evidence that we had overtaken or assumed Ops' job. Do
11 you have any evidence that DGC Corp. had a
12 responsibility to oversee safety at the plant? I don't
13 know. Mr. King had, right? Mr. King, as the operations
14 and maintenance manager, have similar responsibilities?
15 Yes. That was similar to Mr. Walker. Again, Mr. King
16 was an Ops manager.

17 Mr. Lane said that Mott, the designer, was
18 responsible for warning signs. So the designer would
19 have been responsible for that? Yes. He testified that
20 Diamond Generating would not have been. Sentinel, the
21 owner? Probably. That is the -- on the structure,
22 that's the company that built the plant. And DGC Ops,
23 yeah, I think that's a really good idea for them to put
24 up warning signs. Yes, it's their job to keep their
25 employees safe. So if they think that a warning sign
26 would help, then they need to do it. Agreed.

27 So this is the owner, Sentinel Energy Center.
28 Let's talk about their negligence. Do you have an

1 opinion regarding the labeling of the valves on the fuel
2 filter system? Yes. What's your opinion? They should
3 have been clearly labeled and they should have been used
4 the same name for -- it shouldn't have been used the
5 same name for two different valves. Who in your opinion
6 should have been placing labels on those valves? That
7 should have been done at new construction. New
8 construction, construction company, owner. Talked
9 about -- confirmed that Gemma built it. He also talked
10 about there should have been this double block and bleed
11 at the outlet side, that will be a construction issue.

12 Then Mr. Lane, as we -- and I'll develop this a
13 little further and remind you, but Mr. Lane
14 unfortunately didn't know the system. He's been out
15 there. He doesn't know it. He didn't know where their
16 pressure transducer was. He doesn't really know. Do
17 you know where the package manual fuel and isolation
18 valve is located? Not absolutely. This is the key guy.
19 This guy ought to know his stuff when he comes in here.
20 If he's going to challenge Mr. Dennis Johnson, the
21 current plant manager, he better know his stuff.

22 More testimony about I don't recall, I don't
23 know. He confirmed that Collins did the exact same LOTO
24 a month before. He confirmed that if you follow the
25 sheet, everything was safe. That was it. Just follow
26 the order that you've all agreed on. Difference again,
27 I'm going to set a speed record. I'm going to do
28 something else. I'm going to cut some corners. I'm

1 unfortunately going to put someone else's initials on
2 locks and tags. It was unfortunately not a good
3 situation.

4 Three additional LOTOs were done that year, all
5 done properly. All three were accomplished, the system
6 was completely vented and no one was injured. Again,
7 same difference. We heard some testimony or claims that
8 no one knew what they were doing. They weren't trained.
9 Mr. Collins was highly trained. He was trained in the
10 military. He was trained for many, many years during
11 the military. He came out of the military. He was
12 further trained. He worked at the plant for a full year
13 working with Gemma getting the entire plant ready before
14 they even did one LOTO. This guy knew what he was
15 doing. And Mr. Lane agreed that he was a knowledgeable
16 experienced operator.

17 And unfortunately, I assume you recall that
18 there was testimony that Mr. Delaney testified that
19 those were not his initials and Mr. Palalay testified
20 that those were not his initials. And the only other
21 person in charge of this LOTO or working on this LOTO
22 was Mr. Collins. Were there any DGC employees at the
23 facility on the date of the incident? I don't know. If
24 there was, we surely would have heard it. Do you have
25 any evidence that my client had a responsibility to
26 oversee safety at the plant? I don't know. This is
27 their safety guy. It's the only guy they have to come
28 in.

1 In terms of whether we controlled Ops, we asked
2 him several questions. Do you know if DG Corp. had any
3 part in making sure that Ops complied with the
4 regulations? I don't recall. Similar questions about
5 California Energy Commission. I don't recall. Prior to
6 March 16, do you have any evidence that DG Corp. had any
7 part in making sure that Ops conducted training of
8 its -- I think the court reporter should say its --
9 employees? I don't recall any specific document. His
10 testimony was just filled again and again with -- with
11 proof that my client did not control Ops. You didn't
12 see any contracts or anyone else who was hired to do it.

13 I can go on and on. I'll speed through these
14 because there's so much testimony by their own expert
15 that my client did not control Ops.

16 Then you heard Mr. Lane say that Jason King was
17 negligent. He's a board supervisor. He would agree
18 Jason King was negligent. That falls on Ops. We heard
19 Jason King testify about what he did or didn't do and
20 how he probably failed to walk down the LOTO. That's
21 certainly a failure. And that would fall on his
22 negligence, and as an employee of Ops, it would fall on
23 Ops. Mr. Lane confirmed and agreed that the Ops
24 employees were responsible. Would you agree that the
25 employees were responsible for performing the work in a
26 safe and reasonable manner? To their best ability, yes.
27 Would that include Mr. Collins? Yes.

28 The rules were not followed. Were there a

1 number of indicators -- indications that there was
2 stored energy in the system? Yes. Right, there were a
3 number. More than one? Yes. And Mr. King was aware of
4 it? Yes, he was. Mr. Collins was aware of it? Yes.
5 They heard four ventings. All the testimony you've
6 heard is that anything more than one venting is unusual.
7 You heard testimony that every time there was an unusual
8 venting, someone spoke with Mr. Collins. The second
9 time, the third time, the fourth time, someone spoke
10 with Mr. Collins. Twice he told Mr. King -- I think
11 maybe if I -- it's either twice or all three times he
12 told Mr. King everything's fine. He even told the
13 operator in the control room that everything was fine
14 when there was a very large loud sound over at the
15 turbine package.

16 Rules were not followed by Ops. Talking about
17 the installer, the verifier, the work supervisor, right?
18 They're all redundancies. First guy does it, second guy
19 checks it, third guy checks it. All three of those
20 people on that day didn't do their job, correct? That's
21 correct. Those are Ops employees.

22 Unfortunately, Collins didn't follow the rules.
23 These were -- the LOTO is safety rules. Those are
24 safety rules, and he decided not to follow them.
25 Mr. Delaney didn't initial, Palalay didn't initial,
26 falsified the initials. The time was not put on by
27 Mr. Delaney. And yes, of course, they all want to save
28 their own skin. They don't want -- you don't want to be

1 blamed for someone's death. So Delaney for sure will
2 try and make it someone else's fault. Mr. Collins told
3 Mr. King that the LOTO was complete.

4 Then there was a root cause analysis. Read it.
5 You'll have it. Talks about it all. Talks about the
6 employee mistakes. Talked about Collins speeding
7 through it, cutting corners, doing whatever he decided
8 to do that day. Mr. Lane agreed with it. Then Mr. Lane
9 and counsel have this presentation about the annual
10 outage of this particular Unit 5. Unfortunately,
11 Mr. Lane, who's been out there, doesn't know the system.
12 You heard the current plant manager basically put him in
13 his spot, correct counsel that this is not the way we
14 run this system, never has, ever. So these slides that
15 they have shown you about the red and the green and the
16 labeling of the -- of the valves, they're incorrect.
17 The valve on top never was valve two. His PowerPoint is
18 wrong. He doesn't know the system. Thus, his testimony
19 is invalid.

20 So they talking about the isolation valves.
21 I'm going to try and speed it up and show you.

22 Okay. This is Mr. Lane's system. He calls --
23 all right. He calls this ISO valve one and this ISO
24 valve two. What he does is he wants -- he wants to --
25 this is why Mr. Johnson said is this what -- an example
26 of something? Because we've never done it this way,
27 when he asked counsel. Mr. Lane calls this ISO valve
28 two. It's never been ISO valve two. This is ISO valve

1 three, always has been. Never in five years has it ever
2 been anything other than that.

3 So sure, so if you close this one and you close
4 this one and you vent it, then this part is -- is clear,
5 no pressure. But that's not the LOTO. The LOTO is the
6 entire system from here, intake, through the filter, all
7 the way through, over to the turbine package. That is
8 the LOTO. No one was hired that day to create a LOTO
9 only to clear the pressure in here. That was not the
10 job. So sure, Mr. Lane would like to say, Hey, just
11 close this one and close this and vent this and there we
12 go, we're done. That was not the job. So the job was
13 the entire system, thus, a very large LOTO sheet that
14 you follow.

15 So what should have happened is when
16 Mr. Collins went out, should close the valve, open up
17 the vent valves, kept going and then eventually as the
18 entire system vents out he ends up closing this valve.
19 But it wasn't done, right? Someone opened these vents,
20 started venting, had to go get earplugs and a jacket,
21 closed them. But instead of making sure they were still
22 open, right, Mr. Collins told Mr. Palalay to do it.
23 Then later, there's another venting.

24 Now, there's a warning sign, right? This is a
25 warning sign. Might as well put a warning on the
26 document. Hey, if there's an extra venting, what's
27 going on? So there's another vent. That's a warning
28 sign. Mr. Collins says, I got it under -- I got it

1 under control, no problem.

2 That's the system they would like to have done.
3 That's the system Mr. Lane claimed was done for five
4 years. Untrue. Big X through it. Dennis Johnson,
5 probably the most impressive witness you've heard, knows
6 everything about this plant, confirmed that Lane's
7 testimony was wrong and not the way to do it. This
8 valve up here was never used.

9 Then there was testimony about the root cause
10 analysis done by Mr. Stanley. He talked about who he
11 was interviewing, who he talked to. Again, my client
12 was not involved in the incident. It's his conclusion.
13 The LOTO procedure was not followed was his conclusion.
14 Collins did not properly follow the steps to isolate the
15 equipment in the order listed on the LOTO. The LOTO had
16 previously been used in an orderly, safely and
17 effectively manner. Jason King failed in his job
18 duties.

19 He found out through discussions, investigation
20 that Mr. Collins was too aggressive, he wrote, in his
21 approach to his work, that Ops had talked to him about
22 this before. You got to slow down, dude, right? This
23 is important stuff. You got coworkers next to you.
24 This is a dangerous system. You can't do it any other
25 way than this. Don't rush it. Mr. Collins, "I'm going
26 to set a speed record." He very well knew the rules.
27 He decided to ignore them, and he ignored the warnings
28 on the day. He cut corners. I hate to say it, but

1 someone did those initials.

2 He closed the valves out of sequence. He
3 ignored the warnings and the comments by his friends.
4 He told coworkers that the LOTO was done before the work
5 supervisor had walked the LOTO. There were four
6 ventings. At 6:32, the first one starts. At 6:53, he
7 vents off something in the turbine package. That should
8 never happen. You heard the testimony. It should never
9 happen. There should only be one. Someone has a
10 conversation with him, says it's all fine. Then on the
11 sheet it shows that there was another venting between
12 Steps 4 and 5. Well, that should already have been
13 vented earlier. So that should have been another
14 warning sign to them.

15 After he tells Ju Kim that it's all good to go,
16 Ju Kim opens, there's an automatic shutdown, it
17 automatically vents because there's pressure. Everyone
18 is like what's going on? Collins says I'll take care of
19 it or it's been taken care of. We don't know exactly
20 what he said, but we know he said that he'll take care
21 of it.

22 So this is the LOTO sheet for that day. You do
23 the steps in order. The timing should be in order,
24 right? Daniel Collins does the first step at 6:20,
25 6:22, 6:31. There was no time on 4 and 5. 6 is around
26 6:30. And these two are done at the same time. Not
27 possible. Number 9 is done before. Not possible.
28 These two are done at the exact same time. Again,

1 should not be possible. And then 14, which is where the
2 valve had been moved to, or it had been moved to Number
3 14 was done early.

4 So yes, I know it's inconvenient to walk around
5 all the way over and then have to come back, right? But
6 that's part of the procedure, so who cares? It's part
7 of your job. If you have to walk all the way over to
8 the parking lot and back here and do something over in
9 the parking lot again, that's the procedure they set up,
10 right? If you were concerned that, Hey, I'd like to do
11 3 and 4 at the same time, is anyone okay with that? Is
12 that fine? Is there any problem with it? Right?
13 That's the discussion to have. It's not to just do it
14 without telling the others. And then all these were
15 signed the same time.

16 We talked about his ignoring the coworker.
17 Counsel claimed that he was confused about the valves.
18 Well, we know he wasn't. We know he talked to his
19 friend. We knew -- we knew he were [sic] part of the
20 change, and we knew he'd been there since 2012.

21 So what do we have? We have Jason King. He
22 testified he was hired by Ops in '12 as an O&M manager.
23 He developed the outline for the operation of the plant,
24 right? He is an Ops and was an Ops employee at the
25 time. He customized what he had brought with him from
26 another plant to this particular plant. He did his job
27 in terms of creating the LOTO. He took a document and
28 made it tailor-made to a different plant. He was an Ops

1 employee.

2 Then we have this red herring about the logo,
3 the Coca-Cola logo. Yes, I put -- I put Diamond
4 Generating Corporation logo on a document. Yeah, it was
5 intentional and I didn't get anyone's authority to do
6 so. Okay. It's a red herring. It means nothing. So
7 he put my client's logo on there. That doesn't make my
8 client liable. It does if every corporation is bad.
9 Then yes. He was asked about Mr. Collins, was he
10 qualified. Yes. And why do you say that? Well, he had
11 been through a lot of LOTOs, a lot of training on Lock
12 Out/Tag Out initial, annually. I've walked the LOTOs
13 with him. That's over five years.

14 He was a work supervisor that day. He
15 conducted a morning meeting that day. He went over
16 everything that's going to happen that day. He
17 emphasized that everyone should be as safe as you should
18 at a plant like that, several times. And was it your
19 responsibility to make sure the fuel filter skid had
20 been isolated and depressurized? That certainly would
21 have been one of the functions of my job.

22 These are part of the conversations he had with
23 Mr. Collins. It's important. Did you have more than
24 one conversation? I had several conversations in
25 regards to the gas and pressure and the Lock Out that
26 morning with Dan Collins, specific to venting. Tell us
27 about the first conversation. First, I was doing other
28 things. I heard it. It wasn't immediately near the

1 unit, but these things are allowed -- aren't allowed,
2 and I -- I could hear it from where I was. I called the
3 radio and I asked Dan, Hey, guys, what's going on? Dan
4 says we're still in the process, something along the
5 lines. Okay. All right. So he assumes Collins got it
6 under control. Should he? Maybe not.

7 Then he has a second conversation after a
8 second vent. This one was face to face. And he said --
9 either this one or the third one was face to face -- did
10 you figure out what happened? Jason, we got it, or
11 something along those lines. And then you had a third
12 conversation with Mr. Collins that morning. I had a
13 face-to-face conversation with him in close proximity to
14 Unit 5 and the gas unit. What was the gist of the
15 conversation? It's all under control. The system is
16 being depressurized. We got it.

17 Did you ask Collins to make sure the system had
18 been depressurized? I did. Did he assure you? Yes, he
19 did. So these two are obviously making mistakes on top
20 of each other. There's a lot where he just keeps
21 confirming it, and testimony came out that if anyone
22 should have stopped the LOTO, it should have been Jason
23 King. So should he have stopped it? He should've. He
24 didn't.

25 We talked about training. Mr. King testified
26 about annual training, classroom training. He had the
27 SMP up on the screen, annual LOTO training. Went
28 through the procedure with the employee? Yes. Counsel

1 wants you to believe that it was just some boring
2 computer screen and who looks at a computer screen
3 anyways.

4 Dan Collins was a participant in the annual
5 LOTO training? Yes. Was he the most experienced
6 operator at the plant? Yes. As far as hands-on
7 training, going out to the fuel filter skid and showing
8 how it should be done, did that ever occur? Yes. Did
9 you do that? Yes. Was Dan Collins involved in that?
10 Yes. And as we sit here today, is it your recollection
11 that you provided Dan Collins hands-on training
12 regarding how to do this fuel filter LOTO? Correct?
13 100 percent.

14 There was testimony about how this LOTO was
15 changed, how Item 4 became Item 14. So you recall Dan
16 Collins being involved in the change that was made to
17 the LOTO sheet? 100 percent. He was involved with that
18 change. And did you give permission to the change?
19 Yes, he gave permission. It was his job. He could say
20 no and he could say yes. It was Mr. Ward who made the
21 recommendation. It made sense to Mr. King, and they
22 decided to do it. Jason King testified that there
23 should only be one venting per LOTO so that Dennis
24 Johnson -- Mr. King was asked what the reason for the
25 incident was. Based on his experience, I believe the
26 Lock Out/Tag Out procedure was not followed. Not that
27 it was wrong, it wasn't followed.

28 Mr. Ward testified, one of Mr. Collins' best

1 friends. Tough for him to testify and tough for him to
2 be truthful about what happened when he had a hand in
3 what happened. Part of the training, he talked about.
4 Did you shadow other gas turbine technicians? Yes. Did
5 you shadow Dan Collins? Yes. He's familiar with the
6 SMP-3, which is the LOTO procedure. He received annual
7 training? Yes. And Mr. Collins was there when you
8 received training as well, i.e., also getting training?
9 Yes. He participated in majority of 30 outages? Yes.
10 Talked about opening the two valves that should've been
11 opened.

12 So what did he do while he opened the two
13 valves? There are two valves that bleeds the entire
14 system. And I know you guys have not lived with it like
15 we've lived with it, but Step 2 and 3 is you open two
16 valves and it bleeds the entire system all the way out.
17 So what he testified to was after he opens those two
18 valves, he goes over and he looks on the gauge and he
19 sees it go to zero. That's what Dennis Johnson
20 testified to, that that's what you do. You just -- just
21 wait. It's going to -- it's going to bleed the system.
22 It's just ten minutes.

23 We don't have to do anything else. We're
24 getting paid to do this part of our job. That's the
25 procedure. So you would actually walk around the fuel
26 filter and look at the gauge? Yes. Custom and practice
27 by other operators? Yes. You observed Collins do this?
28 Yes. Something he observed you do? Yes. Saw Ernest

1 Jones do it? Yes. And the purpose of watching it go to
2 zero is what? To ensure that the filter was actually
3 empty, the green part of their incorrect PowerPoint.
4 Because once you bleed those two valves, the entire
5 system is empty and green.

6 Mr. Ward also confirmed that Mr. Lane was wrong
7 in his PowerPoint. Up here in the top, isolation valve
8 three he talks about. Looking at plaintiffs' --
9 Mr. Lane's diagram, he identifies that isolation valve
10 three as number two. In all your experience, was that
11 valve ever identified as isolation valve number two?
12 No. It's the same testimony that Dennis Johnson gave.
13 Did you discuss the change with Mr. Collins, the change
14 to the LOTO? Yes. Did he agree with you that that
15 change needed to be made? Yes. He reminded Collins
16 twice of 4 is now 14 that day. Mr. Ward testified that
17 he was aware that Mr. King had been told by Mr. Collins
18 that the LOTO was done and that it was safe to go to
19 work. Mr. Ward, as much as he didn't want to say it,
20 And if the steps in the LOTO had been done in order,
21 Mr. Collins would not have been killed? Correct. You
22 heard him. He also testified there was no bonus
23 program. Again, a red herring was made up, corporates,
24 bad corporations.

25 Then this was interesting testimony. Counsel
26 tried to make Ward agree that he had no training. The
27 only thing was, the training sheets, he hadn't been
28 hired yet, so of course he wasn't on that training

1 sheet. Then we had testimony by McDaniels. So he is
2 the gentleman that ran CPV Sentinel Management who was
3 hired to shadow and watch Ops. Whatever Ops does or
4 thinks, I am going to oversee them. And I'll have my
5 own opinions about them, but I'm going to oversee them.

6 And I hate to refer you to the contract, but --
7 it's long, but it's in there. Contracts are there for a
8 reason in our society. They are read. They are
9 reviewed. They're signed. They are agreed to. They
10 are binding. This confirms that it was a competitive
11 bid. It wasn't just given to someone. They interviewed
12 a bunch of operators, selected one who they thought
13 could run it. At the head of the CPV management and
14 running of it through the asset management agreement,
15 you would oversee what DGC Ops did? That's correct. He
16 was also there during the one-year final construction.
17 He was there every day during that time. He spent a
18 year. Right? That's when he would be at the plant
19 every day and would see Gemma train the employees.

20 The near miss that we heard about was never
21 reported to him. You heard from Dennis Johnson that it
22 wasn't reported to anyone. So counsel's claim that we
23 somehow should have known about it and that's why it
24 happened, because four years earlier someone had a near
25 miss, again, that's not a substantial factor. That had
26 nothing to do with why this incident occurred.

27 He testified that there were hundreds of these
28 job safety procedures that is used for education and

1 training tools for the employees. He oversaw the plant,
2 but ultimately let Ops run it the way Ops decided to run
3 it. He was -- his job was to make sure that they did
4 their job. Again, it's in this corporate world we live
5 in where corporations are allowed, you're allowed to
6 have a company hired to overlook, oversee another
7 company.

8 "I was responsible for review of safety
9 procedures." Okay. If there was any violation of them,
10 it was on him. Mr. Mason went through, testified. The
11 LOTO procedure -- he believed that the LOTO procedure
12 was correct and should have worked if it was followed
13 line by line. Did you find any faults in the procedure?
14 He did not. Confirmed that the installer should not
15 hurry, that the procedures are there to protect
16 everyone, to protect Collins, to protect his coworkers.

17 Does Your Honor want to take a break for the
18 jury?

19 THE COURT: We usually break at three o'clock.

20 MR. SCHUMANN: Okay.

21 THE COURT: If you'd like to take one now,
22 Mr. Schumann, we can do that as well.

23 MR. SCHUMANN: Could we do that instead? I
24 don't want to bore everyone. I have still a little bit
25 more time to go. Sorry. Is that okay?

26 THE COURT: That's fine.

27 MR. SCHUMANN: Great.

28 THE COURT: Members of the jury, we'll take our

1 afternoon recess right now. It's 2:30. We've been
2 going for an hour, so maybe just refresh after the lunch
3 hour. We'll come back at 2:40, so a ten-minute break.
4 It'll be a little bit shorter one, but we'll see you at
5 2:40. Thank you.

6 (The jury exited the courtroom.)

7 THE COURT: Okay. We're now outside the
8 presence of the jury. All right, counsel. You're at
9 exactly one hour. There is no time limit, for your
10 information.

11 MR. SCHUMANN: Thank you.

12 THE COURT: And then we'll come back at 2:40 --

13 MR. SCHUMANN: Yeah.

14 THE COURT: -- continue. And we'll see -- let
15 me know if you need a break for rebuttal or if you want
16 to go right into it. Just let me know and I will
17 accommodate.

18 MR. BASILE: Thank you.

19 THE COURT: Okay. Thank you. We're in recess.

20 MR. REID: Thank you, Your Honor.

21 (Off the record at 2:32 p.m.)

22 (On the record at 2:40 p.m.)

23 (The jury entered the courtroom.)

24 THE COURT: Back on the record, Collins vs. DG
25 Corp. Back after an afternoon recess.

26 Mr. Schumann, when you're ready.

27 MR. SCHUMANN: Thanks, Your Honor.

28 We're talking about Mr. Mason who reviewed the

1 LOTO, reviewed the procedures and agreed that it was
2 safe as is, and that had it been followed per the LOTO,
3 he would have been safe and we wouldn't have been here.
4 Counsel was trying to make it sound like Mr. Mason was
5 not well-educated. Well, he did teach classes in safety
6 at the University of Notre Dame.

7 Then we had testimony by a human factors
8 expert. You probably know more about human factors now
9 than you ever did. Interesting science. It was not
10 disputed by opposing counsel. The only dispute related
11 to how much he'd gotten paid. He's peer reviewed. He's
12 an impressive expert. He knows his stuff. He knows how
13 we as people act/react, and his discussion related to a
14 couple of opinions. And I can't read that.

15 Can you zoom in on Number 1? Okay.

16 So his first opinion was that there was no
17 reliable scientific evidence that the presence of
18 additional warnings or signage at the site of this
19 incident would have affected Mr. Collins' behavior or
20 prevented the accident, especially in consideration of
21 his professional experience. Furthermore, the abnormal
22 venting that multiple witnesses testified about would
23 have provided the salient warning that something was
24 awry in the process, and that warning failed to affect
25 Mr. Collins' behavior.

26 So basically, hey, if all these abnormalities
27 did not stop Mr. Collins from continuing what he was
28 doing, then a line item at the bottom of the sheet

1 wouldn't have made a difference. We already know that
2 he -- per two people who testified, he put their
3 initials on the sheet. So why would another line item
4 have made a difference.

5 His second opinion was that attention is
6 task-driven. To the extent Mr. Collins was
7 predominantly focused on completing his work, his focus
8 on job completion is a likely culprit for his failure to
9 monitor the pressure in the system and would have
10 similar effects on reducing his information-seeking
11 behavior with respect to other safety information. So
12 if you're so intent on doing something, you're not going
13 to see or you're going to ignore the warning signs
14 around you. That's what we do, and that's what he did,
15 obviously. He obviously ignored all the warning signs.

16 Exposures to hazards in environments with
17 potential stored energy are more typically correlated
18 with human error and unsafe behavior than a deficient
19 auto procedure. What he talked about there was the
20 sawmill example where the people who got injured there
21 had nothing to do with the safety procedure. It was
22 people either forgot to do something or didn't turn
23 something off, thus again confirming that the procedure
24 itself, the LOTO procedure itself, is safe, as all
25 experts who have come in here have testified to. The
26 procedure was safe if you just follow it.

27 And his ultimate opinion was adding an
28 additional step to the LOTO would not have reliably

1 prevented the incident.

2 Again, also, if someone wanted to add an item
3 to the LOTO, Ops could have easily done that. Right?
4 It was under their control.

5 Dr. Krauss testified about Mr. Collins knew
6 what his task was. The task was specifically to get the
7 pressure to zero. That was the entire task for that
8 morning. That was it. To get the pressure to zero. It
9 wasn't an item of the task, it was the task. Right?
10 That's the final thing you do. Hey, did I do what I was
11 supposed to do? Let me just double-check. Yes, I did.
12 The pressure gauge was right next to him when he crawled
13 up the ladder. Again, had there been a line item, so
14 what? The pressure gauge was literally right next to
15 him and he didn't look at it. No amount of additional
16 warnings would have stopped him because he was intent on
17 doing what he was doing. He wanted to do it quick. He
18 wanted to do it faster than anyone.

19 He confirmed that, in his opinion, he didn't
20 follow the LOTO, he didn't read the gauge, he ignored
21 the unusual ventings, he didn't listen to Robert Ward
22 who reminded him twice. He was in a hurry and he
23 violated the safety rules for this plant. Then Dennis
24 Johnson came in as the plant manager, talked about the
25 safety procedures, confirmed that they were created by
26 Jason King, brought with him from Jason King to
27 operations. He received the LOTO training when he first
28 started in '12. Jason King performed the LOTO training

1 when he was there. He testified that no one from my
2 client came in and took over the LOTO training. My
3 client did what's called NERC training in 2013, which
4 has zero to do with the LOTO -- the safety of the LOTO
5 system.

6 Four years earlier is not a substantial factor
7 in causing this incident. Mr. Johnson was the
8 supervisor for a total of 23 outages. He looked at the
9 gauge every time as part of the job. All those outages
10 were done safely. There was testimony and
11 cross-examination about the near miss, and it was clear
12 from that testimony that counsel and Mr. Lane did not
13 understand the records from the near miss. What
14 Mr. Johnson was trying to explain and finally came out
15 was that Mr. Johnson, as he is about to do his walk down
16 of the LOTO as the work supervisor, there is a venting.
17 He talks to the gentleman. What is this? They get
18 Jason King over. They handle the venting and the system
19 is vented. No one were allowed to work on the system
20 until it had been finished. Counsel tried to make it
21 look like there were all these workers outside waiting
22 in their trucks and look, they signed in on the sign-in
23 sheet at ten o'clock and at two o'clock. Yeah, they
24 did. Because the LOTO with the near miss was at 7:00
25 a.m., and it was bled and completed by 7:00 a.m.

