

1 The parties may be seated.
 2 All right. So you are Wiley Fairchild.
 3 Correct?
 4 THE JUROR: Wiley Fairchild, yes.
 5 THE COURT: And you indicated to my
 6 bailiff that you know Mr. Sneesby. Is that correct?
 7 THE JUROR: I don't technically know him.
 8 I went to high school with him. He was a -- an
 9 upperclassman when I was in high school.
 10 THE COURT: Okay.
 11 THE JUROR: In the '80s; so it was a
 12 long -- that was, like, the last time I had seen him.
 13 THE COURT: All right. And did you guys
 14 hang out together in high school?
 15 THE JUROR: No. We had the same --
 16 THE COURT: So you weren't part of the --
 17 THE JUROR: We had the same activity, I
 18 guess you could say, skateboarding.
 19 THE COURT: And did you hang out
 20 together?
 21 THE JUROR: No. I just recognized the
 22 name and knew he was, like, one of the guys I'd
 23 skateboard with.
 24 THE COURT: And when was the last time
 25 you saw him?

1 or went to the same high school?
 2 THE JUROR: No.
 3 THE COURT: Would you give -- would you
 4 give less?
 5 THE JUROR: I would be equal.
 6 THE COURT: Equal?
 7 THE JUROR: Yeah, it wouldn't really
 8 matter that I knew him or anything.
 9 THE COURT: Okay. So you would give
 10 Mr. Sneesby's testimony the same weight as any other
 11 witness in this case?
 12 THE JUROR: Yeah.
 13 THE COURT: Okay. All right. Thank you,
 14 sir.
 15 THE WITNESS: Yes, thanks.
 16 (Juror exits.)
 17 THE COURT: All right. You may be
 18 seated.
 19 And so we're outside of the presence of
 20 the jury. Mr. Fairchild is back in the jury
 21 deliberation room.
 22 All right.
 23 So, Mr. Hunt, anything you want to
 24 address with the Court with regard to Mr. Fairchild?
 25 MR. HUNT: No. I think he's clearly -- I

1 THE JUROR: Back in the '80s.
 2 THE COURT: So it was a long time ago.
 3 THE JUROR: '90s. Yeah.
 4 THE COURT: Okay. Okay. So I'm going to
 5 have some follow-up questions for you.
 6 THE JUROR: Uh-huh.
 7 THE COURT: The fact that you went to
 8 high school with Mr. Sneesby, would that prevent you
 9 from being fair and impartial in this case?
 10 THE JUROR: No, not at all.
 11 THE COURT: Not at all? Okay.
 12 Can you set aside the fact that you went
 13 to high school with him and decide this case based on
 14 the evidence presented in this case alone?
 15 THE JUROR: Yes.
 16 THE COURT: And the fact that you went to
 17 high school with Mr. Sneesby, could you decide this
 18 case based on the law, as I instruct you?
 19 THE JUROR: Uh-huh.
 20 THE COURT: That's a "yes"?
 21 THE JUROR: Yes.
 22 THE COURT: Okay. And my final question
 23 to you, would you give Mr. Sneesby's testimony
 24 greater weight than any other witness in this case,
 25 given the fact that you went to high school together

1 mean, we appreciate him letting us know, but
 2 certainly nothing that would disqualify him as a
 3 juror.
 4 THE COURT: And Mr. Tebo?
 5 MR. TEBO: We concur, Your Honor.
 6 Nothing he indicated that gives us pause.
 7 THE COURT: Okay. Let's go ahead and
 8 bring in the jury.
 9 And let me just note for the record,
 10 outside the presence of the jury, I'm not going to
 11 excuse Mr. Fairchild.
 12 (Jury enters.)
 13 THE COURT: We're going to continue with
 14 opening statements.
 15 Mr. Tebo, you may proceed.
 16 MR. TEBO: Thank you, Your Honor.
 17 Good morning, ladies and gentlemen.
 18 THE JURY: Good morning.
 19 **MR. TEBO: Thank you for being here.**
 20 My name is Christopher Tebo. I go by
 21 Chris. I am one of the lawyers representing the
 22 corporate defendants in this case.
 23 And you've already heard a very good
 24 outline of the evidence that the plaintiffs are
 25 focusing on and will bring into court for your

1 consideration.

2 I want to describe for you -- really,
3 three things I would like you to keep in mind while
4 you are weighing the evidence that's provided by both
5 of the parties. I would like you to think of three
6 themes during the presentation of the evidence and
7 how these three themes apply as the evidence is
8 provided to you. And these are the themes of
9 experience, responsibility, and safety, because these
10 are three key elements to the evidence that will be
11 presented to you by both parties.

12 As it relates to experience, you're going
13 to hear testimony about Mr. Razo and his background
14 in this industry. You're going to learn that
15 Mr. Razo was a group of a small cadre of individuals
16 who had the specialized skills to operate this Raptor
17 Hydrascope on a film set. You've already heard why
18 that's part of the case, and that's because the film
19 production company decided to rent this piece of
20 equipment but had to have a specialized operator
21 accompany the equipment to operate it while on the
22 production that day.

