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SUPERIOR COURT - STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MANUEL BUSTAMANTE
Wednesday, June 29, 2022

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(Appearances continued on next page.)

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1 PALM SPRINGS, CALIFORNIA; WEDNESDAY, JUNE 29, 2022

2 BEFORE THE HONORABLE MANUEL BUSTAMANTE

3 -o0o-

4 THE COURT: Let's formally call the matter of the Collins
5 versus DG Corp.

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

8 THE COURT: Good morning.

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

11 THE COURT: Good morning, Mr. Sullivan.

12 MR. SCHUMANN: Good morning, your Honor. Kim Schumann
13 for the defendant.

14 MR. REID: Good morning, your Honor. David Reid for DG
15 Corp.

16 We have Jane Cubos here as a representative of the
17 company.

18 THE COURT: We're going to bring the jury in in about 90
19 seconds. In that 90 seconds, a couple things I wanted to bring
20 up.

21 Number 1, the Court is still reserving ruling on expert
22 witness Kenan Stevick, so please do not make reference. If you
23 do so, you do at your own peril.

24 Thank you, counsel.

25 I did receive the additional briefing on Privette. As I
26 mentioned, because of that, you're not really supposed to
27 discuss the law, anyways, in opening, but I wanted you to be
28 aware of that because that still is an open issue.

1 MR. BASILE: I'm confident the opening will help instruct
2 the Court also.

3 THE COURT: Then, finally, there was -- I'm informed
4 there was a request in terms of, I guess, the parameters of the
5 well.

6 MR. BASILE: A couple things, your Honor.

7 If I could move this just for opening so they can see.

8 THE COURT: That's fine. So you're not going to be
9 utilizing the overhead projector?

10 MR. BASILE: Yes. No, not the overhead projector, just
11 the screen. And I'll be referring to that.

12 I just want to make sure. Can I step back and make sure
13 the alternate can see past that?

14 THE COURT: Sure.

15 MR. BASILE: While we're at that, your Honor, is there
16 any way we can put this alternate over here if the sight
17 lines --

18 THE COURT: No. No, because the bench blocks the view of
19 the witnesses.

20 MR. BASILE: That might be too close.

21 THE COURT: Yes.

22 MR. BASILE: So then just for purposes of questioning,
23 I'll have to squeeze here. I can make it work.

24 THE COURT: That podium can slide back there.

25 MR. BASILE: Or over there if they want it.

26 THE COURT: We'll go ahead and bring in the jurors and
27 get started.

28 Thank you, Deputy Lee.

1 (The following proceedings were held in open court
2 in the presence of the jury.)

3 THE COURT: Good morning. Welcome back.

4 Counsel is already here. We already did a couple things
5 before you came in.

6 Did anyone get the parking under the solar panels?

7 Great. So you were here at 8:00 a.m.?

8 Okay. Thank you. Welcome back.

9 We'll proceed with opening statements this morning. Then
10 the plaintiff will begin their case in chief.

11 When you're ready, Mr. Basile. You have permission to
12 use the well.

13 MR. BASILE: Thank you, your Honor.

14 May it please the Court, your Honor. This is the first
15 time people are going to hear this case. When I stand up to
16 tell it, I get excited I finally get to talk like this.

17 When this case is over, the 12 of the jurors are going to
18 know more about our plant safety than most people in California.
19 With that knowledge comes the responsibility not only to judge
20 corporate conduct and safety at that power plant but also to
21 determine accountability.

22 Nine months after the explosion that killed Daniel
23 Collins, Denise and Christopher were sitting with the only
24 information they had received from the company, and that was
25 that Daniel died in an accident. There was some gas that was
26 trapped and an explosion and it killed him.

27 They wondered for nine months and wanted to know how this
28 happened, why this happened, can anything be done so it doesn't

1 happen again. A family friend referred them to Mr. Sullivan.

2 Mr. Sullivan, like many of you, at that time didn't know
3 much about power plants or anything. He found a report and it
4 mentioned Diamond Generating Corporation in a report. So he
5 initiated this lawsuit to investigate. That's what needed to be
6 done.

7 During the course of that, Diamond Generating Corporation
8 handed over, produced 46,000 documents.

9 Mr. Sullivan, myself, others meticulously went through
10 them and found a few that opened the window to truth in this
11 case.

12 We then took witness statements under oath, put together
13 the story I'm about to tell.

14 This is the name of the case there.

15 Diamond Generating Corporation, we learned, operates
16 power plants throughout the United States and Mexico, 14 power
17 plants. Many of them are high-pressure gas power plants.