26 So now it's finished and done and over with.
27 So it wasn't what they claim, which was oh, my God, they
28 were all working on the system, and in the middle of the

1 system at 2:00 p.m. they found out it was at 500 PSI.
2 No. He explained exactly that the system worked, that
3 he caught the mistake that someone made -- none of us
4 know what happened -- and that it wasn't reported to my
5 client. Here's that sheet where -- this is the sheet
6 for all the vendors while they're waiting to come in.
7 And it took some explaining to show that yeah, you get
8 to bring your tools over to where you're working, but
9 you can't touch the system until the supervisor has
10 walked it down and put his lock on the box and it's
11 done. Then the vendors can come in. And that was
12 confirmed by Mr. Johnson in a lengthy cross-examination.

13 Again, that goes back to Mr. Lane, their
14 expert, who allegedly has looked at all these documents
15 and knows this entire procedure. Right? Had he really
16 looked at it, he would have known that these sign-in
17 sheets and that the LOTO back in 2014 where the near
18 miss was, that it was resolved before anyone touched the
19 system. No one had signed in yet. He tried to explain
20 it with the sign-in sheet. It was finished by 7:00 a.m.

21 Dennis Johnson testified about doing the LOTO
22 slowly. I said so what do you have to do? He said it's
23 not something you rush through. He testified that on
24 all the prior LOTOs, only one venting occurred since
25 2014. That's the way they're supposed to happen, not
26 two, not three. Right?

27 Each step is important. Should anyone be
28 moving on without having the lock and the tag placed on

1 that item? So you do Item Number 1. You finish it.
2 You put your lock. You tag. You do Item Number 2. You
3 finish it. You lock it. You tag it. He checked the
4 gauge when he was a work supervisor, and it took about a
5 minimum of an hour to do this job. You can't rush it.

6 Mr. Johnson had an opinion that Mr. King should
7 have noticed that the LOTO sheet were [sic] in the
8 control room and that he should have then taken -- his
9 job and taken it out and walked the LOTO. That would be
10 on Mr. King as a mistake that he made.

11 He talked about the four ventings, confirmed
12 the four ventings, the short by Palalay, the inside the
13 turbine package venting, the loud, unusual noise when Ju
14 Kim hit the emergency block valves and Mr. Delaney also
15 manipulating the release valves. This is the -- there
16 was some testimony about moving the Number 4 to 14. So
17 his explanation or discussion about moving the item that
18 Mr. Ward moved down to Line Item 14, so if there were
19 any residual gas in the fuel filter, it would have been
20 vented by the time you got to this step, Number 14,
21 correct? And that's because it would take you probably
22 45 minutes to get to Item Number 14 and the venting
23 takes 10 to 12. So it was a good move to move it to 14.

24 Dennis Johnson opined that Ops was negligent.
25 He reviewed the investigation, he spoke to people. Did
26 Dan Collins perform the installer role correctly on the
27 day of the incident? No. Did Palalay perform the
28 verifier job correctly? No. Did Jason King perform

1 correctly? No. And if the LOTO procedure in use on the
2 day of the incident had been performed correctly and in
3 order, would there have been an accident? No.

4 I'm going to show you part of the video. I
5 know it's four minutes long. Let me just show you what
6 should have been done. And I'll agree with counsel that
7 the two people should not walk together. The verifier
8 should verify separately. But this is what happened
9 that day if Mr. Palalay had followed Mr. Collins.

10 Can you start it?

11 (The video deposition played in open court.)

12 MR. SCHUMANN: Okay. So they walk over to the
13 Step Number 1, close the first valve. 1 and 2 is a
14 different part of it, but the valves start at isolation
15 valve one, Step Number 3. Then Palalay opens these two,
16 and they should be left open until the system goes to
17 zero because all the gas comes in from here and it's
18 been shut off. So just wait until this vents to zero.
19 Now the system is clear. Close it, lock it and tag it
20 and then move on to the next steps.

21 And if we can go to 13 -- could we move it up
22 to like 13?

23 Okay. It's fine right there, yeah.

24 So we're towards the end. The valve is --
25 Valve 14 is the one that got moved from 4. So he has to
26 go back to where he started. So this is where he
27 decided -- on the timing sheet that we have, we can see
28 that he decided to close this one basically at the same

1 time that he closed Number 1.

2 Dennis Johnson talked about plaintiffs'
3 expert's PowerPoint and his system, again, talking about
4 the valve number two, which is the one up top, always
5 being valve three and never used. He was confused with
6 counsel's questioning, asked if this was just a
7 scenario. I don't understand why it's called valve two
8 on top because it never was. And then he says in this
9 scenario, which I've never seen this done in industry
10 before.

11 He talked about the near miss. I explained
12 that to you. Again, Mr. Lane and counsel were
13 completely wrong. They claim that what happened
14 happened after the LOTO was finished. That was wrong.
15 They claimed that the vendors had signed in. That was
16 wrong. Then they claimed that it wasn't until 2:00 p.m.
17 and that everything was being done safely overnight.
18 That was wrong. And they claimed that Mr. Johnson
19 didn't know what happened, even though he was the one
20 who was there.

21 Okay. So there's a lot of jury instructions.
22 All right. Burden of proof. Like I don't have to prove
23 anything. Right? The burden of proof is on the
24 plaintiff. They have to prove to you what happened.
25 Now, they didn't prove any facts, so I proved the facts.
26 But the burden of proof is on them. And it's not just
27 51 percent. I completely disagree. It has nothing to
28 do -- it doesn't say 51 percent anywhere. They must

1 persuade you by the evidence presented it is more likely
2 to be true than not true. They don't start at 50/50.
3 They start at zero. They have to keep adding evidence
4 until they have proven it.

5 There's a lot of evidence that they have failed
6 to explain, like the facts, like the law. There's an
7 instruction on experts. I ask that you read that. And
8 then this one is the basic standard of care.

9 Now I'm going to skip to 450 because this is
10 what the case is about, and I'll come back.

11 So this is not a regular negligence case where
12 you -- someone did something and we all find out what's
13 everyone's responsibility. This is their hook, and only
14 hook, to my client's alleged liability. It doesn't
15 matter whether you think that it -- my client
16 negligently wrote an e-mail or didn't have the review at
17 the right time or enough. They have to prove that my
18 client either voluntarily or they got paid to render a
19 service to DGC Operations, and that service, you heard
20 earlier in counsel's opening -- closing statement, which
21 is now -- no, sorry. Sorry. Sorry. Sorry. I'm going
22 to -- hang on. Ah, I'll find it. Sorry. I will --
23 hang on. I thought exactly I had it. Of course I
24 didn't.

25 Okay. Employer's duty to its employees, can
26 you find that one? Employer's duties to its employees
27 in the PowerPoint.

28 So there is a jury instruction, and I'll just

1 find the number, that talks about the employer's duty to
2 its employees. Right? So Ops' duties -- there we go.
3 So Ops had a duty to its employees. And I think I did
4 that on the next one. There you go. So I took the jury
5 instruction, and this is what they have to prove. Ops
6 has a duty initially to keep all its employees safe. We
7 can all agree on that. Everyone -- Collins, Palalay,
8 all of them, Ops has a duty to keep them safe. Right?
9 "Ops shall not fail or neglect to do any of the
10 following to Collins and his coworkers: Ops
11 must," right? They have to provide and use safety
12 devices and safeguards reasonably adequate to render the
13 employment and place of employment safe. That's Ops'
14 duty.

15 Ops also has to adopt and use methods and
16 processes reasonably adequate to render the employment
17 and place of employment safe. Right here. This is what
18 plaintiffs' counsel said that we overtook -- or
19 undertook. We undertook this duty, he said. We
20 undertook the duty to adopt and use methods and
21 processes reasonable, adequate to render the employment
22 and place of employment safe. That's it. That's what
23 they have to prove. Not whether we were somehow
24 negligent, whether we took over this entire job.

25 I would submit to you that there is no evidence
26 in this case that we took over this entire section of
27 this jury instruction. That's their burden in this
28 case. That's the only thing you have to decide in this

1 case. When it comes to -- and this is legalese and I'm
2 sorry, but when it comes to negligence, basic standard
3 of care, well, that's whether Mott MacDonald were
4 negligent in what they were supposed to do, whether CPV
5 Sentinel Management Company was negligent in overseeing
6 Ops under the contract, whether Ops was negligent in
7 handling this situation that they had, their plants,
8 their employees. They have this standard of care. I
9 don't -- I -- you -- they have to prove that we took
10 over Ops' job. Let me just see if I go back here.

11 So we'll get to apportionment. We'll get to
12 that.

13 So we're going to -- okay. So what's an
14 undertaking? Right? And "undertaking" is a weird word.
15 I don't know if you probably have ever seen this jury
16 instruction, but an undertaking is like a pledge or a
17 promise to do something. Like you see someone on the
18 road who's injured, you pick them up and help them. You
19 don't pick them up and throw them onto the freeway.
20 Right? Now you have undertaken to help someone and you
21 threw them on the freeway instead. Well, guess what?
22 You didn't do your job.

23 You guarantee, you're assurer, you're promising
24 something. There is zero evidence in this case that my
25 client came out and said to Ops, Hey, don't worry about
26 it, you don't have to take care of safety or training,
27 we got it covered. Zero evidence. There's evidence
28 that we owned part of it, we bought shares in the

1 company that owned the plant and that we were -- that
2 operations was a subsidiary. That's the evidence you've
3 heard. There's no evidence that we undertook their job.
4 That's their instruction.

5 It is a high, tough burden, and I submit
6 there's zero evidence in this case that the service --
7 rendered service to DGC, which I just showed you on the
8 employer's duty to its employees what the alleged act
9 was, zero evidence. Yes, someone wrote an e-mail,
10 someone hired a manager, someone met with the manager
11 every year. Some people wrote an e-mail that had the
12 word "safety" in it. None of their evidence, zero, has
13 any evidence that says we are in charge of safety. We
14 are doing all this. We're sending our own team out. We
15 are handling it all. We'll train all of you. None of
16 it.

17 Yes, they did training in 2013 for NERC. Well,
18 that has nothing to do with the LOTO. And on top of
19 that, you have to find that whatever we allegedly did
20 caused this incident three, four years later, months
21 later, whatever it was, whatever -- whatever the alleged
22 involvement we had, that it somehow caused the incident,
23 that it was a substantial factor. That's another
24 instruction that you will have.

25 Okay. And, of course, I'm now fooling around
26 because I can't find the substantial factor instruction.
27 Can you find that for me? Substantial factor.

28 So as soon as he can find it.

1 Find it yet? There you go.

2 So 430 is the rule for whether what we did
3 caused or was part of causing the incident. Okay? So a
4 substantial factor in causing harm is a factor that a
5 reasonable person would consider to have contributed to
6 the harm. Okay? So that's Step Number 1. It must be
7 more than a remote or trivial factor, more than remote.
8 It doesn't have to be the only cause, et cetera. That
9 is their burden. It's not my burden. It's their
10 burden.

11 You've heard about multiple parties. You've
12 heard about all the employees, all the Ops employees.
13 You heard about Mott MacDonald. You heard about the
14 construction company. You heard about the owner. You
15 heard about the management company. They will all be on
16 your verdict form. You had this instruction earlier
17 about a construction -- about a corporation being
18 entitled to the same fair and impartial treatment and a
19 person is also a company.

20 So my client ultimately was not responsible for
21 Ops' mistakes. Whether they were Ops' mistakes or
22 whether they were Mr. Collins' mistakes or whether they
23 were a combo of their failures, Ops had the
24 responsibility to keep its employees safe. The only
25 question you have to answer is whether my client
26 undertook a duty that belonged to Ops. You have to
27 first go with the duty that is Ops' duty and did I take
28 it over. Whether I told someone about -- talked to

1 someone about their duty, that's not taking it over. We
2 didn't train their employees. We don't have a duty to
3 train them. They have a duty to train them. Ops has
4 the duty to train them. Just like you don't have a duty
5 to train your neighbor's employees, the law separates
6 entities and sees them as individuals with their own
7 rights.

8 We talked about this earlier. If you're afraid
9 of the facts, you argue the law. They never talked
10 about the facts. If you're afraid of the law, you pound
11 the table. The law is not in their favor either. They
12 pounded the table the entire 30 days.

13 You saw the verdict form. It's a long verdict
14 form. The very first question is the one you're going
15 to have to answer, "Did Diamond Generating voluntarily
16 or for a charge render services related to Sentinel
17 Energy Center worker safety?" Did we take over Ops' job
18 of providing worker safety? It could have been phrased
19 that way. Did Ops take over -- did Diamond Generating
20 take over Ops' job to provide worker safety. I would
21 suggest that it's no. Diamond Generating for sure spoke
22 to the plant manager many times. He was hired to run
23 their -- this is an asset. This is an expensive plant.
24 They hired two companies to run it. One to run it, one
25 to oversee the other person running it. They're
26 entitled to do that.

27 They did the right thing by hiring two
28 professional companies: one with multiple employees, a

1 plant manager, supervisors, trained them, had them at
2 the plant for an entire year before it opened, paid them
3 all for an entire year before it opened to learn the
4 system. They didn't take over safety or training. If
5 you -- if you somehow find that they had some
6 involvement, I would submit to you that it was not a
7 substantial factor. It had nothing to do with this
8 accident. Whether they interviewed or spoke to or
9 yelled at the plant manager, that had nothing to do with
10 this incident. This incident didn't occur because of
11 e-mails about, quote/unquote, "safety." It didn't occur
12 because people met from different corporate levels. It
13 didn't occur because my client had an office on a
14 certain floor downtown, right? These are not -- these
15 are not facts. That's argument. It's emotional
16 arguments that a big corporation who has the floor on a
17 certain building allegedly didn't do something that
18 there's zero evidence for.

19 So when you get to Question 2, I submit to you
20 that it was not a substantial factor.

21 I will go through -- if you get to the point
22 where you start being asked about other defendants -- I
23 mean, other parties that are listed on the verdict form,
24 you will be asked about each of them. Mott MacDonald,
25 the company that designed the plant, you heard from
26 plaintiffs' own expert that they should have put warning
27 labels on. If the warning had anything to do with this
28 incident, then they should certainly be partly

1 responsible. And if the warning labels and any labels
2 had anything to do with it, it shouldn't be a
3 substantial factor because the claim has been that there
4 should have been a warning label.

5 Did I go too fast?

6 MR. REID: It seems like your slides aren't in
7 order.

8 MR. SCHUMANN: Yeah, I think it's not in order.
9 That's sometimes what happens here. Okay.

10 All right. So Mott MacDonald. Okay. So
11 Sentinel Energy Center, that's the owner. So the
12 testimony you heard about the owner having
13 responsibility is again also as to the warnings and the
14 labeling from plaintiffs' expert. Well, you know, it
15 starts with the owner. Okay. Well, this is the owner.
16 This company is the owner. So if the labeling or the
17 warnings were part of this problem, then they were
18 negligent and they were a substantial factor.

19 DGC Operations, clearly negligent, all over the
20 map. Employees, Jason King, Mr. Collins, Palalay, all
21 of them, yes, they certainly were all negligent. And
22 certainly a substantial factor.

23 CPV Sentinel Management, the company that was
24 supposed to oversee Ops, did they do their job? If they
25 didn't do their job, they would have part
26 responsibility. If management's -- Sentinel -- if CPV
27 Sentinel Management's job was partly to oversee the LOTO
28 and oversee the procedures and double-check safety and

1 training, if you find that training and safety and LOTO
2 was not proper, well, then they didn't do their job.
3 That was part of their job. It's clearly in their
4 contract. So if you find that, then you have to find
5 then yes, negligent and yes, a substantial factor. And
6 yes, Mr. Collins obviously was on said record, ignored
7 all the warning signs, ignored his friends, his
8 coworkers and exposed his coworkers to significant
9 potential danger. It sucks to have to blame him, but
10 the facts are clear.

11 Then you will, at that point in time, put
12 percentages on the various faults if you get that far.

13 If you get that far, this is the amount that I
14 think warrants. What is not warranted is 68- to \$80
15 million. I did some quick calculation over lunch. You
16 can buy all the 10 homes on Skyway Drive in Cathedral
17 City, all the 10 homes on Desert Way in Rancho Mirage
18 and all 30 to 40 homes in the Lakes Country Club
19 development in Palm Desert. That's what they want you
20 to give the plaintiffs.

21 I wanted to just hit on a few items that
22 counsel talked about in his closing. He kept saying
23 they -- oh, sorry, can you turn the slide off?

24 He kept saying "they." Well, that has been the
25 motto of the entire case. Who's "they"? Never --
26 counsel never tells us who they is because he doesn't
27 want you to know. The law is not in his favor. They
28 are actually -- they actually have names. You saw the

1 various names: CPV Sentinel Management, Ops, Diamond
2 Generating. He kept calling it the same thing to make
3 you believe that they are all the same company, all my
4 company, just all me. I was all -- just the bad guy for
5 all of this. The law is not in his favor, so he
6 confuses the issues.

7 He claimed that Mott, Gemma, Sentinel, CPV
8 Management and the other parties were only now here
9 because we're in court. No, they sued them.

10 Bottom line is unfortunate, and I'm really
11 sorry for your loss. But had Mr. Collins followed the
12 LOTO we wouldn't have been here. So thank you.

13 And one more item. I don't get to say any
14 more. Counsel gets to talk next. I don't get to
15 respond. So if there's a question, if I didn't say
16 everything I should have said, I might ask that you say
17 well, what would my response be to what counsel is now
18 going to say?

19 So with that, thank you so much for 30 days.
20 Sorry for keeping you so long. Thanks.

21 THE COURT: Thank you, Mr. Schumann.

22 As counsel mentioned, plaintiffs have the
23 burden of proof in these type of cases. Because of
24 that, the law allows for them to give a rebuttal.

25 Mr. Basile, I'll give you the same courtesy if
26 you'd like to take a brief recess, or if you're ready.

27 I will make one more inquiry of you, I
28 apologize. Members of the jury, I know we usually go

1 until 3:30. As I mentioned before, same thing, if you
2 have appointments, I don't want you to cancel them. No
3 questions will be asked. If you need to leave here,
4 just raise your hand, tell me and I'll ask what time and
5 then that'll be the end of the inquiry and we will not
6 stay later. I don't want you to miss any appointments.
7 Is there any --

8 Mr. Basile, do you think you'll be done by four
9 o'clock?

10 MR. BASILE: Absolutely.

11 THE COURT: Okay. Members of the jury, anyone
12 needs to leave right at 3:30 or shortly after? Okay.
13 Not seeing any hands. Again, I don't want you to miss
14 any appointments. Okay. Not hearing anything.

15 Mr. Basile, when you are ready.

16 MR. BASILE: Thank you, Your Honor.

17

18 PLAINTIFFS' REBUTTAL CLOSING ARGUMENT

19 MR. BASILE: I was trying to keep track of that
20 time that he spoke to you, and I think it was close to
21 two hours hour, an hour and 40 minutes, something like
22 that. If Diamond Generating Corporation were to spend
23 as much time with plant manager Walker on one of those
24 reviews looking at the LOTO sheets, looking at whether
25 he did the audits, looking at safety as it was supposed
26 to be at that plant, looking at training on how it was
27 supposed to be at that plant, if they would have taken
28 as much time as they just took to try to confuse you and

1 do all the things I said, none of us would probably be
2 here. Only one person would be here; that would be
3 Daniel Collins. He took all that time to do what I just
4 said.

5 Now, Exhibit 172, please.

6 I mentioned this in the beginning when they're
7 saying who's in charge of who and all this CPV and all
8 that stuff. Take a look at 172. That's their fact
9 sheet saying that they are the owners and managers of
10 that plant, in addition to what I said about the filings
11 with the Secretary of State. And there's three
12 witnesses that you want to always keep in mind
13 throughout your deliberations, and that is Mr. Forsyth
14 who said Diamond Generating Corporation is responsible
15 for safety at the Sentinel Energy Center. He said that.
16 You can always go back to that, no matter where they
17 want to point their fingers or anything. Number two,
18 the plant manager Walker, who's your boss? Who do you
19 answer to? Diamond Generating Corporation, Auden Aberg,
20 Mike Kromer, Paul Sheppard. You can always go back to
21 Walker.

22 And finally, keep in mind this is the third,
23 Ben Stanley, their own manager that came to that root
24 cause analysis. And I know if you remember the
25 testimony of him and how he said before he wrote the
26 final report, who did he meet with? Paul Sheppard. Who
27 assigned him? According to him, not according to
28 Sheppard, according to Stanley, Sheppard did. And

1 before he wrote the final report he met with Paul
2 Sheppard. And that's when they called Daniel Collins
3 brush fire. Did you hear anyone come in and say that
4 other than that report, he was called brush fire? Where
5 was all the discipline they said they were going to come
6 in with about Daniel Collins.

7 And, you know, I'll let you all judge for
8 yourself, though. We saw who Daniel Collins was. And
9 they called him, if I heard right, a forger. They
10 called him someone that lies. They called him someone
11 that makes stuff up. We know who Daniel Collins was,
12 don't we?

13 Now, Paul Sheppard, the COO -- and remember I
14 put this up in opening statement, Diamond Generating
15 Corporation wholly-owned subsidiary is Ops and then all
16 their power plants there. They're now trying to point
17 the finger at everyone. But remember Question 4 when
18 you get to this. I'm sorry. By the time you get to
19 Question 4, once you see -- once you answer this
20 question, "Did Diamond Generating Corporation fail to
21 exercise reasonable care," once you answer yes to those
22 there and listen to Forsyth, they are the ones that are
23 in charge of safety, you've now satisfied.

24 And it was interesting he tried to change the
25 wording of the first question. This man here, His
26 Honor, is the one that instructs what that first
27 question is. And that's the first question on here.
28 It's not what he was trying to narrow it down or do

1 something. He said it could be something else. His
2 Honor tells you what that first question is.

3 So when you get to that first question, they
4 provided services, when you get down to Number 4, that
5 they're now in charge, how can they then, when they're
6 in charge, point the finger at Ops other than to try to
7 use this shell game of corporate structure to try to
8 avoid responsibility? That's what this whole thing is
9 about.

10 So the choice -- put that up there. Let's see
11 the next one. Here's the choice. He said 2 to 3
12 million. In rebuttal to that, I would like to go back
13 to if Paul Sheppard and Daniel left for work that day,
14 called Denise and Christopher on the phone and said, I
15 want to tell you something. We've haven't been doing a
16 very good job at safety at that plant. Daniel is going
17 to be confused today like all the other workers. If it
18 was just one person, it would be human error, but
19 everyone is confused and we haven't marked those valves
20 or done anything. And this is the last day you're ever
21 going to see your husband.

22 MR. SCHUMANN: Improper Golden Rule, Your
23 Honor.

24 THE COURT: I'm sorry?

25 MR. SCHUMANN: Improper Golden Rule argument.

26 THE COURT: Overruled. Just be careful,
27 Mr. Basile.

28 MR. BASILE: Thank you.

1 Yeah. I -- and Sheppard says if you seek
2 justice for what's going to happen that day, we're going
3 to first, not tell you what happened. We're just going
4 to say he got trapped and we're --

5 THE COURT REPORTER: Counsel, I can't hear you,
6 I apologize.

7 MR. BASILE: We're going to have to make you
8 file a lawsuit. We're going to have to make you sort it
9 out for yourself who owned the plant, who's in charge of
10 the plant, who's doing what. And then if you seek
11 justice, we're going to take your deposition and then
12 we're going to make you come into court and we're going
13 to make your friends come into court and we're going to
14 call Daniel a liar, an abuser and whatever they were
15 saying and all that. But in exchange for that, we'll
16 give you a million bucks a year for as long as Daniel
17 would live, 32 million to each of you. You think they'd
18 take that offer? I don't care how many houses they say
19 it would buy. Those are materials. This is love,
20 compassion. This is who we are. This is who we are.
21 They'd never take that.

22 I have to read what I wrote. I was thinking
23 last -- last night about this whole case, what I'd say
24 and I want to make sure I get it right. So excuse me.
25 I usually don't read, as you see, from this stuff, but I
26 want to read you this. Distort, deny, blame others
27 until they face you. Until they face you. Your duty
28 and responsibility now is to speak loud and true, loud

1 and clear the truth to which they have hidden, covered
2 up and confused. We ask you to hold them accountable
3 for all this harm. Let your verdict serve as an
4 indelible reminder of what they should have done to
5 maintain safety at the largest power plant of its kind
6 in the world.

7 It has been -- I'm in my 41st year. It has
8 been a privilege to represent this family and that man,
9 but all I am is a messenger. You are the ones with the
10 power. You're the ones with the truth. You're the ones
11 that we're putting Daniel Collins' life in your hands.
12 And what is that? No one else can do it. There won't
13 be another jury. I want us to walk out that courtroom
14 door together after the verdict. I want you all to be
15 talking to your grandkids about how you stood up for
16 justice. There's good corporations. I said that. But
17 I want you to be proud about how you stood up for
18 justice against this corporation. It's been my
19 privilege. I will look forward to speaking with you
20 after this is over. Thank you.

21 THE COURT: A few more instructions. And then
22 as I mentioned about a week ago, you will be captains of
23 your own ship. So we will ask for some feedback from
24 you so you can at least tell us what your hours of work
25 will be. I have a few more instructions.

26 5009, Predeliberation Instructions.

27 When you go to the jury room, the first thing
28 you should do is choose a presiding juror. The

1 presiding juror should see to it that your discussions
2 are orderly and that everyone has a fair chance to be
3 heard. It is your duty to talk with one another in the
4 jury room and to consider the views of all jurors. Each
5 of you must decide the case for yourself, but only after
6 you've considered the evidence with other members of the
7 jury. Feel free to change your mind if you are
8 convinced that your position should be different. You
9 should all try to agree but do not give up your honest
10 beliefs just because the others think differently.

11 Please do not state your opinions too strongly
12 at the beginning of your deliberations or immediately
13 announce how you plan to vote, as it may interfere with
14 an open discussion. Keep an open mind so that you and
15 your fellow jurors can easily share ideas about the
16 case. You should use your common sense and experience
17 in deciding whether testimony is true and accurate.
18 However, during your deliberations, do not make any
19 statements or provide any information to other jurors
20 based on any special training or unique personal
21 experiences that you may have had related to matters
22 involved in this case. What you may know or have
23 learned through your training or experience is not part
24 of the evidence received in this case.

25 Sometimes jurors disagree or have questions
26 about the evidence or about what the witness has said in
27 their testimony. If that happens, you may ask to have
28 testimony read back to you or ask to see any exhibits

1 admitted into evidence that have not already been
2 provided to you. Also, jurors may need further
3 explanation about the laws that apply to the case. If
4 this happens during your discussions, write down your
5 questions and give them to the -- in this case, the
6 courtroom deputy. I will talk with the attorneys before
7 I answer, so it may take some time. You should continue
8 your deliberations while you wait for my answer. I will
9 do my best to answer them. When you write me a note, do
10 not tell me how you voted on an issue until I ask for
11 this information in open court.