23 And in this case, it wasn't just one
24 operator, was it? Joe Datri, you're going to hear
25 testimony from him. Mr. Datri was a second qualified

1 film requires an enormous amount of planning because
2 one of the elements in this film is wildfire. And in
3 order to depict wildfire on the screen, special
4 effects have to be brought in; people who are experts
5 in handling fire in a controlled fashion. And that's
6 safety, right? That is the safety aspect of a film
7 like this that's dealing already with a highly
8 dangerous subject.

9 You will also hear evidence that Mr. Razo
10 arrived on set for his call at 5:30 in the morning;
11 he arrived there just prior to that time with
12 Mr. Datri; and he didn't appear to know exactly what
13 the timing of the use of the Raptor was going to be.

14 Now, one of the pieces of evidence will
15 suggest that the director of photography made a snap
16 decision that morning. "I'm going to change a shot.
17 I'm going to change a piece of equipment that's
18 required for the shot. I need the Raptor." That may
19 have occurred.

20 But back to this theme of experience, why
21 would that change have affected Mr. Razo in the
22 slightest? It happens all the time. Decisions get
23 made that you're not necessarily -- as an individual,
24 a specialized operator of a piece of equipment,
25 you're not necessarily involved in that decision.

1 operator. So working that piece of equipment that
2 morning were two highly seasoned professionals,
3 people with specialized experience.

4 So, yes, they only come on the set for a
5 few days at a time. They're not part of the
6 month-long, sometimes four-, six-month-long crew and
7 cast that are making this film from start to finish.
8 They're brought in for a very specialized purpose,
9 and that's to operate this very unique piece of
10 equipment.

11 Now, Mr. Razo was on site, along with
12 Mr. Datri, on the morning of June 20th, 2016. That
13 was a Monday morning. It was the first day of
14 filming at Pajarito Mountain, but it was not the
15 first day of the entire production. It was day 6 of
16 the entire production.

17 And, yes, there had been activities prior
18 to Mr. Razo coming on scene that related to scouting
19 the location, figuring out where people were going to
20 be staged with their equipment down below at the
21 parking area, figuring out where shots were going to
22 be taken -- because, again, this is a movie about
23 firefighters working in remote parts of the country.
24 And it is based on a true story. It's based on a
25 tragic story. But by its nature, the subject of the

1 You're told, "We need this piece of equipment. We
2 need it up now because we're going to set up for that
3 first shot."

4 But this is a typical Monday morning.
5 It's a typical Tuesday morning. It's a typical
6 morning on any film set. Any film production. It's
7 not a scurry around at the last minute. It's a
8 recognition that we're going to do something and we
9 need to put all of our equipment in place to do it.
10 And that's what the evidence is going to show you.

11 You're going to hear testimony from the
12 executive producer of this movie, Ellen Schwartz, who
13 was on location that day. And what she's going to
14 reiterate is that this was a production dealing with
15 a subject that already has everyone's antenna up for
16 ensuring a safe set. So every morning, the first
17 assistant director, Bruce Franklin, holds a safety
18 briefing. And it's not a safety briefing to give
19 specific direction to the operator of the Raptor
20 crane unit about which route to take or not take to
21 put the equipment on top of the mountain. It's a
22 safety briefing about the whole range of dangers of
23 working out there on Pajarito Mountain.

24 So, for example, snakes, other kinds of
25 wildlife. Exposure, varying temperatures. Gets

1 pretty hot up there above treeline or outside of the
2 shade of trees on Pajarito Mountain in June. Wear
3 enough sunscreen. You know, that sounds so basic.
4 And I'm not trying to imply that somehow not putting
5 on sunscreen is the equivalent of what happened to
6 Mr. Razo, but that's something that people have to be
7 aware of when they're working in that environment.
8 Hydration.

9 The idea that safety wasn't a
10 consideration is really not valid. And the evidence
11 that you'll hear will reiterate that.

12 You will hear from Mr. Datri that when he
13 and Mr. Razo loaded up that piece of equipment
14 that -- that morning, they weren't a hundred percent
15 sure how far they were going to drive it. They
16 really didn't know how far they were going to drive
17 it, frankly. And, in fact, they loaded it to have it
18 ready for use but not with the idea that they might
19 have to be driving for nearly an hour to get to the
20 top of the mountain along a forest road. They loaded
21 it up as if they were just going to drive it five or
22 ten minutes down the road to set up on level ground.

23 Remember, Mr. Datri and Mr. Razo are the
24 experts in handling this machine. They made that
25 decision based on a lack of information. Now, why

1 didn't they get the information? That's evidence
2 that you need to hear. You need to hear testimony
3 about why neither Mr. Razo, nor Mr. Datri knew what
4 was going on that morning until they were told by the
5 best boy, Dave Santos, "We need that piece of
6 equipment up the hill."