12 Your decision must be based on the personal
13 evaluation of the evidence presented in the case, and
14 each of you may be asked in open court how you voted on
15 each question. While I know you would not do this, I'm
16 required to advise you that you must not base your
17 decision on chance, such as a flip of a coin. If you
18 decide to award damages, you may not agree in advance to
19 simply add up the amounts each year you think is right,
20 and then, without further deliberations, make the
21 average your verdict.

22 5011, Reading Back -- Reading Back of Trial
23 Testimony in the Jury Room.

24 You may request in writing that trial testimony
25 be read to you. I will have the court reporter read the
26 testimony to you. You may request that all or part of a
27 witness's testimony be read. Your request should be as
28 specific as possible. It will be helpful if you can

1 state, one, the name of the witness; two, the subject of
2 the testimony you would like to have read; and, three,
3 the name of the attorney or attorneys asking the
4 questions when the testimony was given. The court
5 reporter is not permitted to talk to you when she or he
6 is reading the testimony you have requested. While the
7 court reporter's reading the testimony, you may not
8 deliberate or discuss the case. You may not ask the
9 court reporter to read testimony that was not specially
10 mentioned -- sorry -- specifically mentioned in the
11 written request. If your notes differ from the
12 testimony, you must accept the court reporter's report
13 as accurate.

14 5012, Introduction to Special Verdict Form.

15 I will give you a verdict form with questions
16 you must answer. I have already instructed you on the
17 law that you're to use in answering these questions.
18 You must follow my instructions in the form carefully.
19 You must consider each question separately. Although
20 you may discuss the evidence and the issues to be
21 decided in any order, you must answer the questions on
22 the verdict form in the order they appear.

23 After you answer a question, the form tells you
24 what to do next. At least nine of you -- at least nine
25 of you must agree on an answer before you can move on to
26 the next question. However, the same nine or more
27 people do not have to agree on each answer. All 12 of
28 you must deliberate on and answer each question

1 regardless of how you voted on an earlier question.
2 Unless the verdict form tells all 12 jurors to stop and
3 answer no further questions, every juror must deliberate
4 and vote on all the remaining questions.

5 When you have finished filling out the form,
6 your presiding juror must write the date and sign it at
7 the bottom of the last page and then notify the bailiff
8 that you are ready to present your verdict in the
9 courtroom.

10 5017, Polling the Jury.

11 After your verdict is read in open court, you
12 may be asked individually to indicate whether the
13 verdict expresses your personal vote. This is referred
14 to as polling the jury and is done to ensure that at
15 least nine jurors have agreed to each decision. The
16 verdict form that you will receive asks you to answer
17 several questions. You must vote separately on each
18 question. Although nine or more jurors must agree on
19 each answer, it does not have to be the same nine for
20 each answer. Therefore, it is important for each of you
21 to remember how you voted on each question so that if
22 the jury is polled, each of you will be able to answer
23 accurately about how you voted. Each of you will be
24 provided a draft copy of the verdict form for use in
25 keeping track of your votes.

26 5018, Audio or Video Recording and
27 Transcription.

28 A sound video recording has been admitted into

1 evidence, and a transcription of the recording -- I'm
2 going to change this -- may be provided to you. The
3 recording itself, not the transcription, is the
4 evidence. The transcription is not an official court
5 reporter's transcript. The transcription was prepared
6 by a party only for the purpose of assisting the jury in
7 following the sound or video recording. The
8 transcription may not be completely accurate. It may
9 contain errors, omissions or notations of inaudible
10 portions of the recording. Therefore, you should use
11 the transcription only as a guide to help you in
12 following along with the recording. If there is a
13 discrepancy between your understanding of the recording
14 and the transcription, your understanding of the
15 recording must prevail.

16 For the video depositions of Ben Stanley -- Ben
17 Stanley, Thomas Walker and Juan Gonzalez, the transcript
18 of the court reporter is the official record that you
19 should consider as evidence. So as to those exhibits,
20 there was depositions or videos of depositions that were
21 admitted into evidence during the course of this trial.
22 If you'd like to review portions of those, those will be
23 done here in open court. The foreperson will just
24 submit a note. Let us know. I'll discuss it with the
25 attorneys and then we'll bring you back out here, we'll
26 play it and then you can go back and resume
27 deliberations.

28 So the courtroom supervisor has provided an

1 extensive list as we were keeping track. You probably
2 recall why it's important to keep track of items of
3 evidence through the course of a trial. She'll be
4 providing you a large envelope, and there will be
5 several of those documents inside there. However, those
6 depositions I just mentioned right now will not be in
7 there. If you need to review those as part of your
8 deliberations, let us know and we will do that here in
9 Court.

10 5020, Demonstrative Evidence.

11 During trial, materials have been shown to you
12 to explain testimony or other evidence in the case.
13 Some of these materials have been admitted into
14 evidence, and you will be able to review them during
15 your deliberations. Other materials have also been
16 shown to you during trial but they have not been
17 admitted into evidence. You will not be able to review
18 them during your deliberations because they are not
19 themselves evidence or proof of any facts. You may,
20 however, consider the testimony given in connection with
21 those materials.

22 Okay. That concludes the instructions we have
23 up to this point. In a moment, the deputy will be sworn
24 in and will take you back. The only thing I do ask of
25 you today, let us know when you would like -- well, one,
26 how long you're going to stay today, but, two, what time
27 you would like to return in the morning. As I mentioned
28 before, we're here in the mornings. We start morning

1 calendar at 8:30. So you're welcome -- we need
2 Deputy Lee in this courtroom starting at 8:30, but
3 you're welcome to begin your deliberations as early as
4 8:30. However, you're also welcome to go with your
5 regular hours of 10:00 a.m. That is a group decision.
6 You are captains of your own ship from now on. We just
7 need to know when you're going to be here so we can plan
8 accordingly and we can have staff in case there's
9 questions or anything else that we can provide for you.
10 Okay? Thank you.

11 THE CLERK: Raise your right hand.

12 (The bailiff was sworn.)

13 THE BAILIFF: I do.

14 THE CLERK: Thank you.

15 THE BAILIFF: All right. Jurors, if you can
16 grab your notebooks and follow me.

17 (The jury exited the courtroom.)

18 THE COURT: We're outside the presence of the
19 jurors.

20 Now that they've been taken back to deliberate,
21 counsel, you're welcome to remain a few minutes. We'll
22 let you know. I can't imagine they're going to go past
23 4:00, although I should have told them what our
24 courtroom limits are as far as the end of the day.
25 Please make sure -- I think after this point, we should
26 have everyone's cell phone number.

27 Okay. So if you'd like to remain a few
28 minutes, we'll let you know what the jury says in terms

1 of what time they'll begin tomorrow. That way you can
2 at least plan accordingly. And then we will let you
3 know. Please be nearby. If we get a jury question, if
4 you could be here within, you know, let's say 15, 20
5 minutes. Are you staying locally or is there anyone
6 that's going to go back to cooler weather?

7 MR. SCHUMANN: Locally.

8 THE COURT: Locally?

9 MR. BASILE: Your Honor, I may be leaving.
10 Mr. Sullivan will be here. I will be available by
11 phone. And if possible, when there's a verdict, if I
12 could call in and just take it by phone. If that's not
13 available, I understand.

14 THE COURT: I'll discuss that with the court
15 supervisor to see if we can accommodate that. Does
16 Mr. Sullivan know that you have -- 15, 20 minutes should
17 work for you?

18 MR. SULLIVAN: Yeah. Staying right down the
19 road, Your Honor.

20 THE COURT: Okay. Great. Mr. Schumann, that's
21 fine?

22 MR. SCHUMANN: Yeah.

23 THE COURT: And, Mr. Reid?

24 MR. REID: Yes, Your Honor.

25 THE COURT: Okay. I want to make sure you can
26 make it back, but I also don't want to waste time too
27 because there's an hour commute.

28 MR. SCHUMANN: Yeah.

1 MR. REID: I would just mention Mr. Schumann
2 and I are going to kind of rotate days, so you'll get
3 one of us.

4 THE COURT: I'd like to have both of you, but
5 one is sufficient. So same thing with Mr. Basile and
6 Mr. Sullivan.

7 Okay. We'll be in recess. We will let you
8 know what the jurors say. So at least that way you know
9 what hours you need to be on standby for.

10 MR. SULLIVAN: Is it possible for the clerk to
11 just send us an e-mail so that we don't have to wait
12 around to know the hours?

13 THE COURT: It's up to you. We can do that as
14 well, or if you'd like to wait a few minutes. I'm going
15 to go off the bench and then I'll know when you know.
16 It's up to you.

17 MR. SCHUMANN: Thank you, Your Honor.

18 MR. REID: Just --

19 THE COURT: Okay. Mr. Reid?

20 MR. REID: In the interest of clearing out your
21 courtroom, Your Honor, there's a -- six boxes of
22 documents that were rebuttal exhibits. We never used
23 them. Mr. Schumann and I were going to get rid of those
24 or take them with us. Is that all right?

25 THE COURT: That's fine. We have what we need
26 up to this point, so you're welcome to take those or any
27 similar documents.

28 MR. SULLIVAN: Are those boxes up there? I

1 think there's extra --

2 THE COURT: I'll let you discuss that with the
3 courtroom supervisor when I'm -- when I'm out of here.

4 But okay.

5 MR. BASILE: Off the record.

6 THE COURT: Thank you. We are in recess.

7 MR. SCHUMANN: Thank you.

8 (The proceedings adjourned at 3:46 p.m.)

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COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT - DIVISION TWO
APPEAL FROM THE SUPERIOR COURT OF RIVERSIDE COUNTY

-oOo-

DENISE COLLINS; CHRISTOPHER)
COLLINS,) DCA NO. E080233
)
Plaintiffs/Respondents,) Riverside County
) Case No. PSC1901096
vs.)
) Volume 16 of 19
DIAMOND GENERATING CORPORATION,) Pages 2725-2752
) (2753-2800 Blocked)
Defendant/Appellant.)
_____)

REPORTER'S TRANSCRIPT OF APPEAL
BEFORE THE HONORABLE MANUEL BUSTAMANTE DEPARTMENT PS2
JULY 27, 2022

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1 PALM SPRINGS, CALIFORNIA; JULY 27, 2022

2 MORNING SESSION

3 --o0o--

4 THE COURT: Let's formally go on the record,
5 Collins vs. DG Corporation. We have Mr. Sullivan
6 present. Mr. Reid is present. And both counsel have
7 been provided a Juror Question Number 2.

8 Have you both had an opportunity to review it?

9 MR. REID: Yes, Your Honor.

10 MR. SULLIVAN: Yes, Your Honor.

11 THE COURT: So the Court's inclination in this
12 is to -- I don't think there's much we can do here other
13 than tell them, you know, please review the question
14 carefully, something nice like that. Is the question
15 long? Yes. But it's probably missing a comma somewhere
16 in there. But I don't think it's compound because it's
17 asking for one thing.

18 MR. SULLIVAN: Yeah, I didn't think it was
19 compound either.

20 MR. REID: I don't -- I agree. I don't think
21 it's compound. I think that's probably the best course
22 of action. I don't know how we would reword it.

23 THE COURT: Now, I think we're in dangerous
24 territory here if we start to tinker with verdict form
25 language at this point. So I'll try to be polite. Any
26 suggestions? Please review this long question
27 carefully? You want to ask your appellate counsel,
28 Mr. Reid?

1 MR. REID: I don't think -- I don't think he's
2 going to help at this point. No offense to John.

3 THE COURT: Certainly he would concur that we
4 should not rephrase the question --

5 MR. REID: Yeah.

6 THE COURT: -- for them.

7 MR. REID: I don't think we can -- I don't
8 think we can tinker with it, Your Honor.

9 THE COURT: It was always nice having appellate
10 counsel with me when I was in trial. So it always gives
11 you extra reassurance when you have doubts about
12 something.

13 MR. REID: Yeah.

14 MR. SULLIVAN: I guess the Court could say
15 something to the effect that "Please review the question
16 carefully. At this point in the proceedings it's not
17 possible to change the language that's been provided to
18 the jury" or something along those lines.

19 MR. REID: That would be acceptable, Your
20 Honor.

21 THE COURT: I'll type it out, and then I'll...
22 (Pause in proceedings.)

23 THE COURT: So "Please review the" -- and I'm
24 putting in parentheses "(long question) carefully. We
25 cannot rephrase verdict form language at this stage."

26 MR. REID: That's fine, Your Honor.

27 THE COURT: Okay. Mr. Sullivan, you agree?

28 MR. SULLIVAN: Yes, Your Honor.

1 (Pause in proceedings.)

2 THE COURT: I think that's it. Anything else?

3 MR. REID: No, Your Honor.

4 MR. SULLIVAN: No, Your Honor. Thank you.

5 MR. REID: Thank you.

6 THE COURT: All right. We'll let you know.

7 (Off the record at 9:36 a.m.)

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1 PALM SPRINGS, CALIFORNIA; JULY 27, 2022

2 AFTERNOON SESSION

3 --o0o--

4 (On the record at 1:29 p.m.)

5 THE COURT: Let's formally go on the record,
6 Collins vs. DG Corporation. All counsel are present.
7 The parties are present as well, with the exception of
8 the representative for DG Corporation. I believe right
9 before the lunch hour, I think it was about 11:25, we
10 received word that the jury does have a verdict. We
11 contacted counsel, and we -- in order to accommodate the
12 parties so that they could be here, we decided we would
13 wait until 1:30 to call the case and now it's about two
14 minutes to 1:30. So we'll go ahead and bring the jury
15 in. Thank you, Deputy Lee.

16 (Pause in proceedings.)

17 (The jury entered the courtroom.)

18 THE COURT: Good afternoon, members of the
19 jury. I understand there is a verdict?

20 THE JURY FOREPERSON: Yes.

21 THE COURT: Yes? And I understand that it's
22 Juror Number 9 that's the foreperson?

23 THE JURY FOREPERSON: Yes.

24 THE COURT: Have you completed the verdict
25 forms?

26 THE JURY FOREPERSON: Yes, I have.

27 THE COURT: I'll have Deputy Lee get those from
28 you.

1 All right. I'll review, make sure all the
2 boxes are checked, and then I'll let the courtroom
3 supervisor read the verdict out loud.

4 (Pause in proceedings.)

5 THE COURT: Okay. Ms. Youngberg, we're ready.

6 THE CLERK: Superior Court of the State of
7 California, County of Riverside, Palm Springs.

8 Denise Collins and Christopher Collins,
9 Plaintiffs vs. Diamond Generating Corporation,
10 Defendant, Case Number PSC1901096.

11 Special Verdict:

12 We, the jury, in the above-entitled action
13 answer the questions submitted to us as follows:

14 1: Did Diamond Generating Corporation
15 voluntarily or for a charge render services related to
16 Sentinel Energy Center worker safety? Answer: Yes.

17 If you answered yes for Question 1, then answer
18 Question 2.

19 Question 2: Were the services -- excuse me.
20 Were the services rendered of the kind that Diamond
21 Generating Corporation should have recognized as needed
22 for the protection of workers at the Sentinel Energy
23 Center? Answer: Yes.

24 If you answered yes to Question 2, then answer
25 Question 3.

26 3: Did Diamond Generating Corporation fail to
27 exercise reasonable care in rendering those services?
28 Answer: Yes.

1 If you answered yes to Question 3, then answer
2 Question 4.

3 4: Was Diamond Generating Corporation's
4 failure to exercise reasonable care a substantial factor
5 in causing the death of Daniel Collins? Answer: Yes.

6 If you answered yes to Question 4, then answer
7 Questions 5, 6 and 7.

8 5: Did Diamond Generating Corporation's
9 failure to use reasonable care add to the risk of harm
10 to Sentinel Energy Center workers? Answer: Yes.

11 Answer Question 6.

12 6: Were Diamond Generating Corporation's
13 services related to Sentinel Energy worker safety
14 rendered to perform a duty that DGC Operations owed to
15 the workers at Sentinel Energy Center, including Daniel
16 Collins? Answer: Yes.

17 Answer Question 7.

18 7: Was Daniel Collins killed because DGC
19 Operations relied on Diamond Generating Corporation's
20 services related to Sentinel Energy worker safety?
21 Answer: Yes.

22 If you answered yes to any of Questions 5, 6 or
23 7, answer the following questions:

24 8: What are Denise Collins' past noneconomic
25 damages for the loss of her husband, Daniel Collins,
26 from March 7th, 2017 to present? For the loss of love,
27 companionship, comfort, care, assistance, protection,
28 affection, society, moral support, training and guidance

1 and the loss of the enjoyment of sexual relations? 5
2 million.

3 9: What are Denise Collins' future noneconomic
4 damages for the loss of her husband, Daniel Collins,
5 from today forward? For the loss of love,
6 companionship, comfort, care, assistance, protection,
7 affection, society, moral support, training and guidance
8 and the loss of the enjoyment of sexual relations? 54
9 million.

10 10: What are Christopher Collins' past
11 noneconomic damages for loss of his father, Daniel
12 Collins, from March 7th, 2017 to present? For the loss
13 of love, companionship, comfort, care, assistance,
14 protection, affection, society, moral support and the
15 loss of Daniel Collins' training and guidance? 10
16 million.

17 11: What are Christopher Collins' future
18 noneconomic damages for loss of his father, Daniel
19 Collins, from today forward? For the loss of love,
20 companionship, comfort, care, assistance, protection,
21 affection, society, moral support and the loss of Daniel
22 Collins' training and guidance? 81 million.

23 After answering Questions 8, 9, 10 and 11,
24 answer Question 12.

25 12: Was Mott MacDonald negligent? Answer:
26 No.

27 If you answered Question 12 yes, answer
28 Question 13. If you answered no, go to Question 14.

1 Question 14: Was Sentinel Energy Center, LLC
2 negligent? Answer: No.

3 If you answered Question 14 yes, answer
4 Question 15. If you answered no, go to Question 16.

5 Question 16: Was DGC Operations, LLC
6 negligent? Answer: Yes.

7 If you answered Question 16 yes, answer
8 Question 17.

9 Question 17: Was DGC Operations, LLC's
10 negligence a substantial factor in causing his death?
11 Answer: Yes.

12 Answer Question 18.

13 Was CPV Sentinel Management, LLC negligent?
14 Answer: Yes.

15 If you answered Question 18 yes, then answer
16 Question 19.

17 19: Was CPV Sentinel Management, LLC's
18 negligence a substantial factor in causing his death?
19 No.

20 Answer Question 20.

21 20: Was Daniel Collins negligent? Yes.

22 If you answered Question 20 yes, answer
23 Question 21.

24 21: Was Daniel Collins' negligence a
25 substantial factor in causing his own death? Answer:
26 Yes.

27 22: What percentage of responsibility for
28 Daniel Collins' death do you assign to the following?

1 Please only assign a percentage to a party, entity or
2 individual you found as both negligent and their
3 negligence was a -- excuse me, was a substantial factor
4 in Daniel Collins' death.

5 Defendant Diamond Generating Corporation: 97
6 percent.

7 Mott MacDonald: Zero percent.

8 Sentinel Energy Center: Zero percent.

9 DGC Operations, LLC: 2 percent.

10 CPV Sentinel Management, LLC: Zero percent.

11 Daniel Collins: 1 percent.

12 Total: 100 percent.

13 Signed and dated July 27, 2022, Jury

14 Foreperson.

15 Ladies and gentlemen of the jury, is this your
16 verdict?

17 THE JURY PANEL: Yes.

18 THE CLERK: Thank you.

19 THE COURT: Counsel, before we record the
20 verdict, would either side like the jury to be polled?

21 MR. SCHUMANN: Yes, Your Honor.

22 THE COURT: At the request of defense, when
23 you're ready, Ms. Youngberg.

24 THE CLERK: Yes, Your Honor.

25 Question 1: Did Diamond Generating Corporation
26 voluntarily or for a charge render services related to
27 Sentinel Energy Center worker safety? Answer: Yes.

28 Jurors, if this was your answer, please raise your hand.

1 THE COURT: The record will reflect unanimous
2 12.

3 THE CLERK: If you answered yes for Question 1,
4 then answer Question 2.

5 Question 2: Were the services -- excuse me.
6 Were the services rendered of the kind that Diamond
7 Generating Corporation should have recognized as needed
8 for the protection of workers at the Sentinel Energy
9 Center? Answer: Yes. If this was your answer, please
10 raise your hand.

11 THE COURT: The record will reflect 12 in the
12 affirmative.

13 THE CLERK: If you answered yes to Question 2,
14 then answer Question 3.

15 Did Diamond Generating Corporation fail to
16 exercise reasonable care in rendering those services?
17 Answer: Yes. If this was your answer, please raise
18 your hand.

19 THE COURT: The record will reflect 12 in the
20 affirmative.

21 THE CLERK: If you answer -- answered yes to
22 Question 3, then answer Question 4.

23 4: Was Diamond Generating Corporation's
24 failure to exercise reasonable care a substantial factor
25 in causing the death of Daniel Collins? Answer: Yes.
26 If this was your answer, please raise your hand.

27 THE COURT: The record will reflect 12 in the
28 affirmative.

1 THE CLERK: If you answered yes to Question 4,
2 then answer Questions 5, 6 and 7.

3 5: Did Diamond Generating Corporation's
4 failure to use reasonable care add to the risk of harm
5 to Sentinel Energy Center workers? Answer: Yes. If
6 this was your answer, please raise your hand.

7 THE COURT: The record will reflect 12 in the
8 affirmative.

9 THE CLERK: Answer Question 6.

10 Were Diamond Generating Corporation's services
11 related to Sentinel Energy worker safety rendered to
12 perform a duty that DGC Operations owed to the workers
13 at Sentinel Energy Center, including Daniel Collins?
14 Answer: Yes. If this was your answer, please raise
15 your hand.

16 THE COURT: The record will reflect 12 in the
17 affirmative.

18 THE CLERK: Answer Question 7.

19 Was Daniel Collins killed because DGC
20 Operations relied on Diamond Generating Corporation's
21 services related to Sentinel Energy worker safety?
22 Answer: Yes. If this was your answer, please raise
23 your hand.

24 THE COURT: The record will reflect 12 in the
25 affirmative.

26 THE CLERK: If you answered yes to any of
27 Questions 5, 6 or 7, answer the following questions:

28 8: What are Denise Collins' past noneconomic

1 damages for the loss of her husband, Daniel Collins,
2 from March 7th, 2017 to present? For the loss of love,
3 companionship, comfort, care, assistance, protection,
4 affection, society, moral support, training and guidance
5 and the loss of the enjoyment of sexual relations? 5
6 million. If this was your answer, please raise your
7 hand.

8 THE COURT: 12 in the affirmative.

9 THE CLERK: 9: What are Denise Collins' future
10 noneconomic damages for the loss of her husband, Daniel
11 Collins, from today forward? For the loss of love,
12 companionship, comfort, care, assistance, protection,
13 affection, society, moral support, training and guidance
14 and the loss of the enjoyment of sexual relations? 54
15 million. If this is your answer, please raise your
16 hand.

17 THE COURT: 12 in the affirmative.

18 THE CLERK: 10: What are Christopher Collins'
19 past noneconomic damages for loss of his father, Daniel
20 Collins, from March 7th, 2017 to present? For the loss
21 of love, companionship, comfort, care, assistance,
22 protection, affection, society, moral support and the
23 loss of Daniel Collins' training and guidance? 10
24 million. If this is your answer, please raise your
25 hand.

26 THE COURT: 12 in the affirmative.

27 THE CLERK: 11: What are Christopher Collins'
28 future noneconomic damages for the loss of his father,

1 Daniel Collins, from today forward? For the loss of
2 love, companionship, comfort, care, assistance,
3 protection, affection, society, moral support and the
4 loss of Daniel Collins' training and guidance? 81
5 million. If this is your answer, please raise your
6 hand.

7 THE COURT: 12 in the affirmative.

8 THE CLERK: After answering Questions 8, 9, 10
9 and 11, answer Question 12.

10 12: Was Mott MacDonald negligent? Answer:
11 No. If this was your answer, please raise your hand.

12 THE COURT: 12 in the affirmative.

13 THE CLERK: If you answered Question 12 yes,
14 answer Question 13. If you answered no, go to Question
15 14.

16 14: Was Sentinel Energy Center, LLC negligent?
17 Answer: No. If this is your answer, please raise your
18 hand.

19 THE COURT: 12 in the affirmative.

20 THE CLERK: If you answered Question 14 yes,
21 answer Question 15. If you answered no, go to Question
22 16.

23 16: Was DGC Operations, LLC negligent?
24 Answer: Yes. If this is your answer, please raise your
25 hand.

26 THE COURT: 12 in the affirmative.

27 THE CLERK: If you answered Question 16 yes,
28 answer Question 17.

1 17: Was DGC Operation -- Operations, LLC's
2 negligence a substantial factor in causing his death?
3 Answer: Yes. If this is your answer, please raise your
4 hand.

5 THE COURT: 12 in the affirmative.

6 THE CLERK: Answer Question 18.

7 Was CPV Sentinel Management, LLC negligent?

8 Answer: Yes. If this is your answer, please raise your
9 hand.

10 THE COURT: 12 in the affirmative.

11 THE CLERK: If you answered Question 18 yes,
12 answer Question 19.

13 19: Was CPV Sentinel Management, LLC's
14 negligence a substantial factor in causing his death?

15 Answer: No. If this is your answer, please raise your
16 hand.

17 THE COURT: 12 in the affirmative.

18 THE CLERK: Answer Question 20.

19 20: Was Daniel Collins negligent? Answer:
20 Yes. If this was your answer, please raise your hand.

21 THE COURT: 12 in the affirmative.

22 THE CLERK: If you answered Question 20 yes,
23 answer Question 21.

24 21: Was Daniel Collins' negligence a
25 substantial factor in causing his own death? Answer:
26 Yes. If this is your answer, please raise your hand.

27 THE COURT: 12 in the affirmative.

28 THE CLERK: 22: What percentage of

1 responsibility for Daniel Collins' death do you assign
2 to the following? Please only assign a percentage to a
3 party, entity or individual you found was both negligent
4 and their negligence was a substantial factor in Daniel
5 Collins' death.

6 Defendant Diamond Generating Corporation: 97
7 percent. If this is your answer, please raise your
8 hand.

9 THE COURT: 12 in the affirmative.

10 THE CLERK: Mott MacDonald: Zero percent. If
11 this was your answer, please raise your hand.

12 THE COURT: 12 in the affirmative.

13 THE CLERK: Sentinel Energy Center, LLC. If
14 this was your answer -- excuse me. Sentinel Energy
15 Center: Zero percent. If this was your answer, please
16 raise your hand.

17 THE COURT: 12 in the affirmative.

18 THE CLERK: DGC Operations, LLC: 2 percent.
19 If this was your answer, please raise your hand.

20 THE COURT: Sorry, is every -- 12 in the
21 affirmative.

22 THE CLERK: CPV Sentinel Management, LLC: Zero
23 percent. If this was your answer, please raise your
24 hand.

25 THE COURT: 12 in the affirmative.

26 THE CLERK: Daniel Collins: 1 percent. If
27 this was your answer, please raise your hand.

28 THE COURT: 12 in the affirmative.

1 THE CLERK: Thank you.

2 THE COURT: Thank you, Ms. Youngberg.

3 I'll go ahead and order that the verdict be
4 recorded in today's minutes.

5 Members of the jury, I just have a few more
6 instructions, then you'll be discharged. Before I read
7 those instructions, I just want to add -- just -- I'm
8 not -- not reading this part. I just wanted to
9 sincerely thank each of you for your time. We started
10 back on June -- June's gone, but I think it was June
11 27th or June 29th. The alternates especially, we
12 mentioned at the beginning you never know if you're
13 going to end up being a part of the 12 that are going to
14 make the decision. So regardless of the verdict that
15 ultimately you reached, we need all of you. You're
16 members of the community that otherwise -- maybe, but
17 might not have come together. So you came together.
18 You served your civic duty. We can't do this without
19 you. There was a dispute that needed your help, and so
20 we do thank you for your time.