7 In other words, Mr. Razo and Mr. Datri
8 dropped the equipment off late on Sunday -- so much
9 so that it was starting to get dark. They had been
10 in Albuquerque -- Mr. Razo had been in Albuquerque
11 all that day. Mr. Datri flew in to meet Mr. Razo mid
12 afternoon. But, based on the travel time, they
13 didn't leave Albuquerque until very late afternoon,
14 4:30, 5 o'clock. So by the time they got up to
15 Pajarito and they went through the security gates at
16 the labs and they continued on up the road to the
17 parking area at the ski basin, it was starting to get
18 dark. 8:30 at night. So absolutely there wasn't an
19 opportunity to necessarily get out and scout the
20 route that evening. But they couldn't fail to know
21 that they were parking it at the parking lot for the
22 ski area and that filming was going to be taking
23 place somewhere up on that mountain.

24 But the next morning, you won't hear
25 anyone testify that either Mr. Datri or Mr. Razo

1 specifically asked anyone for the details of how soon
2 that morning they would start working. There was an
3 assumption that was made that we were going to have a
4 day for prep or a half day for prep, that we were not
5 going to be traveling as far as they ended up having
6 to travel to get toward the top of the mountain.
7 These are assumptions.

8 The second theme, though, in this case is
9 about responsibility. So Mr. Razo and Mr. Datri
10 together made some assumptions that proved to be
11 incorrect; when the Raptor was going to be needed,
12 where it was going to be needed, how it was going to
13 be needed to be prepped. And so, that morning,
14 Mr. Santos started leading them up to the top of the
15 mountain. He was riding one of those little ATVs,
16 those little four-wheel ATVs.

17 And, as you have heard, the evidence will
18 show Mr. Razo was driving the Raptor, and he was
19 driving it very slow, very careful, very
20 conscientiously all the way up this route that did
21 not take him straight up the mountain; it worked its
22 way along the side of the ridge and gained elevation.
23 96 percent, 97 percent of the entire route up to the
24 top of the hill without incident.

25 Sometimes Mr. Datri would have to walk,

1 maneuvering this huge crane arm in a way so that it
2 wasn't damaged by trees, it didn't swing too heavily
3 one direction or the other. They proceeded carefully
4 and cautiously. And, you know, Mr. Datri's going to
5 testify one of the interesting things about this job
6 that he and Mr. Razo have is the challenges of
7 getting this equipment where it needs to go.
8 Mr. Datri has so much experience, like Mr. Razo, in
9 operating this equipment in a remote location that,
10 truthfully, one of the more interesting aspects of
11 the job is knowing where they want to put it and
12 trying to figure out how to get it there, how to get
13 it there safely. Not just safely, though. How to
14 get it without damaging the equipment.

15 This is a very complex -- you saw the
16 photos -- this is a very complex piece of equipment.
17 It has a very narrow purpose. It is not an
18 inexpensive piece of equipment. Yes, the production
19 is relying on the equipment to be there when it needs
20 to be used. But as the operators of this equipment,
21 Mr. Datri and Mr. Razo probably have foremost in
22 their mind, after their own safety, a desire to make
23 sure the equipment isn't damaged or harmed because,
24 again, they have a very narrow role to play and they
25 have the experience and the training to do that.

1 So when you look at the events of this
 2 day, ladies and gentlemen, I please want you to
 3 consider as you weigh this evidence -- all right? --
 4 who had the control? Was it the production company
 5 that was making noise through the key grip, Trevor
 6 Fulks, who I need to point out, you will not hear
 7 testimony from. There's a reason for that.
 8 Mr. Fulks is deceased. He can't tell you what he
 9 said. He's not here for that. You will hear what he
 10 said that others heard. But you can't actually hear
 11 what Mr. Fulks was thinking that evening.

12 So Mr. Fulks has kind of been held up as
 13 the instigator of all of this, that he was driving
 14 Mr. Razo forward in an unsafe way. How is that
 15 possible? That's the question to ask yourself as you
 16 do hear the evidence from both parties. How is it
 17 possible that someone on a radio -- I don't care what
 18 they're saying, Mr. Razo is the pilot of this ship.
 19 How does that person on the radio cause Mr. Razo to
 20 take an action that is actually completely different
 21 than any action he's taken up to this point, which is
 22 operate things safely?

23 Mr. Razo had the experience where he was
 24 desired by producers and production companies and
 25 cinematographers to be a part of this process. He

1 had no shortage of work, as you saw. He made a very
 2 good living because he was a specialist who did very
 3 good on his job. And he didn't pick Mr. Datri to
 4 accompany him either because Mr. Datri was a trainee
 5 or a shadow or just an observer. Mr. Datri was his
 6 copilot. He was backing him up.

7 So I do understand that the testimony you
 8 will hear will include a claim that Mr. Razo was not
 9 permitted to scout the route. But here's a thing you
 10 need to consider -- and this comes back to experience
 11 and responsibility -- 95, 96 percent of the route was
 12 not a problem. It was that last 50 or 60 yards up
 13 that obviously steep road. It was an attempt to
 14 drive up that road without first assessing what the
 15 other alternatives were that existed.

16 Mr. Santos was leading them up on his
 17 little ATV. Okay? Couldn't Mr. Datri have asked
 18 Mr. Santos to take a 30-second drive down that road
 19 to the right? They stopped when they got to that
 20 fork in the road because they could see ahead of
 21 them, that was one steep slope. They didn't do that.
 22 They couldn't take 30 seconds to have Mr. Datri drive
 23 down and see what was down that fork to the right?

24 You could tell, just by looking at it, to
 25 the right was not as steep of a slope as what was in

1 front of them. What about Mr. Datri? Mr. Datri
 2 could have walked up that slope, gotten to the top,
 3 looked around. Maybe there were other roads coming
 4 into the top of the ski mountain. What you could see
 5 from that fork in the road, though -- and you'll see
 6 the photos, you'll hear the testimony -- is you could
 7 see the big metal wheel of the ski lift up there. So
 8 it was pretty obvious to anyone looking at that that
 9 that slope would get you to the top of the mountain.

10 And here's a real key issue that is the
 11 third theme in this case: Safety. The argument
 12 that's raised and the evidence that you will hear
 13 from some of the witnesses is that somehow the very
 14 existence of that steep road should have been noted,
 15 identified, and blocked off. That would have
 16 presented -- prevented -- excuse me -- prevented
 17 Mr. Razo from attempting to drive up it. That may be
 18 true. A barrier across that steep road probably
 19 would have made Mr. Razo and Mr. Datri think twice.

20 But it is an obvious nature of the road
 21 that it's steep. It is the operator of the Raptor
 22 that is facing that road. Who makes the call?
 23 Trevor Fulks, who is not even there, who's squawking
 24 on the radio? I don't know Mr. Fulks. I never met
 25 Mr. Fulks. I have no idea whether Mr. Fulks is one

1 of those people that you want to spend time around.
 2 But I'll go back to the point. What really could
 3 Trevor Fulks have said to make Mr. Razo ignore the
 4 slope, given how the Raptor was configured? And that
 5 matters.

6 You're going to hear testimony from an
 7 expert retained by the defense, a reconstructionist,
 8 who is going to come in and he's going to provide you
 9 testimony about how, in his view, the accident
 10 occurred. You know, we know that the accident
 11 occurred. We know that the machine rolled over and
 12 it injured Mr. Razo horribly. We know this. But
 13 what were the factors that led to that?

14 Mr. Beauchamp is going to look at really
 15 three factors. The environment. What was the road?
 16 What was its grade? What was its steepness? What
 17 was its condition? The equipment. How did the
 18 configuration of that Raptor that day, by the two
 19 operators who knew it best, how did that contribute
 20 to its propensity or lack of propensity to simply
 21 rolled over when it hit a slope, when the wheels lost
 22 traction? How did all of that come into play? And
 23 then the third aspect of Mr. Beauchamp's testimony is
 24 he's going to talk about the operator. And he is
 25 going to blame three factors: Environment,

1 equipment, operator as contributory.

2 Mr. Razo is not being blamed for his
3 injuries. Mr. Razo's lapse of judgment is what is
4 being pointed out. He made a call, and it was the
5 wrong call. He drove up that slope after having
6 first paused at the fork, and he did so without
7 Mr. Datri offering him any advice or assistance at
8 all. I mean, Mr. Datri bears some responsibility for
9 this as well. And the evidence will show that.

10 Because he wasn't a passive observer there that day.
11 He wasn't, for example, Dave Santos, the best boy.

12 Mr. Datri was only there to back up his pilot,
13 Mr. Razo. Mr. Datri has significant experience, just
14 like Mr. Razo. He didn't use that experience, and
15 one could look at the evidence and conclude that
16 Mr. Razo lost sight of his experience as well.

17 So one of the -- one of the themes, when
18 we talk about safety, is what was the lapse in safety
19 from the production from No Exit? What did they not
20 take into account that led this specialized operator
21 of equipment to make the wrong call in terms of the
22 outcome? In other words, it may have seemed like
23 driving up was something that could happen, but we
24 know how it turned out. So how does a so-called lack
25 of safety awareness, safety regulations, how does

1 that play into what actually happened?

2 What the defense will suggest is that the
3 evidence will show you that safety awareness, safety
4 policies, safety protocol, the overall safety of this
5 location had nothing to do with Mr. Razo's choice.
6 He wasn't forced. And here's why. This goes back to
7 experience.

8 Mr. Razo has the ability, if he doesn't
9 feel like he's getting what he needs, to escalate it,
10 just like any other highly skilled professional. The
11 suggestion is that he was somehow controlled by the
12 production. But you can't have it both ways. And
13 the evidence is going to show that Mr. Razo was there
14 working for the production.

15 He was sent by Chapman/Leonard in
16 conjunction with the rental of the equipment.
17 Mr. Razo had talked with Mr. Fulks a week and a half
18 prior to arriving on location with the equipment.
19 Mr. Razo had to pack up all the equipment and drive
20 from Southern California all the way to New Mexico,
21 do some more prep work with the equipment in
22 Albuquerque, get his copilot, codriver, co-operator,
23 and go up to Pajarito. All of these things were part
24 of Mr. Razo's job. And not once did he pick up a
25 phone, send an e-mail, asking for something as

1 specific as what time will we need to be on top of
2 the mountain?