21 Now I'm going to read, so...

22 Members of the jury, this completes your duties
23 in this case. On behalf of the parties and their
24 attorneys, thank you for your time and your service. It
25 can be a great personal sacrifice to serve as a juror,
26 but by doing so you are fulfilling an extremely
27 important role in the California system of justice.
28 Each of us has a right to a trial by jury, but that

1 right would mean little unless citizens such as each of
2 you are willing to serve when called to do so. You have
3 been attentive and conscientious during the trial and
4 I'm grateful for your dedication.

5 Throughout the trial I continued to admonish
6 you that you could not discuss the facts of the case
7 with anyone other than your fellow jurors and then only
8 during deliberations when all 12 jurors were present.
9 I'm now relieving you from that restriction, but I do
10 have another admonishment. You now have the absolute
11 right to discuss or not to discuss your deliberations
12 and verdict with anyone, including members of the media.
13 It is appropriate for the parties, their attorney
14 representatives to ask you to discuss the case, but any
15 such discussion may only occur with your consent and
16 only if the discussion is at a reasonable time and
17 place. You should immediately report any unreasonable
18 contact to the court. If you choose to discuss the case
19 with anyone, feel free to discuss it from your own
20 perspective, but be respectful of the other jurors and
21 their views and their feelings.

22 Thank you for your time and your service. You
23 are now discharged. Thank you again.

24 Counsel, we can take a brief recess if you
25 wanted an opportunity to speak with the jurors before
26 they left. Just outside in the hallway. Why don't you
27 come back in at 2:10. That gives you about 20 minutes
28 if you'd like. We'll be in recess until then.

1 (The jury exited the courtroom.)

2 (Off the record at 1:52 p.m.)

3 (On the record at 2:09 p.m.)

4 THE COURT: Let's formally go back on the
5 record, Collins vs. DG Corporation. All counsel are
6 present and the Collinses are present as well. The jury
7 has been discharged. We took a break at approximately
8 1:50 to allow the attorneys to have an opportunity to
9 speak to the jurors before they left out in the
10 courtroom hallway. We allowed that for approximately 20
11 minutes. So --

12 MR. SCHUMANN: Thank you, Your Honor.

13 THE COURT: Thank you for coming back in. I
14 know that's a brief amount of time, but I know for
15 counsel it's sometimes helpful to get to speak to the
16 jurors afterwards before they are...

17 Okay. So next, we have -- regardless, I was
18 going to ask plaintiffs' counsel to submit a proposed
19 judgment within ten days.

20 MR. SULLIVAN: I can do that, Your Honor.

21 THE COURT: Let me make a note here.

22 MR. SULLIVAN: One housekeeping matter is, is
23 that there is an outstanding default --

24 THE COURT: We'll get to that in a second.

25 MR. SULLIVAN: Oh, okay.

26 THE COURT: There's also a cross-complaint as
27 well.

28 As a -- as a placeholder, Mr. Sullivan, we're

1 going to set an order to show cause as to why sanctions
2 should not be imposed for failing to file that proposed
3 judgment. We need something in place. Believe it or
4 not, as I mentioned before, you're not our only case.
5 So just need to make sure that we keep that as -- we
6 need a reminder ticker in our case management system.
7 So file the proposed judgment within ten days, that OSC
8 will be vacated.

9 MR. SULLIVAN: Oh, okay.

10 THE COURT: Okay? So I have to put something
11 there.

12 MR. SULLIVAN: Got you. All right. I was like
13 thinking what'd I do wrong.

14 THE COURT: It's -- you haven't done anything
15 wrong yet. So --

16 MR. SULLIVAN: All right. I got you.

17 THE COURT: Okay. And we'll give you a date
18 here in a moment. Ten days from today would be --
19 should be August 7th, which is a Sunday, so we'll give
20 you until August 8th to file that proposed judgment. Is
21 it August 8th?

22 THE CLERK: August 8th, Your Honor? Yes.

23 THE COURT: We'll set an OSC as to plaintiffs'
24 counsel, Mr. Sullivan, for failure to file the proposed
25 judgment as ordered.

26 Then after that, Mr. Reid and Mr. Schumann, we
27 will provide notice -- once we receive the proposed
28 judgment and there's an entry of judgment, we'll provide

1 that. So any applicable deadlines will start from there
2 from when we provide notice, just so you know. I don't
3 think we're going to wait -- let the whole 180 days
4 lapse. So sometime shortly after there, probably
5 sometime before the end of August we'll provide that
6 notice and that'll start -- I think it's a 15-day window
7 for certain motions, so ultimately, whatever decisions
8 need to be made. But I just wanted you to be aware of
9 that so, obviously, your office is on the lookout.

10 Okay. Mr. Sullivan, in terms of -- you still
11 have a defaulted defendant?

12 MR. SULLIVAN: Yeah, against CPV Asset
13 Management Company. Given the jury's determination in
14 this case that their negligence was not a substantial
15 factor in causing any harm, the plaintiffs will file a
16 dismissal as it relates to that.

17 THE COURT: Okay. Would you like to make an
18 oral motion as to that?

19 MR. SULLIVAN: Yes, Your Honor. If it'll save
20 me the trouble of filing the dismissal, that'll be
21 great.

22 THE COURT: We do it on calendar every morning.
23 Would that be with prejudice?

24 MR. SULLIVAN: Yes, Your Honor.

25 THE COURT: Okay. That'll be reflected in
26 today's minutes.

27 Mr. Reid or Mr. Schumann, there's also -- there
28 was a cross-complaint on Rose. I believe it's 1 through

1 20.

2 MR. REID: I don't think we have any problem
3 dismissing that at this point, Your Honor.

4 MR. SCHUMANN: Oh, us? Rose?

5 MR. REID: Yeah.

6 MR. SCHUMANN: Yeah.

7 MR. REID: Dismissed.

8 THE COURT: And we should have taken care of
9 that earlier on but --

10 MR. SCHUMANN: I did not know. They can be
11 dismissed.

12 THE COURT: So based on defense's oral motion,
13 would it now be with prejudice, Mr. --

14 MR. REID: Yes, Your Honor.

15 MR. SCHUMANN: Could we do it without
16 prejudice?

17 THE COURT: Sure, we can do it without
18 prejudice.

19 MR. SCHUMANN: Great.

20 MR. REID: Just in case.

21 THE COURT: I think that's it for calendaring.
22 You have your OSC, Mr. Sullivan, so you --

23 MR. SCHUMANN: And I just --

24 THE COURT: -- can submit that for the
25 judgment. And Mr. Schumann?

26 MR. SCHUMANN: Yeah, can I just read a request
27 for Your Honor?

28 THE COURT: Sure.

1 MR. SCHUMANN: My client would request a stay
2 of enforcement of the judgment under CCP 918 which
3 extends for ten days after the last date on which notice
4 of appeal can be filed. My client further requests that
5 this Court order that any existing liens on his property
6 placed there by plaintiffs by virtue of this action be
7 extinguished and that no new liens may be created during
8 the pendency of this temporary stay.

9 THE COURT: I'll deny that at this time without
10 prejudice. If you want to bring that in a written
11 motion, as I mentioned, be on the lookout once the
12 proposed judgment is received, shortly after because I'm
13 sure it'll be buried under something, other paperwork
14 we'll receive at the same time. But once we do the
15 entry of judgment, we will provide written notice to --
16 to your office, and obviously to Mr. Sullivan as well.
17 So that'll start your applicable deadlines, and if you'd
18 like to bring that motion again at that time you're
19 welcome to.

20 MR. SCHUMANN: We will -- we'll file the
21 motion.

22 THE COURT: Understand. That's why I'm being
23 very clear on what to be looking out for next in terms
24 of -- I know you need to preserve certain timelines and
25 everything, so...

26 MR. SCHUMANN: Okay.
27 Okay. That's it, Your Honor.

28 THE COURT: Is there anything else?

1 MR. SCHUMANN: That's it. Thank you.

2 THE COURT: Okay. Thank you for your time. It
3 was a month in here. So --

4 MR. SULLIVAN: Thank you for everything that
5 you did in the case, Your Honor. I know it was a long
6 haul and sometimes we can get on your nerves, and, you
7 know, we appreciate your patience in putting up with us,
8 everyone.

9 THE COURT: I appreciate both counsels'
10 patience. I know I was frustrated at times. I only get
11 frustrated with records and the exhibits. It's your
12 case, so I'm just trying to preserve the -- make the
13 record. So thank you. Please --

14 MR. REID: Thank you, Your Honor.

15 MR. SULLIVAN: Thank you.

16 THE COURT: -- safe travels, everyone.

17 MR. REID: Thank you.

18 MR. SULLIVAN: Thanks.

19 THE COURT: We're in recess.

20 (The proceedings adjourned at 2:16 p.m.)

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SUPERIOR COURT - STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

DENISE COLLINS; CHRISTOPHER COLLINS,)	
)	
PLAINTIFFS,	)	Case No. PSC1901096
)	
v.)	
)	
CPV SENTINEL ENERGY CENTER, LLC; MOTT MACDONALD, LLC; GEMMA POWER SYSTEMS, LLC; and DOES 1 to 15, Inclusive,)	
)	
DEFENDANTS.)	
)	
)	

I, SHAYNA MONTGOMERY, REPORTER PRO TEMPORE OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF RIVERSIDE, DO HEREBY CERTIFY THAT I DID CORRECTLY REPORT THE PROCEEDINGS CONTAINED HEREIN AND THAT THE FOREGOING PROCEEDINGS PAGES 2725 THROUGH 2800, INCLUSIVE, COMPRISE A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE PROCEEDINGS AND TESTIMONY TAKEN IN THE MATTER OF THE ABOVE-ENTITLED CAUSE ON WEDNESDAY, JULY 27, 2022.

DATED THIS 3RD DAY OF MARCH, 2023.

SHAYNA MONTGOMERY, CSR NO. 13452

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COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT - DIVISION TWO
APPEAL FROM THE SUPERIOR COURT OF RIVERSIDE COUNTY

-000-

DENISE COLLINS; CHRISTOPHER)
COLLINS,)DCA NO. E08E233
)
PLAINTIFF/RESPONDENT,)RIVERSIDE COUNTY CASE
)NO. PSC1901096
VS.)
)VOLUME 17 OF 19
DIAMOND GENERATING CORPORATION,)PAGES 2801 - 2814
) (2815 - 2900 BLOCKED)
)
DEFENDANT/APPELLANT.)
_____)

REPORTER'S TRANSCRIPT ON APPEAL
BEFORE THE HONORABLE MANUEL BUSTAMANTE -- DEPARTMENT PS2
TUESDAY, AUGUST 9, 2022

APPEARANCES:

FOR THE PLAINTIFF-RESPONDENT: GOLPER, SULLIVAN RIVERA &
OSUNA
BY: DAVE SULLIVAN
110 WEST "A" STREET,
SUITE 1025
SAN DIEGO, CA 92101
TELEPHONE: (619) 236-8466

FOR THE DEFENDANT-APPELLANT: SCHUMANN ROSENBERG &
AREVALO, LLP
BY: DAVID P. REID
3100 BRISTOL STREET,
SUITE 100
COSTA MESA, CA 92629

REPORTED BY: JUSTUS BALENTINE, CSR 13859

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NUMBERED)**

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1 AUGUST 9, 2022 - MORNING SESSION

2 BEFORE THE HONORABLE MANUEL BUSTAMANTE

3

4 THE COURT: COULD WE HAVE COUNSEL STATE YOUR
5 APPEARANCES BEGINNING FIRST WITH PLAINTIFF'S COUNSEL.

6 GOOD MORNING, COUNSEL, COLLINS VERSUS
7 MOTT MACDONALD.

8 MR. SULLIVAN: SORRY, YOUR HONOR.

9 DAVID SULLIVAN APPEARING ON BEHALF OF THE PLAINTIFFS. I
10 HAD A LITTLE TROUBLE WITH MY BUTTON UNMUTING. I
11 APOLOGIZE.

12 THE COURT: FINE. GOOD MORNING, MR. SULLIVAN.
13 WELCOME BACK.

14 MR. SULLIVAN: THANK YOU.

15 MR. REID: GOOD MORNING, YOUR HONOR. DAVID REID
16 ON BEHALF OF DIAMOND GENERATING CORPORATION.

17 THE COURT: HI, MR. REID. GOOD MORNING.
18 WELCOME BACK.

19 MR. REID: THANK YOU, YOUR HONOR.

20 THE COURT: SO, FIRST, AS A PRELIMINARY MATTER,
21 IT LOOKS LIKE YOU HAVE A COURT REPORTER?

22 MR. REID: YES, YOUR HONOR.

23 THE COURT: OKAY. SO YOU DID NOT SUBMIT AN
24 ORDER?

25 MR. REID: I DON'T KNOW. I ASSUMED THE COURT
26 REPORTING SERVICE WOULD BE TAKING CARE OF THAT.

27 THE REPORTER: I WAS NOT INFORMED THAT WE NEEDED
28 AN ORDER. SORRY, YOUR HONOR.

1 THE COURT: IT'S USUALLY A STIPULATION AND THEN
2 AN ORDER FOR THE COURT TO SIGN. YOU DIDN'T RECEIVE ONE.
3 I GUESS SINCE WE HAVE THE COURT REPORTER HERE, BOTH SIDES
4 STIPULATE ON THE RECORD?

5 MR. SULLIVAN: PLAINTIFFS WILL STIPULATE, YOUR
6 HONOR.

7 MR. REID: DEFENDANT WILL STIPULATE, YOUR HONOR.

8 THE COURT: OKAY.

9 MR. REID: THANK YOU, YOUR HONOR.

10 THE COURT: NEXT, WE HAVE DEFENSE'S REQUEST FOR
11 TEMPORARY STAY OF ENFORCEMENT OF THE MONEY JUDGMENT. IN
12 THIS CASE WE DO HAVE THE PROPOSED -- PROPOSED -- WE HAVE
13 SUBMITTED JUDGMENT ON THE SPECIAL VERDICT. WE'VE HELD
14 ONTO IT. I HAVEN'T SIGNED IT YET, WHICH I INTEND TO DO
15 SO -- WHICH I INTEND TO DO SO THIS MORNING.

16 MR. REID: YOUR HONOR, WE SUBMITTED AN OBJECTION
17 AND ANOTHER PROPOSED DOCUMENT YESTERDAY AFTERNOON. I
18 DON'T THINK THAT'S REACHED THE COURT JUST YET.

19 THE COURT: WELL, THEN ON THAT, I'M NOT GOING TO
20 ADDRESS IT IF IT -- I DON'T HAVE IT BEFORE ME. THE ONLY
21 THING I HAVE IS THE MOTION FOR STAY OF ENFORCEMENT OF THE
22 MONEY JUDGMENT.

23 MR. REID: I KNOW WE GOT THAT SUBMITTED
24 YESTERDAY AFTER THE OBJECTION AND THE PROPOSED
25 ALTERNATIVE JUDGMENT YESTERDAY AFTERNOON, YOUR HONOR. SO
26 I WOULD JUST APPRECIATE IF WE COULD DOUBLE-CHECK WITH THE
27 CLERK OR WHATEVER HAPPENED THERE. I KNOW IT WAS
28 SUBMITTED BEFORE THE CLOSE OF BUSINESS, SO --

1 THE COURT: WELL, I'M PREPARED TO PROCEED ON THE
2 MOTION FOR THIS TEMPORARY STAY, BUT IF THERE'S SOMETHING
3 ELSE, FOR US TO PULL IT UP AND FOR ME TO REVIEW IT, I --
4 WE DON'T HAVE TIME FOR THAT IN THE MORNING CALENDAR.

5 I HAVE ANOTHER TRIAL THAT WE'RE ALREADY IN THE
6 MIDDLE OF STARTING AT 10:00. AS YOU KNOW, I HAVE A
7 HEARING HERE IN A COUPLE MINUTES ON THE MORNING CALENDAR,
8 AS WELL. SO I'M NOT GOING TO TAKE A TIME-OUT HERE TO
9 REVIEW SOMETHING THAT YOU SUBMITTED AT THE LAST SECOND
10 YESTERDAY AFTERNOON.

11 MR. REID: WELL, IF I COULD JUST ADDRESS THAT
12 PROPOSED JUDGMENT FOR A MOMENT, THE PROPOSED JUDGMENT IS
13 ASKING FOR THE PREJUDGMENT INTEREST TO BE ADDED TO THE
14 TOTAL AMOUNT, AND THAT WOULD RESULT IN INTEREST ACCRUING
15 ON INTEREST, AND THAT'S OUR MAIN OBJECTION TO THAT
16 JUDGMENT, YOUR HONOR.

17 MR. SULLIVAN: YOUR HONOR, MAY I ADDRESS THAT
18 ISSUE?

19 THE COURT: YES, MR. SULLIVAN.

20 MR. SULLIVAN: YES. THE JUDGMENT WAS SUBMITTED
21 IN A WAY THAT THE PREJUDGMENT INTEREST IS GOING TO BE
22 SEPARATELY DEFINED IN THE JUDGMENT, ITSELF; AND,
23 THEREFORE, THE CONCERN THAT THEY HAVE THAT IT'S GOING TO
24 ALLOW INTEREST TO EARN ON THE PREJUDGMENT INTEREST IS
25 TAKEN OUT OF CONTEXT BECAUSE IT WILL BE EASY TO FIGURE
26 OUT WHAT THE JUDGMENT IS OR WHAT THE INTEREST IS ON THE
27 ACTUAL JUDGMENT EXCLUDING THE PREJUDGMENT INTEREST; AND,
28 THEREFORE, THEIR CONCERN ABOUT THE WAY THAT IT WAS

1 FORMATTED IS ESSENTIALLY UNFOUNDED.

2 WE AGREE THAT YOU'RE NOT ALLOWED TO EARN
3 INTEREST ON PREJUDGMENT INTEREST, BUT THAT DOESN'T MEAN
4 THAT YOU CAN'T HAVE A JUDGMENT THAT LISTS WHAT THAT
5 PREJUDGMENT IS, AND THEN FROM THIS DATE FORWARD, THE
6 INTEREST THAT'S GOING TO BE EARNED ON THE JUDGMENT IS
7 GOING TO BE BASED UPON THE JUDGEMENT, ITSELF, AND NOT THE
8 PREJUDGMENT INTEREST BECAUSE IT'S DEFINED -- OR
9 DELINEATED SEPARATELY IN THE JUDGMENT.

10 SO WE THINK THAT THEIR CONCERN IS -- I
11 UNDERSTAND IT, BUT I DON'T THINK THAT IT'S AN ISSUE GIVEN
12 THE WAY THAT WE'RE GOING ABOUT -- AND IT'S CERTAINLY NOT
13 OUR INTENTION TO TRY TO CHARGE THEM INTEREST ON THE
14 PREJUDGMENT INTEREST.

15 THE COURT: WELL, MR. SULLIVAN, ON THIS, THE
16 JUDGMENT HERE ON THE SPECIAL VERDICT, I DON'T SEE ANY
17 INTEREST REQUESTED ON HERE. IN FACT, WHAT I SEE IS
18 CREDIT FOR THE PRETRIAL SETTLEMENT WITH OTHER PARTIES.

19 MR. SULLIVAN: RIGHT. IF YOU GO FURTHER DOWN,
20 THERE'S A SPOT WHERE WE'VE LEFT AN OPPORTUNITY FOR THE
21 JUDGE TO PUT IN THOSE NUMBERS. WE HAVE THE PAPERWORK,
22 THE MEMORANDUM OF COSTS, WITH IT INCLUDES THE REQUEST FOR
23 THE PREJUDGMENT INTEREST, ALL SET TO FILE.

24 BUT WE WERE WAITING FOR THE DATE THAT THE
25 JUDGMENT WAS ENTERED IN ORDER TO FILE IT BECAUSE WE
26 WANTED TO BE ABLE CALCULATE WHAT THE PREJUDGMENT INTEREST
27 WAS TO THE DATE OF THE ENTRY OF THE JUDGMENT.

28 IF THE JUDGMENT GETS ENTERED TODAY, WE KNOW WHAT

1 THAT THE AMOUNT IS. WE'LL IMMEDIATELY FILE THE
2 MEMORANDUM OF COSTS THAT INCLUDES THE REQUEST FOR THE
3 PREJUDGMENT INTEREST.

4 AND THEN THE COURT, AFTER THEY HAVE THE
5 APPROPRIATE TIME TO CHALLENGE ANY OF THOSE FINDINGS, CAN
6 THEN INSERT THOSE NUMBERS INTO THE JUDGMENT AFTER THEY'VE
7 HAD AN OPPORTUNITY TO RULE ON ANY MOTIONS THAT THEY MAY
8 FILE TO CHALLENGE THE ACCURACY AND THE REASONABLENESS OF
9 THE COSTS THAT ARE BEING CLAIMED.

10 THE COURT: OKAY. SO I'M GOING TO SIGN THE --
11 I'M GOING TO SIGN THE JUDGMENT LEAVING BLANK THE PART FOR
12 PREJUDGMENT INTEREST. IF YOU BRING YOUR MEMORANDUM OF
13 COSTS, AND THEN THERE'S A MOTION OF TAX, WE CAN ADDRESS
14 THAT AT ANOTHER TIME WHAT, IF ANY, INTEREST WOULD BE
15 INCLUDE AS PART OF THE JUDGMENT. I'M GOING TO SIGN IT AS
16 OF TODAY, THAT WOULD BE AUGUST 9, 2022. WE'LL GO AHEAD
17 AND ENTER THAT JUDGMENT TODAY.

18 MR. REID, GOING ON TO YOUR MOTION, YOUR POINTS
19 ARE WELL TAKEN, NOT SO MUCH ON THE MERITS OF ANY
20 POTENTIAL FUTURE --

21 MR. REID: UNDERSTOOD, YOUR HONOR.

22 THE COURT: -- POST TRIAL MOTION, BUT MORE ON
23 THE NEED FOR A TEMPORARY STAY CONSIDERING THE -- THIS
24 PARTICULAR VERDICT AND THE NEED TO, OBVIOUSLY, REVIEW
25 YOUR OPTIONS AND HOW TO PROCEED MOVING FORWARD.

26 SO FOR THAT REASON PURSUANT TO CCP 918, WE'RE
27 GOING TO GO AHEAD AND STAY ENFORCEMENT OF THE JUDGMENT UP
28 TO THE STATUTORY AMOUNT, WHICH WOULD BE TEN DAYS BEYOND

1 THE LAST DAY ON WHICH A NOTICE OF APPEAL COULD BE FILED.
2 THE JUDGMENT HAS BEEN -- WILL BE ENTERED AS OF
3 TODAY, SO 60 DAYS FROM TODAY WILL BE -- WE'LL GIVE YOU A
4 DATE HERE IN A SECOND, SO THAT THERE ISN'T ANY CONFUSION
5 AS TO WHAT THE DATES ARE.

6 MR. SULLIVAN: YOUR HONOR, MAY I BE HEARD
7 BRIEFLY ON THIS TOPIC?

8 THE COURT: BRIEFLY. HOLD ON. LET ME GIVE YOU
9 THE DATES, AND THEN -- I DON'T WANT THERE TO BE ANY
10 CONFUSION HERE IN TERMS OF WHETHER A MOTION IS TIMELY OR
11 UNTIMELY. THIS IS PROBABLY NOT THE TYPE OF CASE WHERE
12 YOU WANT TO WAIT UNTIL THE LAST SECOND TO FILE.

13 MR. REID: UNDERSTOOD.

14 THE COURT: AND THIS WOULD BE CALENDAR DAYS,
15 YES. OKAY, 60 DAYS FROM TODAY WOULD BE OCTOBER 8TH,
16 WHICH IS A SATURDAY, WHICH WOULD THEN MEAN THE FINAL DAY
17 TO BRING THE NOTICE OF APPEAL WOULD BE OCTOBER 10TH,
18 MONDAY, OCTOBER 10TH.

19 THEN FROM THERE, ENFORCEMENT OF THE JUDGMENT
20 WILL STAYED UP TO, BUT NO LATER THAN OCTOBER 20TH.

21 MR. REID: UNDERSTOOD, YOUR HONOR.

22 THE COURT: AND THEN AT THAT POINT, I SUPPOSE
23 YOU SHOULD BE PREPARED IF WHETHER THERE'S GOING TO BE,
24 YOU KNOW, AN UNDERTAKING OR A BOND POSTED.

25 MR. SULLIVAN?

26 MR. SULLIVAN: YES. ONE OF THE THINGS THAT I
27 WAS CONCERNED ABOUT WAS BECAUSE OF THE WAY THAT DIAMOND
28 GENERATING CORPORATION IS MADE UP WITH ALL THESE

1 DIFFERENT LAYERS OF CORPORATIONS, I DON'T WANT TO GET IN
2 A SITUATION WHERE DURING THIS TIME PERIOD THAT THIS STAY
3 OCCURS THAT THEY DIVEST ANY OF THE ASSETS.

4 IS THERE ANY WAY THAT THE COURT COULD INCLUDE IN
5 ITS ORDER TO A STAY AN ORDER THAT WOULD PRECLUDE THEM
6 FROM DIVESTING THE ASSETS THAT THEY'VE IDENTIFIED IN THE
7 DECLARATIONS THAT THEY'VE FILED IN SUPPORT OF THEIR
8 REQUEST TO THIS COURT FOR THE STAY?

9 MR. REID: YOUR HONOR, IF I MAY BE HEARD ON
10 THAT?

11 THE COURT: BRIEFLY.

12 MR. REID: YOUR HONOR, THERE'S ESSENTIALLY
13 \$135 MILLION OF INSURANCE HERE AVAILABLE FOR THIS
14 JUDGMENT. I DON'T THINK DIAMOND GENERATING IS GOING TO
15 DIVEST THEMSELVES OF ANY ASSETS BECAUSE OF THIS JUDGMENT.

16 MR. SULLIVAN: WELL, THAT WAS THE OTHER QUESTION
17 THAT I HAD IS THEY INDICATED IN THEIR MOVING PAPERS THAT
18 THERE WAS INSURANCE TO COVER THE LOSS, BUT THEY DID NOT
19 INDICATE WHAT THE AMOUNT IS. SO I TAKE IT FROM
20 MR. REID'S REPRESENTATION THAT THAT IS THE FULL AMOUNT OF
21 COVERAGE THAT'S AVAILABLE, MR. REID?

22 MR. REID: THAT IS MY UNDERSTANDING. WE LEARNED
23 ABOUT AN ADDITIONAL LAYER OF COVERAGE A COUPLE OF DAYS
24 BEFORE THE INCIDENT, THAT'S A \$100 MILLION POLICY. MY
25 UNDERSTANDING IS THAT THAT IS -- THIS LOSS IS GOING TO BE
26 COVERED UNDER THAT. I CAN'T DEFINITELY STATE THAT, BUT
27 THAT IS MY UNDERSTANDING AT THIS TIME.

28 MR. SULLIVAN: CAN I ASK THE COURT TO HAVE

1 MR. REID RESEARCH THAT ISSUE AND SEND ME AN E-MAIL
2 CONFIRMING THE COVERAGE, SO THE PLAINTIFFS ARE FULLY
3 AWARE OF THAT?

4 BECAUSE ONE OF THE THINGS THAT WE INTENDED ON
5 DOING ONCE THE JUDGMENT WAS ENTERED, WAS SCHEDULING A
6 DEBTORS EXAM WITH SOMEBODY MOST KNOWLEDGEABLE AS IT
7 RELATED TO THE INSURANCE COVERAGE AVAILABLE FOR THIS
8 LOSS. AND IF HE COULD PROVIDE THAT INFORMATION, THAT
9 WOULD BE HELPFUL.

10 MR. REID: I CAN DO THAT, YOUR HONOR?

11 THE COURT: IF I HEARD CORRECTLY, WAS THAT -- IF
12 I HEARD CORRECTLY, WAS THAT AT 135 MILLION?

13 MR. REID: IT SHOULD BE ACTUALLY 136 MILLION,
14 YOUR HONOR. THERE'S A MILLION-DOLLAR PRIMARY. THERE'S A
15 \$25 MILLION EXCESS. THERE'S ANOTHER \$10 MILLION EXCESS.
16 THAT'S 36. I KNOW THAT THERE'S COVERAGE FOR THIS LOSS
17 UNDER THAT -- THAT AMOUNT, AND THEN THERE'S AN ADDITIONAL
18 \$100 MILLION POLICY.

19 THE COURT: ALL RIGHT. AND THE VERDICT ABOUT --
20 SO THAT SEEMS A LITTLE BIT SHORT OF THE VERDICT.

21 MR. SULLIVAN, ANYTHING ON THAT?

22 MR. SULLIVAN: WELL, GIVEN THE FACT THAT THE --
23 THAT THERE IS A SUBSTANTIAL AMOUNT OF INSURANCE, UNLESS
24 FEARFUL OF THE FACT THAT THEY'RE GOING TO JUMP THROUGH
25 THEIR HOOPS TO TRY TO DIVEST THEMSELVES OF SOME OF THE
26 ASSETS WHILE WE'RE WAITING FOR THE TIME LIMIT TO APPEAL,
27 BECAUSE IT MAY BE -- I MEAN, THEY'VE ALREADY TOLD ME THAT
28 THEY'RE HAVING TROUBLE COMING UP WITH THE MONEY TO DO IT,

1 THEY MAY DECIDE TO TAKE SOME ALTERNATIVE ROUTE INSTEAD
2 OF, YOU KNOW, POSTING THE BOND, WHICH THEN PUTS US IN A
3 PRECARIOUS SITUATION.

4 THE COURT: MR. REID, I'M GOING TO ORDER THAT
5 WITHIN TEN DAYS OF TODAY. IF YOU COULD PLEASE IN WRITING
6 CONTACT MR. SULLIVAN AND INFORM HIM OF INSURANCE COVERAGE
7 ISSUES AND WHAT YOUR KNOWLEDGE IS IN TERMS OF HOW MUCH
8 COVERAGE YOU BELIEVE THERE IS.

9 MR. REID: I WILL DO THAT, YOUR HONOR.

10 THE COURT: OKAY. MR. SULLIVAN, ANYTHING
11 FURTHER?

12 MR. SULLIVAN: NO, YOUR HONOR. THANK YOU FOR
13 ADDRESSING THOSE TOPICS. I APPRECIATE IT.

14 THE COURT: THANK YOU.

15 AND THEN, MR. REID, YOU HAVE YOUR STAY. AND,
16 LIKE I SAID, I WANTED TO BE VERY CLEAR WITH THE DATES.
17 USUALLY, WE LEAVE IT UP TO THE PARTIES TO CALCULATE THE
18 DATES, BUT I DIDN'T WANT THERE TO BE ANY CONFUSION. SO
19 YOU HAVE YOUR CASE, THAT WILL BE REFLECTED IN THE MINUTE
20 ORDER.

21 MR. REID: VERY GOOD, YOUR HONOR. THANK YOU.

22 THE COURT: OKAY.

23 MR. REID: THE MINUTE ORDER AND THE ENTRY OF
24 JUDGMENT WILL BE AVAILABLE THIS AFTERNOON?

25 THE COURT: IF ALL GOES WELL, YES.

26 MR. REID: OKAY. THANK YOU, YOUR HONOR.

27 THE COURT: ALL RIGHT. IT WAS NICE HEARING FROM
28 YOU BOTH AGAIN. THANK YOU.

1 MR. SULLIVAN: YEAH, IT'S GOOD TO HEAR FROM YOU
2 TOO, YOUR HONOR. YOU GUYS HAVE A WONDERFUL DAY.

3 MR. REID: THANKS, YOUR HONOR.

4 THE COURT: YOU TOO. THANK YOU.
5 TAKE CARE, MR. REID.

6 (WHEREUPON THE PROCEEDINGS WERE CONCLUDED AT
7 9:27 A.M.)

8 (NEXT VOLUME AND PAGE NUMBER IS VOLUME 18, PAGE
9 2901.)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE, PALM SPRINGS

DEPARTMENT PS2

HON. MANUEL BUSTAMANTE, JUDGE

DENISE COLLINS; CHRISTOPHER)
COLLINS,)

PLAINTIFF,)

VS.)

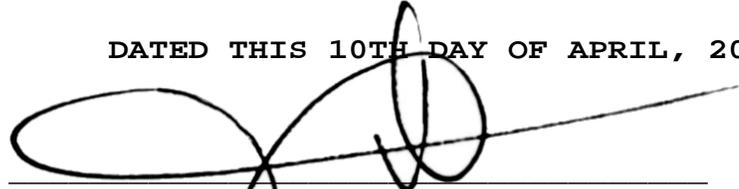
CASE NO.: PSC1901096

CPV SENTINEL ENERGY CENTER, LLC)
MOTT MACDONALD, LLC, GEMMA)
POWER SYSTEMS, LLC, AND DOES)
1 TO 15, INCLUSIVE,)

DEFENDANT.)

I, JUSTUS BALENTINE, COURT REPORTER PRO TEMPORE
OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY
THAT THE FOREGOING PAGES, 2801 TO 2814-2900,
INCLUSIVE, COMPRISE A FULL, TRUE AND CORRECT
TRANSCRIPT OF THE TESTIMONY AND PROCEEDINGS HELD IN
THE ABOVE-ENTITLED MATTER ON AUGUST 9, 2022.

DATED THIS 10TH DAY OF APRIL, 2023.


JUSTUS BALENTINE, CSR NO. 13859
OFFICIAL COURT REPORTER PRO TEMPORE

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COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT - DIVISION TWO
APPEAL FROM THE SUPERIOR COURT OF RIVERSIDE COUNTY

-o0o-

DENISE COLLINS and CHRISTOPHER)
COLLINS,)
) DCA No. E080233
Plaintiffs/Respondents,)
) Riverside County
vs.) Case No. PSC1901096
)
DIAMOND GENERATING CORPORATION,)
) Volume 18 of 19
) Pages 2901-2925
Defendant/Appellant.) (2926-2950 Blocked)
)

REPORTER'S TRANSCRIPT OF APPEAL
BEFORE THE HONORABLE MANUEL BUSTAMANTE, DEPARTMENT PS2
OCTOBER 5, 2022

APPEARANCES:

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SUPERIOR COURT - STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

-o0o-

DENISE COLLINS and CHRISTOPHER)
COLLINS,)
)
Plaintiffs,)
)
vs.) CASE NO. PSC1901096
)
DIAMOND GENERATING CORPORATION,)
)
Defendant.)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE MANUEL BUSTAMANTE - DEPARTMENT PS2

OCTOBER 5, 2022

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OCTOBER 5, 2022 - MORNING SESSION
BEFORE THE HONORABLE MANUEL BUSTAMANTE

-o0o-

THE COURT: I'll formally call the matter of Collins versus Mott McDonald, LLC.

MR. SULLIVAN: David Sullivan appearing on behalf of the plaintiffs Denise and Christopher Collins, your Honor.

MR. REID: And good morning, your Honor. David Reid appearing on behalf of Diamond Generating Corporation.

THE COURT: Good morning, counsel. Welcome back. Please have a seat.

I appreciate the in-person visit. I know you're both from out of county, so you could have done this remotely.

How was your commute in? Probably several accidents along the way?

MR. SULLIVAN: I came in last night. Not bad.

MR. REID: Mine was good. The 10 was mercifully open this morning.

THE COURT: It was? That's nice.

MR. SULLIVAN: To be honest, I miss the in-person interaction in the courtroom. I mean, yeah, you can do things on the phone line, but it's nice to see faces and stuff like that.

THE COURT: For the trials, I think so. For brief calendar appearances, I think it really does help keeping some cars off the road, getting counsel to their depositions. But you're right, Mr. Sullivan, there is no replacing in-person appearances.

1 So the Court did post its tentative yesterday afternoon.
2 It is still tentative at this point.

3 Ordinarily, I would just go ahead and turn it over to
4 counsel that requested oral argument. There was a timely
5 request in this matter. However, both counsel made a timely
6 request.

7 So who would like to begin?

8 MR. SULLIVAN: Well, my request simply had to do with
9 clarification of the judge's order and how it is that you wanted
10 us to proceed in order to get the Court to issue the award for
11 the pre-judgment interest.

12 I understand the confusion that may have been present
13 based upon the way that we filed it. I've been doing this for
14 35 years now, and I've got lots of judgments where there's 998
15 offers that we beat and filed requests for prejudgment interest.
16 I've always done it as a joint request as part of the memorandum
17 of costs.

18 The reason for that is one of the costs that you can
19 recover in that situation is the expert witness cost. In order
20 to get that issue properly before the Court, you need to
21 establish some evidence and submit it to show that there was, in
22 fact, a 998 offer that was made, the point of time it was made.
23 Then the Court can obviously look and see the offer was beaten,
24 so then they get to award that.

25 I think in the language that the Court put at the very
26 end of its order where you talked about --

27 THE COURT: The claiming of interest?

28 MR. SULLIVAN: Yes, in the memorandum of costs.

1 I think that may have just been the Court taking what the
2 plaintiff was doing out of context. It was never our intention
3 to have the Court order the prejudgment interest as an element
4 of costs.

5 If you look at the memo of costs, I know on line 18 it
6 lists other, but it lists prejudgment interest. But down there
7 in the very next line where it asks what we want the Court to
8 do, it lists the total cost completely separate from the
9 prejudgment interest.

10 THE COURT: That's helpful. You're talking about the
11 96,000?

12 MR. SULLIVAN: Yes, exactly. And that was our intention.

13 I know that the defense has made an argument, well,
14 instead of an actual amount, it should be a statement saying
15 that interest shall accrue from the date that the 998 offer was
16 made which was back in February of 2021.

17 For practical purposes it doesn't really matter to us one
18 way or another. If they feel more comfortable inserting that
19 statement into the judgment, that's fine by us.

20 The way that we've always done it in the past is that we
21 always list it as prejudgment interest in the judgment itself,
22 so then when somebody is calculating what the exact amount is
23 based upon post-judgment interest, it's easy to differentiate
24 between the two.

25 I think based upon their statement, what they want to do
26 is they just want to use a different date to calculate the
27 interest and then just do it all in one lump sum, which is going
28 to get you to the same number either way that it's done.

1 THE COURT: Let's deal with that procedural matter in a
2 moment. I believe Mr. Reid probably has some different
3 substantive issues he'd like to address probably on the 998.
4 Then we'll see where we are after that.

5 MR. SULLIVAN: Right.

6 THE COURT: Thank you. I do appreciate you offering
7 that, Mr. Sullivan.

8 MR. REID: Yes, your Honor.

9 Actually, obviously, I want to address the validity of
10 the 998 offer. Just initially on its face because of the format
11 that was used, basically a form which says for one plaintiff and
12 for one defendant --

13 THE COURT: The Judicial Council form?

14 MR. REID: The Judicial Council form.

15 Looking at it at the time that we were evaluating the
16 offer, it appeared to us that the 998 was invalid on its face
17 just because of that.

18 So I understand where the Court's ruling has gone and
19 followed the case law regarding the excess verdict and things
20 like that or as how it relates to evaluating whether each
21 plaintiff exceeded or beat the 998. I understand that.

22 I think the larger problem for us, again, remains the
23 issue of whether the 998 was done in good faith.

24 The Court talks about the FAC actually pleading facts
25 regarding negligent undertaking and cites to two facts in your
26 tentative regarding Diamond Generating Corporation -- I'm
27 skipping a little bit here -- that had negligently recommended
28 safety protocols to DGC Operations -- that were being followed

1 by DGC Operations' employees at the time of this incident that
2 contributed to the occurrence.

3 And then additionally "Diamond Generating Corporation
4 negligently failed to place warnings on the natural gas filter
5 skid, advising anyone who was going to service the skid to check
6 the pressure gauge on the tank to ensure there was no pressure
7 in the tank when the lid was being removed as they knew that
8 with no double block and bleed on the outlet side of the filter
9 tank they knew there was a risk the tank could repressurize
10 after pressure had been released from the line."

11 Your Honor is focusing on facts which are alleged in the
12 negligence cause of action which potentially could support a
13 negligent undertaking cause of action.

14 However, I'd like to point out in the complaint on page 4
15 under that same cause of action that the only duty that's being
16 alleged as to DGC, the last paragraph of that page, begins
17 "Defendant Sentinel Energy LLC previously sued as CPV Sentinel
18 Energy and Diamond Energy Corporation previously substituted for
19 Doe 6 were the owners of the power plant and they negligently
20 authorized the construction of the plant."

21 The focus here is not necessarily on the facts that were
22 alleged but on what duty is alleged.

23 One of the things we pointed out in our reply paper --
24 and this is Paz versus the State of California -- "A negligent
25 undertaking theory can only exist if the defendant does not
26 already owe a duty. One cannot be a Good Samaritan who
27 undertakes a duty if he or she already has a duty."

28 The issue here, your Honor, is the duty that we were

1 being focused on by the complaint is our alleged ownership of
2 the plant. As there is a duty being alleged, that negligent
3 undertaking duty cannot exist at that point in time.

4 So until the motion for summary judgment was heard and
5 the ownership issues, direct ownership, indirect ownership,
6 whatever, that were abandoned essentially by plaintiffs -- they
7 let go of it -- that is when that negligent undertaking theory
8 came to life.

9 So based on the duties that are being alleged, not just
10 the facts, we had no idea that that they were talking about a
11 negligent undertaking when we were evaluating the 998. That's
12 the basis for our believing that it's not in good faith, your
13 Honor.

14 We had no way of evaluating what was going to be done
15 after the motion for summary judgment and subsequently the
16 trial.

17 THE COURT: If I recall -- I'm sorry. I know you're
18 still going, Mr. Reid.

19 MR. REID: Absolutely, your Honor.

20 THE COURT: If I recall from the MSJ, I recall we
21 litigated this during the trial. There was extensive oral
22 argument on the motion for summary judgment, and I believe at
23 that time plaintiffs actually withdrew the general negligence
24 theory. Am I mistaken in that?

25 MR. SULLIVAN: It was the theory that was based upon the
26 ownership liability, the premises liability, not the general
27 negligence point.

28 THE COURT: And was negligent undertaking -- I understand

1 the tentative, but yet the motion for summary judgment was
2 before a different magistrate. So as I recall before, there was
3 extensive argument on it. Was that discussed during oral
4 argument?

5 MR. SULLIVAN: The negligent undertaking was the whole
6 focus of the hearing, the fact that there was all this evidence
7 we had introduced in our opposition to their motion that showed
8 the actions on their part that showed that they undertook to
9 provide oversight for safety at the plant.

10 THE COURT: I apologize. I was just trying to refresh my
11 memory on that one point.

12 MR. SULLIVAN: And you have lots of cases so it's
13 understandable.

14 MR. REID: And that's the last point I'll make about the
15 pleadings, your Honor.

16 There is nothing in the first amended complaint regarding
17 a duty as to negligent undertaking. It's only based on the
18 ownership issue. So that is, again, why we believe that the 998
19 should be considered invalid and was not in good faith.

20 If that's something they were litigating, they certainly
21 were hiding it from us, because the whole focus was on
22 ownership. That is what our entire MSJ was about, the ownership
23 regarding these three causes of action. It was not until their
24 opposition where they briefly mentioned negligent undertaking
25 and on oral argument at the hearing where negligent undertaking
26 came to life.

27 Thank you, your Honor. That's all I have for the moment.

28 THE COURT: Thank you, Mr. Reid.

1 One moment, Mr. Sullivan.

2 Maybe other magistrates are used to it. It takes me a
3 little bit longer to read the complaints when they're on the
4 Judicial Council form and it's on separate pages as opposed to
5 the paragraphs. Since this is an old case with a very
6 contentious history, it takes a second for everything to load on
7 my screen.

8 MR. REID: I understand, your Honor.

9 THE COURT: I'm pulling up that complaint.

10 MR. REID: I have a copy of it here.

11 THE COURT: I appreciate that, Mr. Reid. I have it here.
12 I just have to -- like I said, it takes a little bit longer
13 because this case does have a rich history.

14 Okay. Mr. Sullivan, how do you respond to Mr. Reid in
15 terms of the negligent undertaking was really only brought to
16 DGC's attention during the -- at the time of the summary
17 judgment?

18 MR. SULLIVAN: That's a complete red herring, your Honor.
19 The reason it's a red herring is that there was extensive
20 discovery that was being done throughout the litigation where
21 witnesses were deposed. There were questions that were asked
22 that all pointed toward the negligent undertaking theory.

23 When you look at the complaint, all the negligent
24 undertaking theory is, it's a way of establishing a duty as part
25 of a normal general negligence claim.

26 In order to impose that duty upon them, they have to
27 engage in some kind of activity, which the complaint alleges
28 that they engaged in activity which would have imposed a duty on

1 them. There was evidence that was submitted during the trial
2 that showed that they did exactly that.

3 So their assertion that they were somehow blindsided by
4 this negligent undertaking theory is complete nonsense. The
5 reason that it's nonsense is if you just look at their original
6 motion that they filed, even though they didn't use the words
7 "negligent undertaking" in their original papers, moving papers
8 on this motion for summary judgment, they asserted all of these
9 facts that showed that they didn't engage in any conduct that
10 would have created a duty on their part to act reasonably as it
11 relates to what they were doing at the plant there.

12 The only reason that they did that was because they knew
13 that those actions that they were fully aware that Diamond
14 Generating Corporation had engaged in throughout the entire time
15 that this plant was done -- they knew that those actions in
16 providing the oversight for safety at this plant could expose
17 them to liability if they did those things in an unreasonable
18 manner. So those facts were asserted as part of their original
19 motion to defeat that.

20 What they did was they calculated very precisely, I might
21 add, to make sure that they never mentioned negligent
22 undertaking once in their moving papers so they knew when we
23 presented all this evidence -- because it had all been disclosed
24 in discovery leading up to that motion that they filed -- so
25 that on their reply brief they could say, oh my gosh, a
26 negligent undertaking? What are you talking about? We've never
27 heard that before. This is surprise. We should be barred from
28 asserting that at all costs.

1 It is all just part of their legal ploy in an effort to
2 try to ambush the plaintiffs even though throughout this entire
3 case they knew exactly what it is that their clients had done
4 and what their exposure was as it relates to liability.

5 You know, as it relates to their argument that, oh, the
6 form was the wrong form and that that should invalidate the 998,
7 they haven't cited any case that says that's the case. The
8 reason for that is there aren't any cases.

9 All that is required of a 998 is here are these certain
10 elements that need to be satisfied which based upon the
11 information that the plaintiffs put in front of the Court, each
12 and every one of those elements was satisfied.

13 When the Court issued its tentative, the Court got it
14 right. This was a good faith offer that was made to them, gave
15 them an opportunity to resolve this case for a fair amount.

16 What really happened is defense counsel was looking at
17 this and they were thinking, well, we're just going to blame
18 Daniel Collins, and we're going to blame the DGC Ops people and
19 we're going to deny we had any responsibility, and we have a
20 great chance of defending this case.

21 They happened to be wrong, but just because they're wrong
22 doesn't mean that our offer we made to them was made in bad
23 faith, doesn't mean they didn't have plenty of facts known to
24 them at the time that should have alerted them to the fact that
25 they were taking a risk and a chance by choosing, making the
26 choice to not accept that extremely reasonable offer that the
27 plaintiffs made in order to put this litigation to an end back
28 in February of 2021 and avoid all the things that happened after

1 that.

2 They chose not to. The plaintiffs, pursuant to CCP
3 section 998, are entitled to that prejudgment interest, and the
4 Court should affirm its tentative ruling.

5 THE COURT: Thank you, Mr. Sullivan.

6 Mr. Reid, anything to add?

7 MR. REID: Yes, your Honor.

8 Plaintiffs' counsel seems to be able to read my mind,
9 seems to be able to read Mr. Schumann's mind.

10 THE COURT: And if I could just help you there. Not so
11 much help but avoid --

12 MR. REID: Avoid my having to go through it.

13 THE COURT: Any findings the Court makes are certainly
14 not going to be as to the strategy or the -- the strategy of the
15 defense in asserting the legal moves. There was calculated risk
16 here on both sides. Sometimes you win and sometimes you lose.
17 I don't think it's relevant for today for the Court to make any
18 finding as to what your strategy may or may not have been, if I
19 can help you with that.

20 I appreciate the colorful argument, Mr. Sullivan, but I'm
21 not going to go that far with it.

22 MR. REID: I appreciate it, your Honor.

23 Plaintiffs' counsel says that we spent all this time in
24 our MSJ and our statement of material facts refuting allegations
25 that they had made regarding the things that they've alleged in
26 their complaint, that we somehow provided procedures, that we
27 were supervising the manager. These are all things that would
28 have potentially risen to liability as if DGC were the owner of

1 the company.

2 These are all things we had to go through and refute
3 because of the allegations in the complaint.

4 In fact, two of these allegations, one of them which is
5 the labeling of the tank, that was found at trial that we didn't
6 have anything to do with that. So we were reasonable in relying
7 on that fact and the fact that we knew we didn't have anything
8 to do with labeling the tank.

9 We also knew there was an issue regarding the double
10 block and bleed on the outlet side of the tank which is
11 something this Court didn't spend a lot of time with because
12 plaintiffs, based on the evidence that we produced during
13 depositions, let go of that particular issue.

14 So the only thing we were left with was our ownership and
15 the allegation in the complaint that we had provided procedures.
16 And we had to address the other things they brought up because
17 we knew they would argue them in their opposition.

18 So, again, we don't know anything about a negligent
19 undertaking theory, and that negligent undertaking theory cannot
20 exist until the ownership theory is gone and we have no other
21 duty.

22 You cannot voluntarily assume a duty if you already have
23 one. That is the Paz case, again, at page 553.

24 And just one final point, your Honor, depending on, of
25 course, Mr. Sullivan.

26 We had raised the argument, your Honor, in our reply that
27 Civil Code section 3291 requires the plaintiff to actually have
28 pled in their prayer for prejudgment interest. It wasn't

1 addressed in the Court's tentative. I was wondering if you
2 could just briefly address it.

3 THE COURT: One moment. And I'll come back to you
4 briefly on that last point, Mr. Sullivan, but one moment. There
5 is something. I want to look.

6 I appreciate your patience. We're not dealing with a
7 \$100,000 policy here. Not to minimize that.

8 MR. REID: We absolutely appreciate your efforts, your
9 Honor.

10 THE COURT: What did the new minimums go up to on auto
11 pay? It was 15/30. Wasn't there recently legislation to
12 increase them now to 25/50 or 30/60?

13 MR. REID: I hadn't heard, but that would be awesome.

14 THE COURT: Maybe that's below your usual dealings,
15 Mr. Reid.

16 MR. SULLIVAN: I haven't heard of that, but it's not
17 below my minimum. I handle cases in all ranges.

18 MR. REID: If the other party in the suit has a 15/30
19 policy, it really creates trouble.

20 THE COURT: Mr. Reid?

21 MR. REID: Yes, your Honor.

22 THE COURT: I was looking up your pinpoint on Paz.

23 Essentially, your pinpoint, at least, is just a
24 recitation of -- it's an introduction to the opinion by Justice
25 Chin. It's literally the beginning of it, and it's just briefly
26 explaining the facts of the case and the theory of negligent
27 undertaking.

28 MR. REID: The specific language, your Honor -- and I

1 apologize if it's not correct. It says, "A negligent
2 undertaking theory only can exist if the defendant does not
3 already owe a duty. One cannot be a Good Samaritan who
4 undertakes a duty if he or she already owes a duty."

5 THE COURT: Maybe it's another citation within the
6 opinion, but I do recall seeing that when we were dealing with
7 the jury instructions.

8 Okay. Mr. Sullivan, on the issue of the pre-judgment
9 interest not being pled on the first amended complaint, I do
10 have the operative document in front of me, as well.

11 MR. SULLIVAN: Certainly.

12 If you look at a case called Segura versus McBride, which
13 is 5 Cal. App. 4th at 1028, it's a case that talked about an
14 award of prejudgment interest. One of the arguments that was
15 made is that it was not specifically pled as part of that.

16 The Court stated in the last page of its opinion at 1024,
17 "In his complaint Segura included a general request for such
18 other and further relief as the Court deems just and proper.
19 This prayer is sufficient for the Court on its own to invoke the
20 power to levy such prejudgment interest as it deems just and
21 reasonable."

22 If the Court goes to the plaintiffs' amended complaint,
23 on page number 3 under paragraph number 14, it says, "Plaintiff
24 prays for judgment for cost of suit for such relief as is fair,
25 just and equitable," which is the identical language as found in
26 Segura.

27 There is a whole line of cases that says Segura states
28 that that request for equitable relief that's just and proper is

1 sufficient for getting the issue of the prejudgment interest,
2 which is only understandable, especially in a situation like
3 this where the potential for recovery that the prejudgment
4 interest through a 998 doesn't come into play unless a 998 offer
5 is made as part of the litigation, which is something that
6 happens after the lawsuit is done.

7 THE COURT: What page? You said page 3 of the complaint?

8 MR. SULLIVAN: Page number 3 of the complaint.

9 THE COURT: Paragraph, you said, 14?

10 MR. SULLIVAN: Paragraph number 14.

11 THE COURT: Oh, I see. There are checked boxes
12 underneath.

13 I do have the Segura case, although that dealt with home
14 equity sales contracts.

15 MR. SULLIVAN: Still prejudgment interest is one of the
16 topics that was in front.

17 There are other, like I said, cases that come to the same
18 conclusion. I didn't find one specifically as it relates to
19 998, but the same logic would apply.

20 THE COURT: Thank you.

21 Okay. As to the 998, having presided over this matter,
22 having heard the evidence, the Court finds, as mentioned in the
23 tentative, in terms of the paragraph -- I'm looking at it now --
24 it's attachment 1. Again, another reason I don't really like
25 this Judicial Council form. But it's attachment 1, paragraph 1
26 of the complaint which is also page 5 of 7 of the complaint, the
27 first amended.

28 The very first sentence after it says, "Diamond

1 Generating Corporation previously substituted in as Doe number 6
2 and Does 6 to 10 prior to March 6, 2017, had negligently
3 recommended safety protocols to DGC Operations that were being
4 followed by DGC Operations' employee at the time of the incident
5 and contributed to this occurrence."