3 Okay. He got there in time for crew call
4 that morning. Not once did Mr. Razo or Mr. Datri ask
5 Bruce Franklin, when Bruce was doing his safety
6 briefing that morning, whether the Raptor was going
7 to be needed at the top. Not once did Mr. Datri or
8 Mr. Razo convey the concerns directly to the people
9 who were running this production.

10 Mr. Santos will testify there were
11 conversations that went on. He was, like, a
12 go-between. Okay. But he's not a decisionmaker.
13 And when you are in that role of basically being the
14 pilot, you don't need to deal with folks who can't
15 make decisions in order to do the job that you need
16 to do. And that's what the evidence is going to
17 show -- that this industry is not really that
18 different in so many ways from other industries that
19 rely on disparate groups of professionals, people
20 that are experts in their field, people who may never
21 have met each other before they come together to do a
22 very complex activity.

23 So here's what also plays into that.
24 This is the issue of safety. There's a misnomer that
25 somehow the film industry is a rush, rush, rush,

1 rush, rush to get it. But that's belied by the fact
2 that this was not a minor production. "Only the
3 Brave" was a 46-million-dollar A-list production.
4 Josh Brolin was one of the stars. The director of
5 this particular film had a wonderful reputation. You
6 already heard about the reputation and the experience
7 of the director of photography.

8 Now, as you listen to the evidence, try
9 and imagine why anybody working on this production
10 would want to run the risk of having the Raptor put
11 in a position where it flipped over on its operator?
12 And I know there's a very -- there's a very
13 straightforward answer that you might hear that,
14 well, this was all about money, and time is money.
15 Time is money. It's Hollywood. Time is money. And
16 that may be true in some areas. But it's safe to say
17 that having the Raptor damaged and roll over on its
18 operator is the antithesis of what any film
19 production would want.

20 As you heard, the Raptor had to be
21 replaced. It had to be brought up the next day. Not
22 only that, it was Mr. Datri who took the Raptor up
23 the next day. Guess what he did, though? He had the
24 weights -- these 30-pound steel plates -- he had them
25 transported by truck because -- and not

1 surprisingly -- he didn't want to have a similar
 2 situation as what happened with Mr. Razo.
 3 I also want to point out that the
 4 evidence will show you that Mr. Razo and Mr. Datri
 5 had a lot of experience working in mountainous
 6 country, that the idea they would have to tool this
 7 Raptor up this forest road for a couple of miles
 8 wasn't something unusual for them to have to deal
 9 with. Quite frankly, there will be no evidence
 10 presented that will support the idea that if Mr. Razo
 11 had said, "We're going to have to take the weights
 12 off because we can't get this up," that anybody would
 13 have been able to prevent that from occurring.
 14 What Mr. Fulks was squawking about is
 15 not, in hindsight, very attractive, but it doesn't
 16 change the fact that Mr. Razo was the one with the
 17 power and Mr. Datri was the one with the power. And
 18 Mr. Razo didn't exercise that right and that ability
 19 that he had.
 20 You'll also review, as part of your
 21 exhibits, the production's policy. Now, this policy
 22 was e-mailed out a couple of days before. Mr. Datri
 23 got a copy. It doesn't look like Mr. Razo got a copy
 24 of this policy. Mr. Datri forwarded him the policy
 25 Sunday evening after they got back to their hotel in

1 Santa Fe.
 2 The top paragraph of that policy, the top
 3 line, is that safety should never be compromised for
 4 expediency. And Mr. Razo is a case example of what
 5 can happen when someone doesn't think far enough
 6 ahead of the implications of what they're doing. But
 7 he was a sole operator along with his partner. That
 8 policy is so critical, though, because of all those
 9 things I described to you that are going on in this
 10 particular kind of film.
 11 I mean, this is a bit of an outlier in
 12 terms of hazardous topics, hazardous subjects. But
 13 it's not that unusual in film productions to have
 14 lots of really, really complex things going on with
 15 the explosives, pyrotechnics, with all sorts of
 16 things that can harm a person. So expediency in the
 17 name of safety is not something that is condoned.
 18 The safe action is always the better action. And
 19 Mr. Razo and Mr. Datri, both of them knew this.
 20 They've been working too long in the industry not to
 21 know this.
 22 Now, I know a lot of evidence in this
 23 case will be related to Mr. Razo's claimed damages in
 24 this suit. And I'm going to remind you of what I
 25 told you during jury selection. At no point will the

1 defense be attempting to introduce any evidence to
 2 suggest that Mr. Razo's injuries are any less than
 3 how they're being portrayed. I want to reiterate
 4 that point. The defense can view this case as
 5 Mr. Razo's responsibility without calling into
 6 question the fact that the decision he made resulted
 7 in such horrific injuries. It comes back to that
 8 idea of responsibility, though, because that's a
 9 critical component of how this occurred.
 10 You know, the evidence won't show you
 11 that Mr. Razo was there for his first day. He made a
 12 choice based on his experience and training.
 13 Frankly, he thought he could get it up the hill. And
 14 he was wrong. And the defense doesn't blame Mr. Razo
 15 for being wrong. The defense takes issue that
 16 Mr. Razo's claims are all predicated on the idea that
 17 it was the defendant's actions that led him down that
 18 wrong path. So I know and I appreciate that Mr. Razo
 19 believes that he bears some of the responsibility for
 20 this. But what the defense will suggest to you is
 21 that 25 percent is not the number.
 22 It just doesn't take into account
 23 Mr. Razo's power to make choices as a professional in
 24 this industry, one who is beholden -- as has been
 25 established, right? The evidence will show that