6 I read that sentence -- again, having presided over this
7 matter, I really think that's what the case boiled down to. It
8 was the argument on both sides. As I mentioned, there was great
9 risk that both sides took here in bringing this to jury trial.
10 But the Court does find that the defendants in the matter were
11 on notice in terms of this theory of liability.

12 The Court does find the 998 was valid. There was notice.

13 In terms of, ideally, I suppose, the 998 should have been
14 made separately as to each plaintiff. But, again, for the
15 reasons mentioned in the tentative and the cases cited, the
16 excess verdict here -- and I say "excess" in terms of the 998.
17 It really is in excess of however you want to read that 998.

18 So in that respect the Court is going to adopt its
19 tentative.

20 Going back to the original point with the prejudgment
21 interest that Mr. Sullivan raised, the Court does agree with
22 defense, however, on that. I don't think that's proper. I
23 think it just complicates things to include it with the current
24 memorandum of costs.

25 I understand, Mr. Sullivan, that this wasn't anything
26 malicious, that you weren't trying to do anything improper.
27 It's just that's how you have done it before. But defense's
28 argument does resonate with this Court. I could be wrong. I

1 feel that's probably the better practice.

2 MR. SULLIVAN: Well, that was the reason the plaintiff
3 requested oral argument on that particular topic, your honor,
4 was to figure out, okay, how do we fix this.

5 We've already got the evidence in front of you that shows
6 that the 998 offer was made, okay? You've already ruled on
7 their objections and to whether or not the offer was valid or
8 not.

9 In light of trying to promote judicial economy, what I
10 would request that the Court do, which, you know, the Court
11 certainly has the power to do, is that based upon the evidence
12 that's been submitted to you as part of this particular motion,
13 the Court finds that the plaintiff is entitled to prejudgment
14 interest and that we amend the judgment to include the statement
15 that the defendants have requested as far as that statement that
16 talks about and interest shall accrue from the date that the 998
17 offer was made, which in this instance was February 12, of 2021.

18 I could prepare an amended judgment that includes the
19 language recommended by the defense. I can also include the
20 amount of cost that the Court has awarded based upon this
21 hearing here today. Then we can just get an amended judgment
22 filed. That way the matter doesn't require any further efforts
23 on the part of the Court in order to continue this forward.

24 THE COURT: I think there are still some other motions
25 coming.

26 But regarding the memorandum of costs, the Court will add
27 to today's tentative that plaintiff is entitled to costs. I
28 appreciate you breaking it up, and I did look at the exhibits.

1 I didn't really see any opposition to them. It dealt
2 specifically -- there was an opposition because of the 998, but
3 I didn't see anything in terms of the invoices submitted or
4 anything.

5 Candidly, I thought there would be more expert fees, but
6 I recall, then, that there was a lot of video deposition used.
7 So maybe expenses were curtailed in that matter.

8 Costs here are at \$96,383.20 as reflected in the
9 memorandum of costs by plaintiff. So the Court will
10 specifically add that to the tentative for today as part of its
11 final order.

12 Regarding the prejudgment interest, Mr. Sullivan, would
13 you like to be heard on how we should proceed on that? We've
14 heard Mr. Sullivan's suggestion that he submit an amended
15 judgment to add on the costs and the prejudgment interest.

16 MR. REID: We recommended the language, your Honor. We
17 would be satisfied with that. We just don't want a dollar
18 amount appearing in the judgment at this point.

19 THE COURT: I'm pulling that up now.

20 I see the motion to strike costs, and I'm getting past
21 the 998 section here.

22 Where is that? Is it in your declaration, Mr. Reid?

23 MR. SULLIVAN: They had submitted a proposed judgment at
24 one point in time. The language is in that one. I would be
25 happy to take it from their proposed judgment and insert it into
26 the new one.

27 THE COURT: I apologize. The way our case management
28 system works, it kind of compiles all the documents for that

1 particular hearing. Sometimes I have to jump outside that tab.

2 For example, earlier I had to jump outside of it to get
3 the first amended complaint.

4 MR. SULLIVAN: Well, I think to make it easier, what I
5 would propose, your Honor, is I'll prepare the amended judgment.
6 I'll send it to Mr. Reid that includes his language so that he
7 can approve it before we send it for filing with the Court.

8 MR. REID: That would be fine, your Honor.

9 THE COURT: One moment, then.

10 Mr. Sullivan, is your recommendation also to add the
11 costs onto the amended judgment?

12 MR. SULLIVAN: There was a spot in the original judgment
13 that had a line for the Court to write in the costs once the
14 Court ruled on the costs which is typically what's happening.

15 Now that the Court has ruled on that, I can just insert
16 that number on the amended judgment as well.

17 THE COURT: Just work with Mr. Reid on that.

18 MR. REID: That would be fine, your Honor. Thank you.

19 THE COURT: So the only modifications to the tentative
20 will be I added the specific amount for the cost, the 96,000.

21 MR. SULLIVAN: Thank you, your Honor.

22 MR. REID: Thank you, your Honor.

23 MR. SULLIVAN: We'll see you in a few weeks.

24 THE COURT: Please pass my hellos on to Mr. Schumann. I
25 haven't seen him. He ran out of here.

26 MR. REID: And Mr. Basile.

27 THE COURT: So did Mr. Basile. I can't recall. Was he
28 here for the verdict?

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MR. SULLIVAN: He was not here for the verdict.

MR. REID: He was here remotely. He listened on Court
Connect.

THE COURT: Once the jury went into deliberations, he was
off to the next one.

We're off the record.

(Proceedings concluded.)

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REPORTER'S CERTIFICATE

DENISE COLLINS and CHRISTOPHER)	
COLLINS,)	
)	
Plaintiffs,)	
)	
vs.	)	CASE NO. PSC1901096
)	
DIAMOND GENERATING CORPORATION,)	
)	
Defendant.)	
)	

I, DAVID A. SALYER, Certified Shorthand Reporter No. 4410, hereby certify:

On October 5, 2022, in the County of Riverside, State of California, I took in stenotype a true and correct report of the testimony given and proceedings had in the above-titled case, pages 2901-2925, and that the foregoing is a true and accurate transcription of my stenotype notes and is the whole thereof.

DATED: Palm Springs, California; January 30, 2023



DAVID A. SALYER, CSR No. 4410

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COURT OF APPEAL - STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT - DIVISION TWO
APPEAL FROM THE SUPERIOR COURT OF RIVERSIDE COUNTY

-o0o-

DENISE COLLINS and CHRISTOPHER)
COLLINS,)
) DCA No. E080233
Plaintiffs/Respondents,)
) Riverside County
vs.) Case No. PSC1901096
)
DIAMOND GENERATING CORPORATION,)
) Volume 19 of 19
) Pages 2951-3012
Defendant/Appellant.) (3013-3051 Blocked)
)

REPORTER'S TRANSCRIPT OF APPEAL
BEFORE THE HONORABLE MANUEL BUSTAMANTE, DEPARTMENT PS2
OCTOBER 27, 2022

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SUPERIOR COURT - STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

-o0o-

DENISE COLLINS and CHRISTOPHER)	
COLLINS,)	
)	
Plaintiffs,)	
)	
vs.	)	CASE NO. PSC1901096
)	
DIAMOND GENERATING CORPORATION,)	
)	
Defendant.)	
)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE MANUEL BUSTAMANTE - DEPARTMENT PS2

OCTOBER 27, 2022

APPEARANCES:

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(Appearances continued on next page.)

REPORTED BY: David A. Salyer, CSR 4410

1 APPEARANCES OF COUNSEL: (CONTINUED)

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OCTOBER 27, 2022 - MORNING SESSION
BEFORE THE HONORABLE MANUEL BUSTAMANTE

-o0o-

THE COURT: Let's formally call the matter of Collins
versus Diamond Generating Corporation.

Counsel, your appearances?

MR. BASILE: Good morning, your Honor. Jude Basile on
behalf of Denise and Christopher Collins, who are present.

MR. SULLIVAN: David Sullivan also on behalf the
Collinses, your Honor.

MR. REID: David Reid on behalf of Diamond Generating
Corporation.

MR. KRESSEL: And Mark Kressel on behalf of Diamond
Generating Corporation.

THE COURT: Nice to meet you, Mr. Kressel. I knew you
were here during different parts of the trial, but I don't think
you ever introduced yourself.

MR. KRESSEL: I did not.

THE COURT: And then I did sign the stipulation
previously.

I do have a court reporter for today's proceedings.

MR. REID: Thank you, your Honor.

THE COURT: I have your motions here. I have my notes
from the trial binder.

So we have first the motion for new trial, which I was
looking to address secondly. I was thinking we would start with
the motion for notwithstanding the verdict. I have the moving
papers. I have the opposition. I've reviewed the reply. And

1 then I'll put this aside for the new trial.

2 Do you wish to address it in a different order or shall
3 we begin with that?

4 MR. BASILE: That's fine, your Honor.

5 THE COURT: Let me go to -- so the first argument for
6 notwithstanding the verdict is the issue of the Privette
7 doctrine.

8 MR. KRESSEL: Yes, your Honor. I'm happy to proceed.

9 THE COURT: You're welcome to sit. However you feel most
10 comfortable. You can stand. Because you do have the court
11 reporter, just make sure we can hear you.

12 MR. KRESSEL: Well, I'm used to standing.

13 THE COURT: Whenever you're ready.

14 MR. KRESSEL: We are back again revisiting the Privette
15 issue, but I think that makes sense here, and I'm happy we
16 started with that issue, because that's really what this case
17 has always been about is the Privette case.

18 I think we preserved the issue in the nonsuit, but now
19 that we have the entire trial behind us, it's clear that this
20 case is governed by the Privette doctrine.

21 This is a very strong doctrine that the Supreme Court has
22 repeatedly reaffirmed. The Courts of Appeal continue to
23 reaffirm the doctrine. And they make clear the only conditions
24 for Privette to apply is that you have a hirer that hires a
25 contractor to do work and one of the contractor's employees is
26 injured while doing that work.

27 Once those elements are established, the Privette
28 doctrine applies, and we have those elements here.

1 Plaintiffs' argument was that DGC was not the hirer, but
2 as we made clear, DGC was an investor in the hirer. The
3 principals on the policies that underlie Privette make it clear
4 that the Privette protections would extend to the investor of
5 the hirer.

6 The simplest way to put it is it makes no sense if the
7 hirer is protected by having delegated responsibility to the
8 contractor. Then an investor in the hirer would get less
9 protection.

10 So I think the key under these cases is really this
11 principle of delegation. That's what the Supreme Court is
12 talking about, is that when the hirer hires the contractor,
13 they've delegated implicitly all responsibility for safety for
14 the contractor's workers to the contractor.

15 The Court says this is a good thing. This isn't about
16 evading responsibility. This is about drawing clear lines,
17 establishing who is responsible and centering the responsibility
18 in that entity. That's what we have here. That's why the
19 responsibility was centered into Ops. So when we're looking at
20 DGC, the question is how far did that delegation principle
21 extend.

22 Again, as we were saying, it just makes sense if you have
23 Sentinel, who is the hirer, delegating explicitly all
24 responsibility for safety to Ops, that an investor in Sentinel,
25 which is DGC, would also have made that same delegation.

26 THE COURT: And I'm following.

27 You have DGC, 50 percent in Sentinel, and then Sentinel
28 ostensibly does a competitive bid process where they end up

1 hiring a company that just happens to be -- have the same
2 letters, DGC, but now they end it with Operations, right?

3 MR. KRESSEL: I mean, the testimony at trial is that it
4 was a competitive bidding process and there wasn't any evidence
5 that it was not a competitive bidding process.

6 There wasn't any evidence that there was anything
7 underhanded about the arrangement. This is just how the
8 entities chose to structure the deal. And they hired -- now, I
9 mean, it's possible that a parent would think that one of their
10 subsidiaries is the best qualified to do the job, but there is
11 nothing in the record that suggests that outcome is guaranteed
12 here.

13 It was more than just some sort of like a wink and a nod.
14 There were formal written agreements including the operations
15 and management agreement, which again is really important here
16 because in that agreement Sentinel explicitly delegated all
17 responsibility for safety to Ops.

18 THE COURT: You said the parent to the subsidiary. The
19 parent here, though, is it Sentinel still?

20 MR. KRESSEL: The parent corporation is -- DGC is the
21 parent of Ops.

22 THE COURT: Ownership in Sentinel?

23 MR. KRESSEL: Correct -- oh, not correct.

24 MR. REID: Not correct.

25 THE COURT: That's kind of the issue we keep coming back
26 to. The lines are so blurred here.

27 I know you mentioned in your -- you attached -- one of
28 your exhibits in your motion was the Court's analysis when I

1 ultimately denied the instruction on the Privette doctrine, but
2 just the relationship between the parent and subsidiary, there
3 wasn't really a distinction there.

4 The parent essentially was very involved in what the
5 subsidiary was doing, almost to the point where the subsidiary
6 was really kind of just taking a back seat.

7 MR. REID: Your Honor, just to clarify --

8 THE COURT: Sure.

9 MR. REID: DGC, Diamond Generating Corporation, is the
10 parent company for DGC Ops.

11 THE COURT: Okay.

12 MR. REID: All right. DGC also has a 50 percent interest
13 in Sentinel and Sentinel through a competitive bidding process
14 chose to retain DGC Ops.

15 That's as clear as I know how to make it.

16 THE COURT: No. Okay. I get that now.

17 MR. REID: Thank you, your Honor.

18 THE COURT: So Sentinel with the 50 percent being owned,
19 50 percent by DGC, just happens to pick a subsidiary of DGC,
20 right?

21 MR. REID: Correct, your Honor.

22 And there was no testimony that anything was improper, as
23 Mr. Kressel has pointed out.

24 MR. KRESSEL: Right.

25 I will just want to bring it back, beyond the testimony,
26 just looking at the case law, there is no third step in deciding
27 whether Privette applies. The elements are you have the hirer
28 who hires a contractor to do work and the employee is injured.

1 There isn't after that, you know, another step to say,
2 well, let's evaluate the relationship between the hirer and the
3 contractor and see if Privette still applies. There's just
4 nothing in the case law that supports that. There has never
5 been a case that ever held that or even discussed that.

6 It makes sense because, again, the idea is this principle
7 of delegation, which the Courts says is a really good thing. It
8 clears up responsibilities.

9 So whatever the relationship between the hirer and the
10 contractor, they are still entitled to delegate all the
11 responsibility to one of them, and the law presumes that's what
12 has happened.

13 THE COURT: Isn't part of the Privette doctrine to, I
14 guess, shield in this case the parent company from vicarious
15 liability?

16 MR. KRESSEL: Well, I'm not sure about shielding, but
17 there's an idea that the worker who, in general, is injured on
18 the job is entitled to Workers' Compensation.

19 What the Supreme Court has said, it doesn't make sense
20 that some workers would be entitled to some additional form of
21 tort remedy due to fortuity that they were working for a
22 contractor who is being hired by somebody else.

23 THE COURT: Going after the homeowner.

24 MR. KRESSEL: Yes.

25 THE COURT: In your classic example.

26 MR. KRESSEL: Right. The easiest.

27 THE COURT: Isn't the theory here, though, from
28 plaintiffs' case not so much one of vicarious liability but of a

1 negligent undertaking?

2 MR. KRESSEL: Well, so, again, our position in the papers
3 is that because Privette applies, negligent undertaking does
4 not.

5 Again, that's clear in the case law, that if Privette
6 applies, there are only two exceptions to it, with the Hooker
7 and Kinsman exception and not negligent undertaking.

8 But if the Court would like to address plaintiffs'
9 negligent undertaking theory, we've also argued there is not any
10 evidence of a negligent undertaking here.

11 I think the negligent undertaking theory -- and we'll get
12 to this when we do the new trial motion, but it also infected
13 the jury instructions.

14 But the basic problem is that the negligent undertaking
15 theory is a disfavored theory because it's a way to assign a
16 duty to an entity that otherwise does not have a duty. So the
17 negligent undertaking theory requires, before you can create
18 this extra duty, evidence of a specific task that was
19 undertaken.

20 Here we never got any evidence of a specific task that
21 was undertaken that satisfied all of the other elements of the
22 negligent undertaking test.

23 We heard a lot of things during trial in plaintiffs'
24 opposition to the post-trial motions. They really focused on
25 the idea of the annual reviews, but, again, you have to compare
26 it to the requirements of the negligent undertaking test.

27 These annual reviews, the issue is they don't establish a
28 scope of a duty beyond annual reviews. The case law says a fact

1 an entity undertakes one duty or one task doesn't indicate that
2 they've taken responsibility for everything.

3 So here all we have are some, you know, claimed
4 negligently performed annual reviews. As we said, if that's the
5 task, it doesn't meet the other requirements of the test. It
6 didn't make any pre-existing risk worse. By doing annual
7 reviews, DGC did not take over Ops' job. Ops was still running
8 the plant.

9 By doing annual reviews DGC didn't make any promises
10 about the safety of the procedure that day that anybody was
11 relying on. All the testimony was clear that Ops workers had
12 developed this procedure.

13 In particular, Robert Ward testified that he, who is an
14 Ops employee, made the change in the positioning of ISO valve
15 two within the list of steps and that he told Daniel Collins
16 about the change twice on the morning of the incident and that
17 he had also gotten Daniel Collins' approval for making the
18 change when he first proposed the change.

19 So, again, there is just know way that a negligent annual
20 review satisfies the elements of a negligent undertaking.

21 THE COURT: In your moving papers you mentioned that the
22 instructions, the CACI instructions, I can't recall exactly how
23 you phrased it, but they're supposed to be guidelines, more or
24 less. And ultimately the Court did take time with counsel and I
25 think that's reflected in the transcripts. We didn't rush
26 through jury instructions where I just said this is what it's
27 going to be.

28 In fact, the Court granted several special instructions

1 proposed by defense.

2 When we arrived at that and in your moving papers you did
3 attach the transcript from our discussion where the Court did
4 mention this does seem to be a pretty -- not liberal but kind of
5 a broad scope that this instruction is giving on negligent
6 undertaking.

7 But I think more often than not modifying the
8 instructions beyond how they're proposed is probably more likely
9 to result in instructional error as opposed to following the
10 instructions there that perhaps already have been reviewed on
11 appellate review and been modified at least once before.

12 So there wasn't any modification. I know we discussed
13 this. I specifically remember discussing it with Mr. Schumann
14 about the specific task.

15 When we arrived at the jury instructions, the jury
16 instructions didn't require it. There wasn't any real position
17 for it.

18 What would you like the Court to have done at that point?

19 MR. KRESSEL: Because the case law says the factfinder
20 has to identify what the specific task was, but, of course the
21 problem is you can't just send the jury an open-ended question
22 that says what do you think the specific task was.

23 So I believe what defense counsel was requesting
24 throughout was that the jury instructions should have been
25 tailored to this case by listing the specific tasks that
26 plaintiffs wanted to assert and then the jury could answer yes
27 or no to that.

28 The problem here is we never got a specific task. We

1 just got safety services.

2 THE COURT: Again, the sequence of the -- I'm sorry.
3 That should have been the sequence of the gas release?

4 MR. KRESSEL: I mean, it's up to plaintiffs to assert,
5 you know, whichever task they want to assert.

6 I think, frankly, if they had listed -- they list two
7 tasks, if they want to base it on two. The problem is we just
8 didn't get any task. We just got the notion of safety services.

9 I really do think the effect there was to sort of -- I'll
10 use the word snuggle in. It's a little strong, but to bring in
11 a notion of vicarious liability.

12 If you're just saying to the jury, well, were you
13 responsible for safety, the jury isn't really allowed to answer
14 that question because the law tells us that DGC did not have a
15 general duty of care. They only than had a duty if they
16 satisfied specific elements much negligent undertaking.

17 Just to get back, we're talking about now in terms of
18 instructional error. We also just think looking at it from a
19 JNOV perspective, there just was no evidence that would satisfy
20 that.

21 So the Court can grant JNOV on that basis as well.

22 THE COURT: And I know it's my fault. It's not you,
23 counsel. I appreciate your argument. We were talking about the
24 Privette doctrine and we started talking about the negligent
25 undertaking.

26 Anything before we turn it over to plaintiffs' counsel
27 just on those two points?

28 MR. KRESSEL: Just on those two points. I think that's

1 it, your Honor.

2 THE COURT: Thank you.

3 I know I interjected with questions, but thank you for
4 addressing those.

5 MR. KRESSEL: I appreciate it.

6 THE COURT: Is it going to be -- Mr. Basile, welcome
7 back.

8 MR. BASILE: Thank you, your Honor.

9 THE COURT: I haven't seen you. You weren't here for the
10 jury verdict.

11 MR. BASILE: No, your Honor. I apologize.

12 THE COURT: I don't think I've seen you since closing
13 argument.

14 MR. BASILE: It's nice to be back.

15 THE COURT: It's a little bit cooler since the last time
16 you were here weatherwise.

17 Mr. Reid and Mr. Sullivan, that's right.

18 MR. SULLIVAN: Yes. Thank you, your Honor.

19 I'll address the issues as it relates to the Privette
20 doctrine first.

21 One of the things that the defense has not done is cite a
22 single case that even remotely suggests that somebody who has a
23 remote ownership interest in a company that has no right of
24 exercise of control over that company. And they've admitted
25 that in their motion for summary judgment that they filed with
26 the Court.

27 Keep in mind, DGC doesn't own 50 percent of Sentinel.

28 DGC owns stock in three other companies and those other

1 companies have an ownership interest in Sentinel. So there
2 really is no direct ownership relationship there. You have to
3 go up the chain of all these different companies that have been
4 put in place before you get to DGC.

5 One of the exhibits that was introduced at the time of
6 trial was that ownership chart. I don't know the number off the
7 top of my head, but it's in there if the Court needs to look at
8 that and refresh the exact ownership relationship or the
9 structural relationship that exists.

10 THE COURT: I do recall during the trial, Mr. Sullivan --
11 I'm not sure the jury took it the same way -- there wasn't as
12 much discussion about Sentinel. Really, at least the impression
13 the Court was left with is you have DGC Corporation, the
14 defendant, and then you have DGC Ops. And there was obviously a
15 lot of discussion there. A lot of the defense focused on
16 drawing the delineation between the two entities.

17 A lot of the evidence, at least apparently from the
18 jurors' point of view, was that DGC Ops essentially just
19 consumed -- was involved in the daily operations, had the same
20 officers. I recall that they had the same office address.

21 MR. SULLIVAN: Right. Yes. And that had to do with the
22 parent subsidiary relationship that exists between DGC and DGC
23 Ops. It has nothing to do with the relationship between
24 Sentinel, who is the actual hirer in this case. And there is no
25 agency relationship.

26 THE COURT: Right. I just meant in terms of the evidence
27 before the jury there wasn't -- there is just wasn't as much
28 focus on Sentinel. They were discussed. But really in terms of

1 what the trier of fact heard, it was DGC Operations majority and
2 DGC Corporation, the defendants.

3 And then obviously the delineation was drawn between the
4 two. And from plaintiffs' point of view the plaintiff was
5 trying to show, no, they're certainly one in the same, in the
6 sense that DGC Operations was trying to -- not trying to but had
7 taken an active role in the safety of operations of the plant.

8 MR. SULLIVAN: Right. Which is why the Privette doctrine
9 doesn't apply in this case, because it's not that case.

10 This is a parent subsidiary case and the issue is did DGC
11 engage in conduct such that it undertook certain
12 responsibilities as it relates to the oversight for safety for
13 the DGC Ops people such that it imposed a duty upon them to act
14 reasonably.

15 That is what the purpose of the instruction that was
16 given to the jury was designed to ask. The questions were
17 specifically designed to answer that question.

18 The instruction was tailored per the request of the
19 defense to include a reference as it relates specifically to
20 whether or not they were involved in rendering services related
21 to safety at the power plant.

22 We didn't agree with it, but we went along with the
23 Court's recommendation that that was a good thing to do given
24 the status of the evidence that was submitted to the case.

25 It's just not a matter of they answer the first question
26 and then all of a sudden they're responsible. There are all
27 these other specific questions that are underneath that have to
28 be satisfied in order to establish the elements necessary to

1 prove a negligent undertaking argument.

2 The jury affirmatively answered yes to every single one
3 of those questions. And if the Court looks at the record, there
4 is evidence that substantiates the jury's decision on that.

5 Keep in mind, in ruling on a motion for a JNOV if there
6 is any evidence at all that supports it and you have to give all
7 the reasonable inferences to the prevailing party, when you
8 apply that standard to the motion that they filed on the JNOV, I
9 think it becomes clear that there was sufficient evidence to
10 support the jury's finding in this case and that the Court got
11 it right when it ruled on their motion for nonsuit that this was
12 them trying to fit a square peg into a round hole as it relates
13 to the Privette doctrine because these folks were not the
14 owners. They were not the hirers. They had no control or any
15 involvement in the hires, but they want the protection.

16 What they want is they want their cake and to eat it too.
17 The corporations set up all of these layers so that they can
18 shield themselves from liability so if something catastrophic
19 happens, the only entity that's out there to go after is the
20 LLC, which would be Sentinel, that has, you know, abilities to
21 limit its responsibility based only on the assets that it owns,
22 where you have this company DGC that has all these substantial
23 assets from all these things all over the world that they're
24 involved in.

25 So they want to have their protection, the shield from
26 liability, because they have no direct involvement in any of
27 that stuff. But then now that something has happened, now they
28 want to get the protection of the Privette doctrine, which isn't

1 there, because you don't have that chain of delegation.

2 You don't have an agency relationship between DGC and
3 Sentinel LLC because it just doesn't exist. And it doesn't
4 exist for a reason. They want to shield themselves from
5 liability.

6 Now they want to piggyback on what a completely separate
7 entity did in an effort to try to get a different standard.

8 And the Court got it right on that one.

9 Then on the parent subsidiary situation, there is a Waste
10 Management case that we cited in our opposition that is directly
11 on point and gives the test. And it says specifically that
12 parent corporations can be responsible for negligent oversight
13 if they inject themselves into the actions such that they affect
14 safety at the subsidiary corporation, which is exactly what the
15 folks at DGC decided to do.

16 It's because they decided to do that that they owed the
17 duty to the folks working at the Sentinel energy plant. And
18 when they failed to live up to that duty by rubber stamping the
19 performance reviews of the plant manager even though even just a
20 simple look at the stuff would have revealed he wasn't doing any
21 of the things he was supposed to and that it was a disaster
22 waiting to happen at this plant.

23 It wasn't something that just happened one time. This
24 was happening over a four-year time period. By the admissions
25 that DGC hired to investigate, this was complacency that built
26 up is such that there was this, you know, situation where none
27 of the rules were being followed. They're doing it their own
28 way. The employees weren't being trained. They make a change

1 and they're not being trained on that.

2 Yeah, they had some evidence that was introduced that
3 Daniel Collins was allegedly involved in changing the procedure,
4 but there was also the contradictory evidence that showed that
5 Daniel Collins through the testimony of Robert Ward was asking,
6 hey, where is number 2, which is the actions of somebody who had
7 no idea that there was a change involved.

8 They didn't submit any records that showed that the
9 employees had received any training.

10 There was the testimony from Juan Gonzalez, who testified
11 that he wasn't aware that there was a change. He had never been
12 told that's isolation valve number 2 had been changed. He never
13 received any training on the change.