1 Mr. Razo was not beholden to anyone. He had the
 2 work. He was there for the purpose.
 3 So when it comes to this allocation of
 4 responsibility, I want you to flip that equation
 5 over. And I know it's a hard thing to ask, and I'm
 6 not suggesting that the defendants want you to do
 7 that because they're trying to escape from something
 8 they did.
 9 And as I also told you during jury
 10 selection, what the evidence will show is that the
 11 defendants could have done a lot of things in
 12 hindsight that would have kept Mr. Razo from driving
 13 up that little steep shortcut. And one of them could
 14 be to put a barrier up. But is that reasonable?
 15 It's a ski mountain. There are roads all over the
 16 place. From the top, you can look down and, you
 17 know, quite frankly, it's ski slopes. So they drop
 18 straight down. They'd be difficult to walk, let
 19 alone drive a vehicle like the Raptor up.
 20 But that inverse consideration is
 21 important because not having a particular policy to
 22 guide a particular operator of a particular piece of
 23 specialized equipment is not really what's at issue
 24 here. What's at issue, and what the evidence will
 25 show you, is that Mr. Santos led them up almost to

1 the top, and instead of taking the time to assess and
 2 make the right call, Mr. Razo continued up.
 3 Now, Mr. Datri followed holding what's
 4 called the bucket. It's not really a bucket; it's
 5 really a counterweight. But it's called a bucket
 6 because it was once a bucket. Mr. Razo drove slowly
 7 and carefully, and right there, that tells you that
 8 he had a pretty good idea of what he was doing. And
 9 it didn't work out. He made the wrong call. I'm
 10 sure he would admit that. I'm sure anyone looking at
 11 this would admit that that was the wrong decision in
 12 hindsight. But it's not appropriate in hindsight to
 13 say, "Hey, you didn't have a cone in front of that
 14 road. You didn't have a sign in front of that road"
 15 because -- and the evidence you'll hear won't suggest
 16 that that's what should have happened.
 17 I know there will be testimony from the
 18 plaintiff's safety expert, Mr. Avrit. I know that he
 19 will draw analogies between his field of expertise
 20 and view this worksite as unsafe. We understand
 21 that. But, you know, the flip side of that is that
 22 one of the defense experts -- a gentleman named Bill
 23 Witthans -- Mr. Witthans has basically has been
 24 Mr. Razo for his career.
 25 Mr. Witthans has worked on numerous film

1 productions like Mr. Razo and Mr. Datri. And you
 2 know what Mr. Witthans is going to say, not
 3 surprisingly? They should have taken the time to
 4 think about it. And there is no way, according to
 5 Mr. Witthans, that anybody with the kind of
 6 experience that Mr. Razo had would ever have been
 7 rattled by somebody on the radio squawking at him,
 8 telling him, "We need to get you up there. I don't
 9 care how they get it up there. Just get them up. I
 10 don't care."
 11 I think Mr. Fulks is, at one point,
 12 reported to have said, "I don't give a damn. Just
 13 get them up." Wow. What a loose cannon. But not in
 14 the driver's seat. Not the one with the ability to
 15 make a difference. All he can do is spout off. And
 16 that's pretty key in this case.
 17 Mr. Razo has enormous injuries that are
 18 going to require future care, future treatment. The
 19 defense will provide a life care expert that has
 20 examined the materials that the plaintiffs' life care
 21 expert relied upon. Dr. Elizabeth Davis has looked
 22 at future care. And one of the things that she's
 23 identified and she will testify to is that while the
 24 plaintiff's life care expert draws a single point in
 25 terms of a specific number, Dr. Davis views it more

1 realistically as a spectrum. That it's not enough to
 2 say, I'm going to point to one number because --
 3 right? -- we can't predict the future. We know that
 4 there are variables. We know that Mr. Razo will
 5 require future care. We know it could consist of
 6 certain kinds of care. But we just don't know the
 7 extent of that.
 8 That's Dr. Davis's perspective. Not so
 9 much that the cost of a certain type of care has been
 10 calculated incorrectly, but more that the idea that a
 11 single number is exactly what you have to rely upon
 12 to define future care needs.
 13 The other thing that you'll hear
 14 testimony on is related to Mr. Razo's claimed loss
 15 income, lost wages, recognizing that the plaintiffs
 16 still have a burden -- and that's that burden of
 17 persuasion that was described to you -- 50 percent
 18 plus .1 percent, more likely than not, on that scale.
 19 The plaintiffs will bring in an economist
 20 to talk about Mr. Razo's lost future earnings,
 21 projected. The defense will bring in an economist to
 22 talk about very similar issues. But, again, the
 23 difference between the two areas of testimony is that
 24 the defense economist, Dr. Ganderton from UNM, will
 25 not assume that Mr. Razo is incapable of engaging in

1 any kind of activity that could lead to income.
 2 Why might that be?
 3 It goes back to that first theme:
 4 Experience. Mr. Razo is part of an elite few. He's
 5 still part of an elite few because the knowledge he
 6 has in his head is incredibly valuable. Consulting,
 7 teaching, participating in the industry in a
 8 different way than actually getting out and
 9 physically operating that Raptor, these are not off
 10 the table. You may hear testimony that Mr. Razo is
 11 not capable of working. That is quite a broad brush,
 12 through testimony, to present.
 13 In reality, life doesn't work that way,
 14 even when you've experienced, the way Mr. Razo has,
 15 the kind of injuries that are going to be described
 16 to you. That's the big difference.
 17 And recognizing that the plaintiff does
 18 have the burden in this case to persuade you, it's
 19 important that you hear evidence that offers you the
 20 defense's viewpoints, not because the defense is
 21 introducing testimony to ask you to award Mr. Razo
 22 all of the costs incurred for medical care, past and
 23 future, but because part of the defense's job is to
 24 make sure you understand the range of the evidence
 25 that exists in this case.

1 Now, I told you, during jury selection,
 2 that there's a controversy that's present. Your
 3 presence here today is clear evidence of that. There
 4 are two ways to look at what happened to Mr. Razo,
 5 and the evidence that you'll receive from witnesses
 6 for both sides will help you weigh that. You'll be
 7 able to make your own decisions, based on your
 8 understanding of the evidence, as well as in the
 9 context of who you are as individuals.

10 You'll have to consider this very
 11 difficult issue of responsibility. You'll have to
 12 weigh Mr. Razo's background and experience in the
 13 context of what occurred. And you will have to look
 14 at the idea of safety. Who was being unsafe that day
 15 and how? And what did it lead to?

16 I guarantee you, it led to a result that
 17 no one involved in this case would have wanted to
 18 occur. Nobody. It's tragic, and it's unfortunate
 19 that it happened to Mr. Razo.

20 Mr. Datri is going to testify, along with
 21 Mr. Razo, that they both felt incredibly rushed that
 22 morning. They got the sense -- I think as Mr. Datri
 23 will describe, they got the sense people just didn't
 24 know what was going on because this message came down
 25 from on high that the Raptor must be taken up to the

1 top of the mountain. Totally understandable. Maybe
 2 a change was made. Maybe a decision was made. We
 3 have to get the Raptor to the top of the mountain.

4 But two people, like Mr. Datri and
 5 Mr. Razo, should never have felt so rushed that they
 6 stopped thinking. And in fact, that's as good of an
 7 example of how the testimony will describe their
 8 actions. They weren't thinking. Because if they
 9 were, they would have made those other choices that I
 10 talked to you about.

11 You'll also hear testimony from
 12 Mr. Santos, Mr. Sneesby, Mr. Willis. These are all
 13 people who worked on the production crew.
 14 Mr. Sneesby, Mr. Willis, they were up on top of the
 15 hill. None of them saw this incident occur. They
 16 heard radio chatter. I think Mr. Sneesby is going to
 17 testify and Mr. Willis will testify that Trevor Fulks
 18 was on the radio squawking. Mr. Santos was the one
 19 leading them up. He was called the best boy. And
 20 that -- there will be testimony to suggest that.

21 Mr. Santos had no idea where he was
 22 going. It's quite possible. He had never driven
 23 that route before. But he got them to the point in
 24 the fork in the road where they stopped. He
 25 didn't -- Mr. Santos did not tell Mr. Razo to drive

1 up that slope. Mr. Santos passed along over the
 2 radio what he was hearing from Trevor Fulks.

3 But keep in mind, Trevor Fulks wasn't
 4 there. So how would Trevor Fulks even know where
 5 they were? That's something to consider. It's
 6 something to weigh.

7 And it goes back to this idea: What
 8 difference does it make what Trevor Fulks said? He
 9 couldn't touch Mr. Razo because only Mr. Razo could
 10 operate the equipment.

11 Two excellent points, ladies and
 12 gentlemen, to also consider. Two excellent points.
 13 Never put people in danger to save time. I think
 14 that that is a strong message to keep in mind. That
 15 goes back to the theme of safety. I think it's fair
 16 to say that taking shortcuts, putting people in
 17 danger usually doesn't end up saving time. And
 18 that's a very good point. It certainly didn't
 19 result -- to be the case in this case.

20 And the other thing is, is if you fail to
 21 plan, you plan to fail. Again, that is a truism.
 22 But who failed to plan, as part of this tragic set of
 23 events? Who failed to plan that morning? Who failed
 24 to make a call on the drive out from California? If
 25 you need the info, ask for the info. If you see

1 something, say something. These are the kinds of
 2 things that we do when we're in charge of ourselves.