14 So there is contradictory evidence. And when the Court
15 starts to apply the standard in a JNOV situation, all those
16 inferences have to be drawn in favor of the plaintiff.

17 So when it comes down to it, there is no choice for the
18 Court to deny the defense's motion on both of these grounds.

19 THE COURT: The defense says in their reply that clearly
20 the Court's position was wrong because you didn't support it in
21 your opposition papers.

22 You took a different position.

23 I want to be clear about something. The defense
24 mentions -- I'm going to be short with it -- whatever time you
25 need to make your record, you certainly have it this morning.
26 That is why we left you for last.

27 I'm not being short to try to cut you off. I'm being
28 short because whatever reasons we have are already on the

1 record. So you have your transcripts for appeal.

2 Okay. The Court ruled during trial that the Privette
3 doctrine doesn't apply here because of the parent-subsiary
4 relationship. That's a little bit of a simplistic conclusion
5 there. That's not exactly what the Court said. The Court went
6 through an analysis, but that's -- the record is already
7 contained there.

8 Let me look for what else in my notes.

9 So the Privette doctrine can apply to a parent subsidiary
10 relationship, but as plaintiff points out, the actual hire here
11 was Sentinel, and not DGC, the corporation. So it doesn't seem
12 that the Privette doctrine would apply.

13 Again, as I mentioned previously to Mr. Kressel --

14 MR. KRESSEL: Yes.

15 THE COURT: The liability here was based on the negligent
16 undertaking. And for the reasons we already talked about, they
17 mentioned the 2004 Waste Management case. I can't recall the
18 exact language. I used it before when I made the record and I
19 knew this better, but the relationship between DGC Ops and DGC
20 Corporation really did become blurred, so much so that DGC
21 Operations just took over the safety of the plant.

22 MR. BASILE: To correct you, you mean DGC Corporation.

23 THE COURT: DGC Corporation took over the operations of
24 the Sentinel plant, which was supposed to be the responsibility
25 of DGC Operations.

26 You had a month-long trial in here. And I would venture
27 to say that if you were to ask any of the jurors we had that
28 they could go through and on a piece of paper write down the

1 correct sequence for that skiff -- it's not skiff, is it?

2 MR. REID: Skid.

3 THE COURT: On that skid, the jurors would not be able to
4 identify the correct order.

5 You were dealing with a complex safety sequence. We had
6 a month-long trial, and you probably still couldn't correctly
7 explain it to the jurors where somebody could actually
8 understand it.

9 Clearly we were dealing with a life and death matter and
10 being able to make sure that individuals could understand that
11 sequence.

12 The question came down to the jurors ultimately. Clearly
13 the employees didn't understand this. There was negligent
14 training or lack of it. Who was responsible for that? At least
15 to the jurors, they decided that DGC Corporation had undertaken
16 that responsibility.

17 Anything further on that, Mr. Kressel?

18 MR. KRESSEL: Just a few points, your Honor.

19 THE COURT: Of course.

20 MR. KRESSEL: We did cite a case. We don't have the case
21 on point, but we cited the Ruiz case for the proposition that
22 Privette can extend to entities beyond the actual hirer.

23 The Ruiz entity was the agent of the hirer, so that was a
24 case where the hirer had a separate company whose job was to go
25 out and pick the contractors. There the Court of Appeal held
26 that Privette still applies again because of that delegation
27 principle.

28 Here we have an even stronger case because this is just

1 an investor in the hirer.

2 The more that plaintiffs argue that DGC was a remote
3 investor, I think the more sense it would make that Privette
4 would apply.

5 I mean, if you're a shareholder in a corporation, why
6 would the corporation's -- if the corporation has delegated all
7 responsibility to a contractor, why would the investor not have
8 made the same delegation?

9 So the remoteness of the investment level really
10 strengthens the reason why Privette would apply, not weakens
11 them.

12 THE COURT: If I recall your logic then, counsel, if
13 Privette were to apply -- and Mr. Sullivan mentioned and I want
14 to make this clear for the record. He mentioned that
15 corporations, you know, set themselves up in this way with the
16 subsidiaries in order to protect themselves, you know, to limit
17 their liability. That's to encourage businesses to grow and
18 expand.

19 There isn't anything wrong with that as long as it's done
20 lawfully. So to the extent the Court makes any rulings, it's
21 not that there is some kind of anti-corporation sentiment in the
22 courtroom. That is the whole purpose of -- you know, there is a
23 whole -- in law school you have corporations, you learn about
24 it. It's a very basic principle.

25 But going back, to follow your logic, Privette applies,
26 so DGC Corporation doesn't have any liability. Then what about
27 DGC Corporation then basically not keeping their hands off of
28 the subsidiary and involving themselves in matters, doing things

1 negligently and then going, well, Privette applies. So if there
2 is any negligence, you know, it would still be DGC Corporation's
3 part.

4 MR. KRESSEL: First of all, if Privette applies, then we
5 don't ask whether the defendant involved themselves. They would
6 only be liable if they fit into one of the two exceptions, which
7 are really explicit, the Kinsman exception for concealment of a
8 known hazard, which we know is not possible here because there
9 was testimony he was told twice, and the affirmative
10 contribution, the exercise of retained control that
11 affirmatively contributes to the injury.

12 Here we don't have that because, you know, their argument
13 is basically they were doing an annual review of someone at the
14 top and they weren't paying enough attention to that annual
15 review. But the cases say that when the hirer is aware of the
16 risks that it has the authority to correct but does not do so,
17 the Privette doctrine still bars liability in that case.

18 It's not -- I appreciate your Honor's comments, but I
19 want to address the shell games idea because it's not about
20 shell games.

21 There are a lot of reasons that entities form
22 subsidiaries, but in particular with Privette what the Court
23 says is it's not about shell games because it's not that one
24 entity is escaping liability. It's that another entity is
25 taking on all the liability. And that's Ops. Ops was
26 responsible here and there was a remedy against Ops, or the law
27 presumes there is a remedy against Ops.

28 So that's why there is no concern about somebody else not

1 being liable, because they delegated all the liability to the
2 employer Ops.

3 You know, it was a long trial, and opposing counsel just
4 listed a lot of things that were going wrong, but those are all
5 Ops things. He named a lot of Ops employees who didn't know
6 what they were doing. He named Ops employees who were running
7 out of order, all the other facts. Those are Ops employees.

8 There was never any evidence that DGC was supervising
9 those employees. All we have is an annual review of one person.

10 I do want to come back to a concern that the Court has
11 expressed a lot, which is this idea that as the parent DGC was
12 exercising so much control that it was really kind of taking
13 over for Ops.

14 You know, my first point is just to reiterate that the
15 relationship between the two entities is not part of the
16 Privette test or the negligent undertaking test.

17 I also want to point out the plaintiffs have never argued
18 that the two entities became this indistinguishable because they
19 wouldn't want to argue that because then DGC would be protected
20 by Ops' Workers' Compensation exclusivity. So they've made a
21 very clear argument the entities were separate. That's why
22 they've used the negligent undertaking theory.

23 They're not making the argument that they're the same or
24 that Ops exercised so much control. I didn't hear them say
25 that. They said Ops did a negligent undertaking. And our point
26 is they haven't satisfied the test for negligent undertaking.

27 If I can just make one more point. I want to talk about
28 the Waste Management case.

1 So the Waste Management case has the language which
2 plaintiffs cited with recalls which says that a parent can be
3 liable for injuries to the subsidiary's employees where -- I
4 forget the exact language too, but where it does an independent
5 act that involves itself.

6 But I do want to point out that the facts of Waste
7 Management -- despite that language, the facts really support
8 us. Because in that case the argument was that Waste
9 Management, the parent, controlled the budget of the subsidiary.

10 What happened was there was a trucking incident with the
11 subsidiary's employees, and the plaintiffs were claiming, well,
12 the parent knew that the truck fleet was in need of repair and
13 refused to authorize enough funds to repair the trucks.

14 They were claiming that this was this independent act for
15 which the parent could be held liable for those injuries to the
16 subsidiary's employees.

17 The Court of Appeal there, despite the language, they
18 said that the idea that the parent controlled the finances and
19 made a budgeting decision that led to the subsidiary having bad
20 trucks wasn't enough of an independent act to generate liability
21 there.

22 So it is true that a parent can be held liable in certain
23 circumstances, but it takes a lot more than just general
24 management oversight.

25 I would argue if budgeting decisions isn't enough, then
26 an annual review of the plant manager is also not enough.

27 THE COURT: The Court did discuss that at the time of
28 ruling on this during trial. The Court made clear it wasn't any

1 one factor, that use of the parent company's logo -- I can't
2 remember what else. I'm looking at my notes from that time.
3 Mere use of logo or name of the parent company without control
4 doesn't make the parent company liable for acts of the
5 subsidiaries.

6 What else? Business cards, employee uniforms. I think
7 we talked about budget control and management.

8 Ultimately it was as in the context of a criminal case.
9 It was like the totality of the circumstances. It wasn't any
10 just one factor.

11 More importantly, it was their undertaking of the safety
12 at the plant, at least in the Court's opinion not allowing it.

13 Ultimately the final say came down to the jurors.

14 MR. KRESSEL: Mr. Reid is reminding me that the evidence
15 that the Court is listing such as the logo, none of that had
16 anything to do with the actual events that occurred on the date
17 of the accident. So, again, there is just no involvement there.

18 That's it. Thank you, your Honor.

19 THE COURT: Thank you, Mr. Kressel.

20 Anything else you wish to add for the record,
21 Mr. Sullivan?

22 MR. SULLIVAN: No, your Honor.

23 THE COURT: Okay. So ultimately in these situations
24 inevitably one side will be less satisfied than the other, to
25 put it politely. But that's why we have the fine justices in
26 the District Court of Appeals and so on. So if there is
27 something that needs correction, they will certainly let us
28 know.

1 For the reasons mentioned before and those today, the
2 Court is going to deny the judgment notwithstanding the verdict.

3 The motion, first, for not instructing on the Privette
4 doctrine and also on the negligent -- I think this is also
5 negligent undertaking here as well, the specific tasks
6 mentioned.

7 So I think those were the grounds for the judgment
8 notwithstanding the verdict.

9 We next have the motion for new trial. And this is
10 similar grounds, although there were some additional issues
11 brought up.

12 First is instructional error causing the jury to find
13 liability where there was no duty. This is still -- this is
14 repeating the Privette doctrine and also the negligent
15 undertaking, Mr. Kressel?

16 MR. KRESSEL: Yes, that's right, your Honor.

17 THE COURT: Anything additional?

18 The Court's ruling is going to be the same on that.
19 Anything you wish to add for the record on that regarding the
20 standard or anything different you would like the Court to
21 consider?

22 MR. KRESSEL: Well, yeah, of course.

23 As far as the instructional error issue, I think we
24 touched on the issues before. But again, our point is had the
25 jury received the correct instructions, they might have ruled
26 differently.

27 As far as just the general question of whether evidence
28 supports the verdict as a whole in terms of liability, the legal

1 issues are the same that we talked about, but here the standard
2 is different. It's not a test of whether there is any evidence
3 with the verdict. It's whether the verdict is against the
4 weight of the evidence.

5 As we've discussed, we really think the verdict is
6 against the weight of the evidence.

7 All the evidence we're hearing from opposing counsel is
8 evidence about Ops. It's Ops, Ops, Ops. There is just no
9 evidence that DGC specifically did anything that caused this
10 accident.

11 Even if the Court is concerned about the fact that DGC
12 exercised a lot of control over Ops, there is still not evidence
13 to show that DGC did anything that was involved with this
14 particular accident.

15 The evidence showed and the Court is free to re-weigh
16 that evidence on a new trial motion, but the evidence was that
17 Ops employees, and not Tom Walker, who is the one being reviewed
18 by DGC, but other lower level Ops employees, including Robert
19 Ward, made the decision to change the order of the steps.

20 Ops employees communicated the decision about changing
21 the steps to Mr. Collins. I'm going to get into this with
22 allocation of fault so maybe I'll just defer, but everything
23 we're looking at in terms of liability was really something that
24 was done by an Ops employee.

25 THE COURT: Mr. Sullivan, in terms of the evidence?

26 MR. BASILE: Yes, your Honor.

27 In terms of the evidence, I just wanted to point out --
28 well, first of all, I was here not physically but I was on the

1 phone for the verdict, so I respect the Court for that.

2 You know, I want to point out, do you remember
3 Mr. Forsyth testified? Mr. Forsyth testified. At the time this
4 happened, he was a director of Safety and Compliance at Diamond
5 Generating Corporation. He testified on the record on
6 cross-examination that Diamond Generating Corporation was
7 responsible for safety at the Sentinel plant at the time Daniel
8 Collins was killed.

9 Now, I know we just pointed to in the JNOV the reviews of
10 the plant manager, but here we have a director of Diamond
11 Generating Corporation, Mr. Forsyth, testifying under oath.
12 When I went through what they were doing at the other plants,
13 and they were doing the same things at Sentinel, he agreed with
14 me that Diamond Generating Corporation was responsible for
15 safety at the Sentinel plant when Daniel Collins was killed.

16 Now, there is --

17 THE COURT: It says here he wrote a lot of policy for DGC
18 Operations as well?

19 MR. BASILE: Right. Not only that. That's what I was
20 going to get to.

21 He also testified that he reviewed -- not only wrote, but
22 he reviewed the LOTO sheets that were in use at the plant. And
23 this is a Diamond Generating corporate compliance and safety
24 director who has testified under oath like that.

25 So all of this stuff we were trying to pigeonhole, it was
26 just reviews and all that, for a JNOV that's all you need to
27 find. There was some to support that. But in a new trial
28 motion, you can review the whole record. And foresight was key

1 there.

2 Also, more importantly -- I don't know if it's more
3 important, but Ben Stanley on his review, when he went and did
4 the root cause analysis, he pointed to numerous involvement of
5 Diamond Generating Corporation on how they were involved in
6 overseeing this particular day. These what he was
7 investigating, Ben Stanley, there.

8 So there is, as they like to say, a plethora of evidence
9 of Diamond Generating Corporation's direct involvement of that
10 complex shutting down of that plant that day and knowing it for
11 four years.

12 Don't forget we had a similar act take place where it was
13 stopped in time when Juan Gonzalez was removing the lid four
14 years before that the managers should have been aware of. It
15 was his part of his duties to report those near misses and it
16 was never done. And nothing was ever done about that.

17 So there is a whole lot more besides just this review of
18 the plant manager.

19 In addition they hired the plant manager. They gave him
20 safety policies. They gave him LOTO safety policies there. So
21 there was a plethora of evidence on that.

22 THE COURT: On Mr. Forsyth, it says he also testified
23 Ms. Cubos -- I guess this goes to a different point, but Ms.
24 Cubos was the director of HR for both DGC Corp and DGC Ops.

25 Again, that is a factor. I don't think that's
26 dispositive in itself.

27 Agreed on company training employees regarding safety
28 procedures.

1 Then there was something -- I think it was later in the
2 trial, but Mr. Forsyth testified that the asset manager -- the
3 asset being the Sentinel plant?

4 MR. KRESSEL: Yes, your Honor.

5 MR. BASILE: Yes, your Honor.

6 THE COURT: The asset manager was responsible for safety
7 at the site?

8 MR. BASILE: And the asset manager was Paul Shepard, the
9 Diamond Generating corporate officer.

10 MR. REID: That's incorrect, your Honor. Mr. Shepard
11 vehemently denied being the asset manager for the Sentinel
12 facility.

13 There was a specific asset manager. I don't remember his
14 name off the top of my head, but he testified here it was not
15 Mr. Shepard. That's a misstatement of the facts.

16 THE COURT: I'm only reading my notes for Mr. Forsyth's
17 testimony. I know that's what I wrote at the time here.

18 MR. BASILE: Mr. Shepard denied that, but the manager of
19 the plant, Tom Walker, said Shepard was the asset manager that I
20 reported to.

21 So it's not uncontroverted. It's a misstatement of
22 facts. They've misstated stuff throughout this case, your
23 Honor.

24 THE COURT: Did Forsyth say something about it, though?

25 MR. BASILE: About the asset manager? I can't recall if
26 he said that.

27 The most important thing I have -- and I had the
28 transcript; I don't have it here -- was when he was -- when he

1 said Diamond Generating Corporation was responsible for safety
2 at the Sentinel plant on the day that Daniel Collins was killed.
3 Forsyth says that.

4 THE COURT: Also Forsyth said there was an incident at a
5 plant in Florida. There was an incident at a plant in Florida?

6 MR. SULLIVAN: That was a safety recommendation that
7 Mr. Forsyth had made to the plant to conduct a safety meeting on
8 that particular incident. It was an email that he sent to the
9 plant.

10 MR. BASILE: Yes, I recall now.

11 Forsyth heard of a -- I think it was trench collapse in
12 Florida or a compliance space issue, and he took it upon himself
13 to tell Ops, hey, look, part of his job is this safety
14 involvement at the Sentinel plant. They were directly involved
15 there.

16 THE COURT: Tom Walker's testimony, he would report to --
17 he was the plant manager, Tom Walker?

18 MR. BASILE: Yes, sir.

19 THE COURT: And he would report to Auden Auberg,
20 vice-president of Ops -- Operations for DGC?

21 MR. BASILE: DGC Corporation, right.

22 He reported to Auberg and then he reported to -- who else
23 was it?

24 MR. SULLIVAN: Michael Kromer was next in line.

25 THE COURT: Took directions from vice president of Ops,
26 Operations, and asset manager for DGC, involved in daily
27 activities and updates during annual shutdown.

28 MR. BASILE: I think the Court is right online here, that

1 it's more than just his annual review of the plant manager.
2 There was this plethora of evidence of their involvement in
3 safety, and particularly safety of that operation of the
4 shutdown the day this happened.

5 THE COURT: He testified as per the knowledge of the
6 deceased plaintiff -- not plaintiff, but Mr. Collins. Then
7 didn't see a distinction between DGC Ops and DGC Corporation.
8 DGC executives present for Tom Walker's safety presentations.

9 It looks like it's more than just the annual review.

10 Mr. Kressel?

11 MR. KRESSEL: Well, let me just address a few points
12 specifically. And I think a little easier to fold this
13 conversation into the next issue, which is about the fault
14 allocation.

15 On the issue of William Forsyth, he was not a director.
16 There is no dispute in the testimony. He was just a manager.
17 He's a manager, a compliance manager. He had no directorial
18 authority at DGC. So he was someone who is going over there
19 from time to time.

20 As far as his testimony about everyone being responsible
21 for safety, that was the frame of the question.

22 You know, he is a lay person. He's not testifying about
23 what the law -- how the law divides the delegation of duties
24 among different entities. He was just giving a general truism
25 of the notion that everyone is responsible for safety. That may
26 be true in a lay sense, but it doesn't mean that that's true as
27 far as what the law requires for liability here.

28 Just turning to the Ben Stanley point, Ben Stanley made

1 clear in his testimony that when he said there was a culture of
2 complacency, he was talking about Ops.

3 Plaintiffs have relied a lot of Ben Stanley's report. If
4 you read the report and all of his testimony, everything he's
5 talking about the Ops things. These are Ops employees.

6 You know, we hear a lot of names from plaintiffs about
7 people like Paul Shepard and William Forsyth, but we're not
8 hearing the names of a lot of people that are in the report.
9 Jason King, Robert Ward, Pallala, Mr. Delaney. These are all
10 Ops employees who were all knowingly not following a protocol
11 that they knew to follow.

12 In particular, the evidence that they had a job safety
13 meeting that morning at which Mr. Collins was informed about the
14 change in the stems.

15 Let me just move to fault allocation so that I can get
16 into some of the other facts.

17 Again, even if the Court thinks there is evidence to
18 support liability, the jury's allocation of 97 percent of the
19 fault to DGC and only two percent to Ops and only one percent to
20 Mr. Collins is against the weight of the evidence. For that
21 reason alone, the Court should grant a new trial at least on
22 fault allocation.

23 So every single witness who testified to all of these
24 other Ops employees who acted improperly that day.

25 I mean, to take Jason King, Jason King was the work
26 supervisor. He is not being reviewed by DGC. We don't hear him
27 reporting about DGC, but he was in charge of supervising the
28 LOTO that day. He testified that he heard more than two unusual

1 ventings. I think between the witnesses it was three or four
2 unusual ventings.

3 Everyone knew that that if you heard an unusual venting,
4 you immediately stop the procedure and evacuate the area and
5 figure out what's going on. Ben Stanley said that as well.

6 But Jason King chose not do that. Instead he chose to
7 call one of the workers to see if the worker thought it was okay
8 to continue.

9 That's a huge misstep, and it has nothing to do with DGC.
10 These Ops. That is definitely worth more than two percent
11 fault.

12 The person he called that day at least twice was
13 Mr. Collins. And, again, Mr. Collins also knew that if you hear
14 usual venting, you're supposed to immediately stop and evacuate
15 the area and figure out what's going wrong.

16 In fact, on the near miss event that we hear a lot about,
17 that is what happened. When they heard the unusual venting,
18 they stopped everything. They evacuated the area. And that's
19 why it was a miss.

20 When Jason King called Collins. He said don't worry.
21 I've got it.

22 I think I remember there are three conversations like
23 this. We've got it. It's in progress. We've got it. It's
24 under control. We're taking care of it.

25 That was not the procedure and everyone involved knew it.

26 So for the jury to go turn around and award one percent
27 fault allocation for that, it just reflects the jury was looking
28 at passion and prejudice; they were not looking at the evidence.

1 Since the verdict is against the weight of the evidence,
2 the Court should grant a new trial on the fault allocation.

3 This case has abundant facts in all directions, but we
4 have reviewed in our papers all of the facts relating to fault
5 allocation. Again, I just think the Court, if the Court looks
6 at the evidence of the 13th juror, the Court would agree that
7 DGC -- I'm sorry, that Ops and Collins both had more than two
8 and one percent of the fault for what happened that day.

9 THE COURT: Thank you. Mr. Kressel.

10 MR. KRESSEL: Does the Court want to turn to --

11 THE COURT: We'll address those. Then we can talk about
12 the remaining issues. Thank you.

13 Your talents are being wasted on the appellate division,
14 Mr. Kressel. You need to do some more trial work.

15 MR. KRESSEL: I appreciate that, your Honor.

16 THE COURT: Perhaps your arguments would have been more
17 persuasive with this jury. Thank you for that.

18 The way you explained, their arguments are persuasive.
19 Ultimately, though, I'm not going to disturb the jury's finding,
20 at least in this respect.

21 My last comments -- I don't say that in jest. You do
22 make some persuasive arguments. I don't recall if those
23 arguments were presented in that same manner during defendants'
24 opportunity in this case to make the distinction between the
25 employees, who they were employed by, and the defendant in this
26 case versus DGC Operations, who is no longer a party in the
27 case.

28 So I'm not going to disturb the jury's finding on that.

1 They had, as you said, abundant facts in all directions. They
2 compiled it in a certain manner. We obviously don't know their
3 deliberation process. So they came to their conclusion.

4 So the Court is going to deny the motion for new trial on
5 the instructional error we've already talked about and then also
6 on the allocation of fault.

7 The next remaining -- there are two remaining issues.
8 There was damages in terms of the excess verdict and there was a
9 final one on improper argument. Well, improper. And there is
10 one on inflammatory evidence.

11 So let's leave the damages one to the end right now.
12 We'll leave that one.

13 Let's address the next, the improper and inflammatory
14 argument. Specifically, counsel mentions a Golden Rule argument
15 by Mr. Basile during closing argument. I'll just say this. You
16 have your record before you. I reviewed it. I think the record
17 speaks for itself.

18 This Court was -- I now actually miss having each of
19 these counsel here. I've had a few more trials, so you are
20 missed.

21 At the time I was pretty firm -- I don't think Mr. Basile
22 would disagree. I was firm, to say the least, with Mr. Basile
23 throughout the trial. At that point when he was making his
24 closing arguments, I might have had a like a warning response to
25 it. It kind of sounded like he was approaching it. I overruled
26 Mr. Schumann or Mr. Reid's objection, but I asked him to watch
27 himself, and that was in front of the jury.

28 He finished his example, never asked the jurors to put

1 themselves in the plaintiff's shoes.

2 I know counsel may have cited some case law, but I don't
3 think that's anything to grant the motion for new trial.

4 There was also additional discussion about the Golden
5 Rule and to send a message. I saw this as argument.

6 The opposition mentions in its opposition -- the moving
7 papers mention the \$500 million military planes.

8 I don't see anything there. You're entitled not to a
9 perfect trial. You're entitled to a fair trial. In the grand
10 scheme of things, I don't think any of those comments really
11 exceeded the bounds allowed.

12 Some of those arguments can really backfire. Some might
13 think, Mr. Basile -- some might think that they're cheesy or
14 maybe they don't take counsel so seriously with them.

15 But this was in the context of a wrongful death case, so
16 ultimately it's up to counsel to make their own determination on
17 what the appropriate tone would be for this type of case and
18 with this particular jury. It seems like Mr. Basile struck the
19 right tone.

20 Mr. Kressel?

21 MR. KRESSEL: I'll just make a record.

22 First of all, just to clarify, we haven't raised a
23 separate attorney misconduct argument or a separate evidentiary
24 argument. Those are just within the context of looking at
25 reasons why the verdict was excessive.

26 Within that I hear what the Court is saying about the
27 arguments. I just want to return to this Golden Rule argument.

28 That was unmistakably a Golden Rule argument even if he

1 didn't say put yourself in the plaintiffs' shoes. Even if, as
2 he did, he said what do you think, you know, Ms. Collins and
3 Mr. Collins would do if presented with this offer.

4 If the Court thinks about it, the jury never saw any
5 evidence about how the two plaintiffs here make decisions,
6 respond to offers, anything like that. That wasn't what they
7 were supposed to be basing the decision on.

8 If you say to the jurors, well, do you think the
9 plaintiffs would have accepted a deal for \$32 million, it's just
10 completely outside the evidence, and it is just asking the
11 jurors to put themselves in the plaintiffs' shoes. Because
12 there is no way when you're sitting in that box to answer that
13 question except to say would I accept that deal? There was not
14 evidentiary basis for it. So it's implicitly asking the jurors
15 to say what they would accept.

16 Again, again, while we're not arguing separate
17 misconduct, do we think that this is one of the reasons the
18 jurors arrived at an excess verdict. It encouraged them to
19 think of this as something that there was almost no remedy for.
20 What would I accept to lose a loved one personally? Nothing,
21 nothing. That's what led to the excessive damages here.

22 He didn't say send a message, but he said let your
23 verdict ring loud and clear. Let this be an indelible reminder.
24 Again, we're looking at terms not of misconduct but did this
25 tend to lead to excessive damages.

26 When you combine that with all the references to
27 corporate shell games, Mitsubishi is at the top of the food
28 chain, and then you get this argument about let your verdict be

1 a message to the largest power plant of its kind in the world,
2 these kind of arguments were likely to and in this case did
3 inflame the jury to award extremely excessive damages in this
4 case.

5 THE COURT: Thank you for clarifying that, Mr. Kressel.
6 Mr. Basile, anything you wish to add?

7 MR. BASILE: Yeah. I just want to point out a couple
8 things on what's being said on the other side and how that went
9 down procedurally, your Honor.

10 The offer that I said would they accept it, that was in
11 my rebuttal argument, your Honor. I submit that was opened up
12 by defense counsel's argument.