3 So we agree with that. Mr. Razo failed
 4 to plan that morning. He made some assumptions, and
 5 it didn't work out, what he assumed, the way he
 6 assumed. He assumed that the Raptor wouldn't be
 7 needed right away. He was only there with the Raptor
 8 for four days. That was the expected time that he
 9 was going to be onsite.

10 He didn't need to scout the whole route
 11 because he had Mr. Santos leading him slowly and
 12 carefully up that route. He did need to scout that
 13 little piece of 50 or 60 yards on that steep
 14 shortcut. He needed to scout a couple of minutes
 15 down that turn to the right. Nobody denied him that
 16 opportunity because he never asked for that. He
 17 didn't need to ask for that, quite frankly. If
 18 you're driving a piece of equipment through the woods
 19 and you come to a point where you're not sure if you
 20 can get it up the hill, what the evidence will
 21 suggest is that the best thing you can do is assess
 22 the situation and figure it out. Mr. Datri would
 23 agree with that. I'm sure of it. And I'm sure
 24 Mr. Razo would agree with it.

25 There are a lot of areas -- as you learn

1 about Pajarito Mountain, there are a lot of areas
2 that no one in their right mind would drive a piece
3 of equipment like the Raptor. There are a lot of
4 areas on that mountain that you would not drive a
5 four-wheel-drive vehicle. That's the nature of
6 Pajarito as a ski mountain. It is mountainous
7 country, and it's clearly obvious that you have to be
8 careful and you have to make good decisions when
9 you're operating equipment on it.

10 So that, ladies and gentlemen, is what
11 this case really involves. It's -- it's not a case
12 about someone who couldn't say no. It's a case about
13 someone who didn't take the opportunities that were
14 available to make good decisions.

15 I know that you'll be asked to award
16 damages related to medical care, loss of enjoyment of
17 life, pain and suffering. Loss of what we term as
18 "consortia" for Ms. Weinmuller. All of these kinds
19 of damages are all very important to Mr. Razo's
20 future care, future well-being, but they are not the
21 burden of the defense, in this case, and that is what
22 the purpose of the defense's evidence will highlight
23 for you.

24 I echo the plaintiffs' perspective that
25 none of us would really want to be here this week,

1 hearing this case. But it's such an important case
2 for a lot of reasons. It's an important case to
3 Mr. Razo and Ms. Weinmuller. It's an important case
4 to my clients, Black Label and No Exit. It's an
5 important case because the evidence in this case
6 really requires to you decide one side of the
7 responsibility view, one side of the experience view,
8 one side of the safety view, and you are the ones who
9 will make those decisions for us.

10 So I -- I look forward to hearing the
11 plaintiffs' case presented in chief. I also look
12 forward, when the time comes, to presenting the
13 defense case, and I look forward to seeing you all
14 throughout this week. And I greatly appreciate your
15 time and attention. Thank you.

16 THE COURT: All right. Members of the
17 jury, I have a couple of instructions for you. We're
18 going to start witness testimony here in just a
19 moment.

20 My first instruction for you is when an
21 exhibit is presented to you in open court, you should
22 not discuss it with other jurors. You should not
23 point out to another juror matters that seem
24 important to you. You should not whisper back and
25 forth with other jurors about the exhibit. You

1 should have an opportunity -- or you will have an
2 opportunity to discuss the exhibits in the jury room.

3 Also, it is the job of a lawyer to object
4 to questions, testimony, or exhibits a lawyer
5 believes may not be proper. I will sustain
6 objections if the question, where evidence sought, is
7 improper for you to consider. When I sustain an
8 objection, the question or evidence is not allowed.
9 You must not consider such evidence, nor may you
10 consider any evidence I have told you to disregard.

11 By itself, a question is not evidence.
12 You must not speculate about what would be the answer
13 to a question that I rule cannot be answered. If I
14 overrule an objection, then the question or evidence
15 will be allowed.

16 All right.

17 Mr. Hunt, if you would call your first
18 witness.

19 MR. HUNT: Yes, Your Honor.

20 We're going to call Paul Willis via
21 deposition.

22 THE COURT: All right. Members of the
23 jury, another instruction for you. So this witness,
24 this first witness is going to testify by deposition.
25 I need to explain to you what a deposition is.

1 A deposition is testimony taken under
2 oath before trial and has been preserved in writing
3 or by video. This testimony is entitled to the same
4 consideration as any other testimony, during the
5 trial.

6 And, Mr. Hunt, I do intend to take a
7 lunch break at noon; so if you can anticipate that.

8 MR. HUNT: Sure, Judge. This witness is
9 20 minutes, so --

10 THE COURT: Well, then we'll --

11 MR. HUNT: -- we'll be right there.

12 THE COURT: All right.

13 MR. HUNT: It might be 12:05.

14 THE COURT: All right. Thank you.

15 MR. HUNT: I think I had switched it
16 over, if you can give me permission on here.

17 THE COURT: Yes.

18 MR. HUNT: Okay.

19 (Video deposition played.)
20

21 EXAMINATION

22 BY MS. RIVER (VIA VIDEO DEPOSITION):

23 Q. Mr. Willis, what is your full --

24 MR. HUNT: All right. Let's see.

25 THE COURT: You'll need to turn that up a