13 If this Court recalls, defense counsel stood up and said
14 Mr. Basile wanted a million dollars a year, and I went out over
15 at lunchtime and saw that he could buy all these La Quinta homes
16 for 64 million. He could buy 10 homes in La Quinta, and he
17 named some exclusive areas here. He could buy all those homes.
18 He was saying that was too much money.

19 So in rebuttal I can say he said that was too much money.
20 Do you think that's too much money for these people? Do you
21 think they would have taken that if they would have said that's
22 what you're going to get?

23 So he kind of opened the door for that type of argument
24 to do that. That's when I did it. I didn't do it in my initial
25 closing.

26 Now, the other thing about -- they quote me. In fact, I
27 was careful. If you remember, I said I wrote this down to read
28 to you about let your verdict -- when I said that, let your

1 verdict be an indelible reminder about safety at the largest
2 power plant that they said in the world, that was about safety.

3 It wasn't let your dollar verdict be an indelible
4 reminder. No, finding fault that they were undertaking safety
5 at the largest power plant in the world. You read my exact
6 quote in that. I was very careful to write it out and read it,
7 what I did there.

8 It was not referring to money. It was not referring to
9 to a number or anything to send to them or anything. It was
10 about safety at that power plant, which from my mini opening,
11 voir dire, all the way through was perhaps the main theme of
12 this case.

13 THE COURT: Thank you, Mr. Basile.

14 MR. BASILE: One last thing, too.

15 The other thing, when you're looking at argument, and I
16 think the Court has already done this -- I'm just doing this for
17 the record, your Honor. When you look at the totality, I mean,
18 we had 12 witnesses. We had a month of trial. We had
19 everything. And a couple sentences that I say in rebuttal is
20 going to warrant a new trial?

21 I mean, that never happens. It has to be a whole
22 continuing theme or problem.

23 So viewing the whole record, the Court is right on. I
24 did not do anything improper there to influence that.

25 Thank you.

26 THE COURT: Anything further on the improper argument
27 allegation?

28 MR. KRESSEL: I'm sorry, your Honor.

1 Just in reply, a Golden Rule argument is just as
2 prejudicial in terms of damages whether it's on the opening or
3 rebuttal.

4 The fact the defendant tries to argue for lower damages
5 doesn't open the door to suddenly asking the jurors to put
6 themselves in the plaintiffs' shoes, which is what happened
7 here.

8 One other point I wanted to make about the argument that
9 I missed the first time around is that this variant of the
10 Golden Rule argument also implicitly asks the jurors to award
11 some for pain and suffering.

12 Because the question proposed to the jury wasn't just,
13 oh, if the plaintiffs had received a call the night before the
14 accident to take \$32 million in exchange for the loss of the
15 loved one, would they have taken it.

16 The way the argument was praise phrased was they were
17 offered \$32 in exchange for the loss of the loved one and this
18 whole litany of personal mental anguish that plaintiffs argued
19 that -- or counsel argued that the plaintiffs had to undergo by
20 virtue of the litigation. They were going to have to sit
21 through depositions. They were going to have to have their
22 credibility questioned. They were going to have to wait all
23 this time. All of the things that are attendant to litigation.
24 But that's going to the pain and suffering of plaintiffs, and
25 that's an impermissible category of awards.

26 Again, that's why I'm stressing -- I'm not arguing that
27 this was attorney misconduct in the abstract, but that this kind
28 of argument led to the inflated damages award that we see here.

1 THE COURT: Thank you, Mr. Kressel. That's a good point.
2 The only thing the Court will add just from its
3 recollection is that -- I'm sorry, Mr. Kressel?

4 MR. KRESSEL: I don't know if you wanted me to go to
5 evidence.

6 THE COURT: We'll address that last.

7 The only other thing I'll add to that is I think just as
8 much as perhaps Mr. Basile's argument may have contributed to
9 the damages allowed here, and it is a strategy, so I don't want
10 to disregard it, but I mentioned earlier the tone. I also
11 mentioned Mr. Kressel and Mr. Kressel's approach, the way --
12 your logical arguments. There is an appeal to that. I'm
13 telling you you're missing your calling.

14 The way that defendants presented in their opening and
15 closing some of the decisions they decided to make, for
16 example -- Mr. Basile mentions it. I'm not sure if it was in
17 the opposition or in the moving papers, but you mentioned that
18 example by Mr. Schumann about the houses, about oh, during my
19 lunch break I went on Zillow or something and looked up real
20 estate in the local area.

21 Again, this as wrongful death suit. You're dealing with
22 the loss of an individual. And defense counsel decided to bring
23 up local real estate prices and that perhaps the plaintiffs here
24 could, you know, buy up a whole street of houses based on any
25 damages awarded for their loss.

26 Some might argue that even more than plaintiffs' argument
27 that defense's argument in that respect might have contributed
28 to the verdict here -- not to the verdict, but to the amount of

1 damages allowed.

2 So that was something I took note of. Mr. Schumann
3 presents very well. So did Mr. Reid, Mr. Kressel. But a
4 certain amount of responsibility needs to be taken, too, for the
5 strategy maybe used in the case because in opening statements
6 there was something as well. I just saw it actually when I was
7 in my notes, just by chance.

8 There was a comment in opening statement that almost
9 seemed to -- I wouldn't say it was callous, but dismissive. Oh,
10 the plaintiffs' involvement here, an individual did it to
11 themselves entirely. I know that was an argument, but there was
12 a certain amount of finesse that was lacking in there arguably.
13 Maybe the jury didn't think anything of it.

14 Finally, evidence, Mr. Kressel?

15 MR. KRESSEL: Yes.

16 Yes. So, again, our discussion of the evidence is not in
17 support of a request that we grant a new trial based on any
18 particular evidence or ruling. It's just in service of what the
19 Court's ultimate task here is on this issue, which is to
20 determine if the damages were excessive.

21 Our point here is that this evidence also contributed to
22 what is clearly a verdict that was influenced and driven by
23 passion and prejudice on the part of the jurors.

24 I think with this case, you know, the hearing on this
25 damages evidence was really instructive because the Court
26 expressed a concern that if there was too much of this type of
27 evidence, it would inflame the jury's passion and prejudice.

28 You know, the Court certainly went through carefully and

1 did Rule 352 rulings, but, again, the question here isn't
2 whether the rulings was improper. The question is whether the
3 verdict we're seeing is a result of passion and prejudice.

4 I think with hindsight it's clear that with this jury and
5 this amount of evidence -- particularly the many photos, so many
6 witnesses, the videotape that was a first-person video, where
7 they're hearing the decedent's voice and seeing themselves
8 exactly in the decedent's point of view, so to speak, That this
9 inflamed the jury's passion and prejudice and it did lead in
10 part to the excessive damages.

11 THE COURT: Thank you, Mr. Kressel.

12 As you mentioned, we did have a separate hearing on that.
13 We went through and did a 352 analysis on each of the items
14 because I think at one point they wanted to introduce -- when I
15 say they, I mean Mr. Basile -- wanted to introduce I believe
16 like 50 exhibits and the Court said that's not going to happen.

17 They submitted this separate sheet. I just saw it.
18 Basically, the Court had the -- here it is -- had them go
19 through. It's exhibits -- it's in the mid 200s to low 300s, but
20 you're not going to be able to introduce all of these. You
21 better go through and take out some specific ones.

22 We focused it on those specific to Ms. Collins and then
23 the others to Christopher Collins.

24 The flip side of it is that if I don't allow any of those
25 in, defense, which they should -- any attorney in that position
26 would point out, you know, this is an estranged relationship.

27 If Christopher Collins hadn't spoken to his father in ten
28 years, defense would, rightfully so, be arguing there is no

1 evidence that they've spoken recently, that they had any ongoing
2 relationship for his loss of love and companionship. Those are
3 all arguments that would be made.

4 So the plaintiff is certainly entitled to introduce some,
5 and I do feel that the Court thoughtfully went through. Again,
6 the Court was firm with Mr. Basile in discussing those items and
7 excluding many of them.

8 I'm looking here. There is like a bobblehead. There are
9 a lot of nostalgic items from Christopher Collins' young
10 baseball career.

11 I think we just allowed one of them in. So I understand
12 this -- I don't disagree, Mr. Kressel. I think they did
13 contribute to the damages, but they were also relevant.

14 MR. KRESSEL: If I could just make two points.

15 First of all, let me put it this way. If plaintiffs had
16 shown up with a hundred exhibits and the Court admitted 50, that
17 doesn't mean that it necessarily was, you know, the right
18 amount.

19 THE COURT: A numbers game, right?

20 MR. KRESSEL: Yes. So they came with a lot and we
21 appreciate that the Court did not let all of them in.

22 But, again, the question is just did what come in and
23 with this particular jury did it turn out to be too much? And
24 we argue it is.

25 I also would just make the point I'm not sure about the
26 Court's assumption that if less evidence was admitted that the
27 defense would have argued something contrary to the truth of the
28 strength of the relationship here.

1 All I would just point out is that the defense did not
2 cross-examine the damages witnesses, so they didn't make an
3 attempt to dispute the testimony that was coming in.

4 So I don't think that shows they would have capitalized,
5 had less, less testimony, less photographs, maybe not the video.
6 I don't see a suggestion that they would have argued there was
7 no family relationship here.

8 THE COURT: Okay. Thank you.

9 I think the record will speak for itself in that.

10 Did we have a court reporter during that discussion?

11 MR. KRESSEL: Yes.

12 THE COURT: So that's contained in the record.

13 Specifically, we addressed the relevancy of each. Some
14 of them had to do with beginning of the relationship with
15 Ms. Collins, and then we excluded pretty much everything in
16 between for a number of years. Then up to showing something
17 more recent in time to the incident, showing, still, the
18 viability -- what is the word I'm looking for? The recency of
19 the relationship.

20 And we did the same with Christopher Collins. So there
21 was something early on, that he was an absentee father in his
22 early years and now here comes an adult child trying to join in
23 as a plaintiff in a case. This is a father actively involved in
24 his son's life all the way up until a couple weekends before
25 with the voicemail.

26 So the record will reflect that 352 analysis.
27 Ultimately, if the Court was wrong, if we were wrong, we will
28 hear about it.

1 Anything further, Mr. Kressel?

2 MR. KRESSEL: Well, the last two points in our motion
3 are, again, more points related to the excessiveness of the
4 verdict.

5 So, again, first of all, the sheer size of the verdict
6 has to be something that the Court would take note of.

7 Plaintiffs have cited some cases that say the size alone
8 does not necessarily determine the damages are excessive, but
9 again, we're dealing with \$150 million here. That number alone
10 requires a new damages trial or at least a remittitur.

11 Then our other point is, again, there is very strong case
12 law when the jury awards significantly more than the plaintiffs'
13 request, that's another indication that the damages are
14 excessive.

15 Here the request was essentially \$64 million.

16 Now, we would argue that that is still excessive, but for
17 the jury to turn around and more than double that amount again
18 indicates that they're not looking at what even plaintiffs
19 thought was supported by the record or what plaintiffs were
20 willing to contend was supported by the record. Instead, they
21 acted on passion and prejudice and more than doubled the amount
22 owed.

23 In opposition, plaintiffs argued that we said, well,
24 64 million is the least you could do. It's the least you could
25 do. But be that as it may, that doesn't change the fact that
26 the jury more than doubled what was already an astronomical
27 amount and reflects passion and prejudice and sympathy on the
28 part of the prejudice and just reflects an excessive verdict is

1 not supported by the evidence and should be remitted or retried.

2 THE COURT: Mr. Kressel, on the reduction of the verdict,
3 if the Court were to reduce it -- as you propose in your papers,
4 that either the Court reduce it and then plaintiffs will then
5 have -- between a motion for a new trial on damages or accepting
6 the Court's reduction, or can the Court just reduce and not
7 leave an election?

8 MR. KRESSEL: The Court has to leave an election, but the
9 order will say that it's a new trial -- if the Court only wants
10 to retry damages, it would be a new trial on damages unless
11 plaintiffs accept a remittitur to a certain amount or of a
12 certain amount. And the Court should state the date by which
13 they would respond to that. Then they have the election.

14 If they accept the remittitur, then what happens is we
15 can still appeal from the denial of new trial that emerges with
16 the judgment to the extent that we're still aggrieved and then
17 plaintiffs can file a cross-appeal arguing -- even though
18 they've accepted the election, they can in that case file a
19 cross-appeal arguing the judge got it wrong and the original
20 number should be reinstated.

21 If the plaintiffs reject the remittitur, then a new trial
22 order goes into place. In that situation, the parties would be
23 deciding who is aggrieved and who wants to appeal.

24 THE COURT: I'll save you a little bit of time,
25 Mr. Basile. You will have an opportunity in a moment.

26 David, are you still okay?

27 THE REPORTER: Yes, I'm fine, your Honor.

28 THE COURT: You weren't here for the first hearing.

1 Okay.

2 So the Court is inclined to reduce the verdict and give
3 plaintiffs an election. It's not a decision the Court reaches
4 lightly.

5 The jury was asked to make a determination first on
6 liability and then on damages, and they were asked to place an
7 amount on the loss to the two plaintiffs, Denise Collins and
8 Christopher Collins. Now defense is saying it's an excessive
9 verdict and asking the Court to reduce it.

10 The Court is being asked essentially to put an amount on
11 it as well. It's not an enviable task. It's better left in the
12 hands of the jurors, frankly. What price do you put on it? I
13 could double the value and arguably it could be said that it's
14 still not enough. So we're dealing with a very subjective
15 calculation here.

16 But in light of Mr. Basile's arguments in terms of the
17 minimum amount and just in terms of a comparison of verdict
18 amounts, the Court is inclined to reduce it to an equal amount,
19 50 million, that each plaintiff -- so it would be reduced to a
20 hundred million.

21 I know that's probably still going to be appealed, and of
22 course everyone has the right to exercise their appellate
23 rights.

24 In no way is that a reflection that the loss here wasn't
25 worth that much or anything. This is just in comparison of
26 verdicts in California for these type of cases and the facts in
27 this case.

28 So the Court is inclined to reduce it in terms of the

1 amount. And whether I reduce it, Mr. Basile, would you like to
2 be heard?

3 MR. BASILE: Yes, thank you, your Honor.

4 Deputy Lee, may have it?

5 Your Honor, I just want to show four simple slides from
6 my closing argument. That is all, your Honor. It will be very
7 short.

8 While he is doing that, your Honor, I just want to make
9 clear for the record about the damage exhibits.

10 We did list a whole bunch of them. There were over 50.
11 But with your pretrial order we have to list exhibits. You know
12 how trials go. You don't know what witness you're going to
13 have. We don't know what witness. So we never intended to
14 admit all of those.

15 I thoroughly agree that what was admitted was
16 appropriate. So I just want to make clear we never intended to
17 admit all of those, depending on how it went.

18 So I appreciate all this Court has done for putting up
19 with me at times, but this one is going to stay with me for a
20 long time, this trial.

21 With that said, I just want to go through this. It will
22 only take me a few minutes, your Honor.

23 People have come up to me and said how did you get a
24 \$150 million verdict on a wrongful death case. I mean, the
25 answer is simple, and I think the Court has this.

26 MR. KRESSEL: I'm sorry, your Honor. It just took me a
27 second to formulate here, but were these slides included as
28 exhibits with the post-trial motions?

1 MR. BASILE: No. They were part of the closing argument.
2 They were used in closing argument.

3 THE COURT: When you brought them up, in my mind I was
4 thinking there's going to be a request to include them as
5 exhibits as part of this hearing.

6 MR. KRESSEL: To include them.

7 Just for the record, I'm going to register an objection.
8 I haven't seen evidence or demonstratives presented at a
9 post-trial motion hearing before.

10 THE COURT: Let me ask you. I don't think we need the
11 slides, Mr. Basile, because otherwise you'll have to have hard
12 copies available.

13 MR. BASILE: I have the hard copies available. They're
14 right here.

15 THE COURT: I don't need them.

16 MR. BASILE: Okay, take it down. Take it down.

17 THE COURT: It's fine, Mr. Basile. I don't mean it in a
18 negative way, but in order to not complicate things.

19 MR. BASILE: Do you want me to use them or not?

20 THE COURT: To keep the record clean, let's not use them.

21 MR. BASILE: I can do that. I'm sure the Court will
22 remember what I said.

23 When I'm asked where the \$150 million came from, the
24 answer is simple, simple. Can you think of anything more
25 valuable in the human experience than the relationship between
26 life partners, a husband and wife, or the relationship between a
27 parent and child?

28 I ask that rhetorically to anyone who asked me about this

1 case. No one has come up with a different answer.

2 Now, we even mentioned in opposing -- we searched and in
3 the opposing papers we tried to say, well, maybe good health
4 might be something more valuable than those relationships, but
5 what sense is good health if you don't have relationships to
6 share? So that's the starting point here. Nothing is more
7 valuable.

8 I submit that in over 40 years of practice and a number
9 of these cases, wrongful death non-economic damages have been
10 vastly, vastly undervalued in my career. And I hope, for
11 whatever it's worth, this might contribute to the reality of
12 that loss being the greatest.

13 Now, I'm speaking to the choir because you told me what
14 you were going to do. It's clear throughout -- and that's what
15 the slides were. I had the jury questions on a slide. Each
16 slide said the least amount, but I'm leaving it up to you for a
17 just amount. That's what I did. That was the empowerment.
18 That was their call.

19 I said over and over repeatedly least amount for full
20 accountability for the harm. That was the tenor of my argument
21 the whole way through. On each of those slides it had that.

22 Now, to arrive at that, which often isn't done, 3900 of
23 CACI says they must award for each element of harm -- must for
24 each.

25 There were nine elements for Christopher, ten elements
26 for Denise over an estimated 32 years of life. But I think
27 there was testimony -- don't hold me to this, but I think there
28 was testimony that his mother is still alive, in her nineties,

1 so they could have assumed even longer than 32 years.

2 So you have nine elements for each over that period of
3 time for that.

4 And, you know, I'll say this about what we heard of
5 Daniel Collins. I hope you see -- and I know you're rather new
6 to the bench -- I hope you see just as powerful testimony in
7 other cases people seeking justice as here, but when Gianna
8 O'Hara testified as an intern in medical school, where she was
9 kind of callous towards marriage and she observed these people's
10 relationship and how it changed her attitude. When Brian
11 Caprino, Christopher's best friend, was struggling with his own
12 relationship with his dad, saw the relationship with
13 Christopher, pretty powerful stuff. When Beth Goodman, I asked
14 her what was his best quality and she said he loved out loud to
15 everyone -- I submit that in your career you might find equal,
16 but you won't find better. Father and husband.

17 You might find equal but you won't find better.

18 THE COURT: Thank you, Mr. Basile.

19 I appreciate where you're going with this. The strength
20 of plaintiffs' case was relationship. The decedent with his
21 wife, with his son. This was also testimony from his co-workers
22 about he was one of the original employees there. I think
23 someone said no one knew the procedures there better than him.
24 He was trusted.

25 That was the strength of your case. It's a calculation
26 that defense, I'm sure, took into consideration.

27 You were dealing with a very likeable individual on the
28 other side. I think that's a given considering the jury's

1 verdict here.

2 MR. BASILE: That is all I'm saying.

3 THE COURT: So I understand the strength of your case and
4 you don't need to convince is court of it, and ultimately the
5 jurors.

6 MR. BASILE: My last thing, and I know \$100 million is
7 \$100 million. That's what you're reducing it to.

8 But I think there are a lot of cases that say you should
9 compare what other verdicts are, that each one has to be judged
10 individually on what it is.

11 I'm not asking you to change. I trust you.

12 In fact, if you hadn't already told us that's what your
13 intention was, I was going to invite you and trust you, just as
14 this jury was empowered to do it. Your Honor, this Court is
15 empowered to make the call and I appreciate that because I
16 handed it off to them and now I'm handing it off to you and you
17 made the call.

18 So thank you, your Honor.

19 THE COURT: Mr. Kressel, anything you wish to add?

20 I'm still going to stick with the reduction. I know
21 you're still going to ask a further reduction on that.

22 The Court has made its record.

23 In no way is this a reflection that I don't believe the
24 loss to plaintiffs isn't worth 150 million. I don't think 300
25 would be enough. Just in the context of, you know, a wrongful
26 death suit, I do think it's appropriate for the Court to reduce
27 it, but it's not a reflection on anything else.

28 Mr. Kressel?

1 MR. KRESSEL: Thank you, your Honor.

2 Yeah, for our record, we appreciate the Court giving us
3 consideration and granting us some relief on this issue, finding
4 excessive damages. Obviously, DGC still thinks the damages are
5 excessive and we'll be able to take that up on appeal.

6 If the Court would permit me just to go over some
7 procedural issues.

8 THE COURT: Yes.

9 MR. KRESSEL: For the Court to have this order be valid,
10 it has to be entered in writing on the minutes of the Court on
11 or before November 1st. That order must specify in writing the
12 statutory grounds for the relief.

13 The written order also needs to include the specification
14 of reasons, which if the decision is limited to excessive
15 damages it's just a discussion of the parts of the record that
16 lead to the Court's damages decision.

17 The statutes do provide that that written specification
18 of reasons can be entered ten days after the date of the order.
19 But, again, that specific is necessary for the order to be
20 valid, so it's sooner than later sort of, to everyone's benefit.

21 We wrote out an example. If the Court doesn't enter the
22 order to Tuesday, the 1st, that would mean the written
23 specification of reasons isn't due until November 14th.

24 But, for example, if the Court were to enter the order
25 today, then it's ten days from today. I don't have the
26 calculator in front of me, but it would not be November 14th.

27 THE COURT: It will be entered today.

28 MR. KRESSEL: Thank you.

1 THE COURT: Okay. So I believe that's -- thank you,
2 Mr. Kressel.

3 The Court will have in the minutes -- the minute order
4 will reflect the award will be reduced.

5 There weren't any economics. It was -- I can't remember
6 on the damages, were they broken up into future and past?

7 MR. BASILE: Yes, your Honor.

8 THE COURT: So for each plaintiff it's 25 million past,
9 25 million future, so for a total of 50 million for Denise
10 Collins and Christopher Collins.

11 MR. BASILE: Each?

12 THE COURT: Yes. So there is parity there.

13 And then the reason for it is that although I understand
14 that plaintiffs' counsel argued that at the very least it should
15 be a million for each year of, I think, future life expectancy,
16 the 32 million, that even at 64 million, the verdict was almost
17 two and a half times the minimum suggested by plaintiffs'
18 counsel.

19 So that is what will be in the minuter order.

20 We also have today's transcript.

21 MR. SULLIVAN: Can I clarify one issue, your Honor?

22 THE COURT: Yes, Mr. Sullivan.

23 MR. SULLIVAN: There was the three percent comparative,
24 or there was two percent against DGC Ops and one percent against
25 them.

26 Because the net verdict in this case was 144,900,000, I
27 take it the Court is reducing that number of 144,900,000 down to
28 100 million so it reflects the reduction for the allocation of

1 fault of the other parties?

2 THE COURT: Mr. Kressel?

3 MR. KRESSEL: Well, the jury's verdict, such as it was,
4 was 150 million, allocated 97 percent to DGC.

5 I'm not sure how the Court was calculating, but if the
6 remittitur is related to the verdict, then we would ask that
7 97 percent be allocated to DGC on this allocation of fault.
8 With a verdict this high the three percent, it does make a
9 difference.

10 THE COURT: So three percent of 100 million is -- three
11 for each. So we'll reduce the verdict to 104 million. And then
12 with the allocation of fault that should bring it down closer to
13 100 million.

14 MR. BASILE: So the net is a 100 million.

15 THE COURT: Close to it. It will be 26 million -- this
16 is so subjective. I don't have a calculator here to go, okay,
17 this is how much we get for loss of this.

18 I mean, to keep the math simple, 26 million for past,
19 26 million for future for each plaintiff. That total, unless my
20 math is wrong, should be 104 million.

21 It's 104 million. And then you would add --

22 MR. BASILE: Subtract the three percent.

23 THE COURT: Subtract, yes, the allocation of fault. That
24 would get you closer to the net of 100.

25 MR. SULLIVAN: Thank you for the clarification, your
26 Honor.

27 THE COURT: Your election, Mr. Basile or Mr. Sullivan?

28 MR. BASILE: May we have a moment?

1 THE COURT: Oh, sure. I was going to give you a time.
2 You can discuss it further with your clients.

3 MR. BASILE: I thought you were about to ask us.

4 THE COURT: I wasn't going to ask you to make a decision
5 now. If you would like to, you're welcome to.

6 Otherwise, we'll do -- well, by November 1st. Let's keep
7 it short.

8 MR. BASILE: Your Honor, I think if we took a break for
9 ten minutes, I might be able to make the election this morning
10 if that would expedite things.

11 THE COURT: Mr. Kressel, does it make a difference to
12 you?

13 MR. KRESSEL: No, your Honor.

14 THE COURT: It's 10:40. Let's come back at 11:00.
15 Then we shouldn't be here much longer after that.

16 MR. KRESSEL: No, your Honor.

17 THE COURT: Thank you.

18 (Recess.)

19 THE COURT: We're back on the record. Collins versus DGC
20 Corporation. I'm sorry, I keep wanting to call it the case we
21 just finished.

22 Mr. Basile, did you have an opportunity to speak with
23 them?

24 MR. BASILE: Yes, thank you, your Honor. After speaking
25 with Denise and Chris -- we appreciate the Court's efforts
26 throughout this case. They wanted me to thank you on their
27 behalf on that. And they've elected to accept the remittitur in
28 lieu of having the new trial granted.

1 THE COURT: That will be reflected in --

2 THE CLERK: I'm sorry, your Honor. I could not hear
3 Mr. Basile.

4 THE COURT: They've accepted the remittitur of the Court.
5 So there will also not be an election for a new trial on
6 damages.

7 Anything else you need the record to be clear on for your
8 statutory deadlines, either Mr. Reid or Mr. Kressel?

9 MR. KRESSEL: Just the same, that the written record has
10 the specifications on the reasons, et cetera.

11 THE COURT: That's what I stated before.

12 MR. KRESSEL: Yes.

13 THE COURT: Anything further?

14 MR. SULLIVAN: I'll prepare another amended judgment to
15 submit for filing, your Honor.

16 THE COURT: Please.

17 If you could have that in before Tuesday, or by Tuesday
18 end of day.

19 MR. SULLIVAN: Yes, I should be able to do that.

20 THE COURT: It's Thursday. Thank you for everyone's
21 time.

22 I understand there are still appeals, but at some point I
23 hope there is some finality to this for both sides.

24 I think this case had red all over my screen, which means
25 it's very old.

26 Thank you for your patience and your time this morning.

27 (Proceedings concluded.)

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REPORTER'S CERTIFICATE

DENISE COLLINS and CHRISTOPHER)	
COLLINS,)	
)	
Plaintiffs,)	
)	
vs.	)	CASE NO. PSC1901096
)	
DIAMOND GENERATING CORPORATION,)	
)	
Defendant.)	
)	

I, DAVID A. SALYER, Certified Shorthand Reporter
No. 4410, hereby certify:

On October 27, 2022, in the County of Riverside, State of
California, I took in stenotype a true and correct report of the
testimony given and proceedings had in the above-titled case,
pages 2951-3012, and that the foregoing is a true and accurate
transcript of my stenotype notes and is the whole thereof.

DATED: Palm Springs, California; January 30, 2023.



DAVID A. SALYER, CSR 4410