18 On their website they claim that they are a worldwide
19 leader in safe electricity generation and energy services.

20 This is the plant, just outside of town here off Melissa
21 Lane. It's what's called a peaker plant. It's a high-pressure
22 gas plant, as we're told. It's the largest in the world,
23 according to them. I questioned their corporate executives and
24 they claim even on their website it's the largest plant of this
25 type in the world.

26 The reason it is is because if you look -- where is my
27 laser.

28 If you look at these stacks here, folks -- do you see the

1 stacks in this area, a stack in this area? Each one of these
2 stacks represents an area that is a separate power plant in and
3 of itself. So there are eight combined power plants into one
4 huge. That's why they claim it's the largest plant of its kind
5 in the world.

6 Now, I want to -- we're going to focus on just one of
7 these power plants in that huge plant.

8 This is an area of one of them. Eight separate ones.

9 Are you okay? You guys let me know if I get in your way.

10 This is one of those areas.

11 As you might imagine, high-pressure gas plants are
12 complex. There are a lot of different systems within that.

13 There is the gas system that comes in here. There are
14 ammonia systems, there are cooling systems, there are electric
15 systems. There is a lot of complexity in one of these things.

16 It can be simplified down in this case because right in
17 this area is where the explosion takes place, and that's what
18 we're going to be talking about. This is what's called the fuel
19 filter skid, right in here.

20 I'll give you a closeup of that area. This is the fuel
21 filter skid, and it's at unit five, where this explosion took
22 place.

23 How this operates is along the bottom here high-pressure
24 gas comes in. I'll talk about that in a minute. Very
25 high-pressure gas comes in here and goes up through this filter
26 tank.

27 Inside this tank are filters.

28 Then it comes out the top and down and then over to the

1 turbine. It's compressed after it goes through those filters.
2 It's compressed so that when it's lit there is a big explosion
3 that spins the turbines and generates electricity.

4 But for our purposes we're going to be talking about the
5 safety and the safety system, not just for the whole plant but
6 particularly about this fuel filter skid.

7 Here is the lid that is on top of that. That shows how
8 much pressure the tank holds.

9 The lid on top here, that tank is about seven or
10 eight feet tall, about this tall. The tank is about this big
11 around, about 18 inches across. And the lid on it weighs over
12 100 pounds with all these bolts around it here.

13 Now, what are the dangers of high-pressure gas?
14 Obviously, the pressure alone is a danger.

15 The pressure at this plant is 900 pounds per square inch
16 of pressure. Now, to give you an idea of what that is, that is
17 900 pounds of force on a square inch this big on every pipe,
18 every vessel that it's running through, 900 pounds per square
19 inch.

20 To give you an idea of how much that is, the gas lines
21 that run in our homes are one-half of one pound per square inch.
22 So tremendous pressure. 1,800 times what we normally have in
23 our homes.

24 So if it was just air, that was danger, but it's gas.
25 And the gas is flammable. It can burn. The gas is explosive.
26 Not just it will burn, but it can suddenly erupt and explode.

27 Also it's toxic to breathe. So this is, needless to say,
28 a hazardous operation.

1 Now, when corporations are in the business of producing
2 and selling electricity, they must have a safety system in
3 place. And that safety system, everyone agrees who will testify
4 in this case -- I'd be surprised if anyone changes their minds
5 and disagrees -- that the safety system at a plant like this,
6 that the corporations that are running it, producing it, have to
7 develop safety policies and procedures. It's a must. They have
8 to train workers on the policies and procedures.

9 Perhaps just as important, if not more important, they
10 have to review those procedures to see if they're being
11 followed, to see if we can make them safer, to see if there's
12 any screwups or anything in there, to see if there is, if
13 something happens, we can correct it, do an analysis and make
14 sure it doesn't happen again.

15 So as I talk through the rest of this case, DTR is a
16 thing to keep an eye on. Were there procedures, what was the
17 training like, what was the review of these procedures.

18 I made a note here on the board this morning just so as I
19 talk to you you can keep that in mind. Develop, train and
20 review.

21 So back to the overhead.

22 Like I said earlier, a very complex system there that's
23 going to require a lot of procedures and things.

24 Now, how does this operate and how does it apply?

25 Well, what you want to do on a system like this right
26 here, the standards are that you have a separate energy control
27 procedure, it's called. It's called an energy control
28 procedure, where it's common sense -- it makes sense -- you have

1 to isolate that flow of gas, stop it from coming in and going
2 out.

3 You have to drain what's in there out.

4 Then you have to confirm that it's empty.

5 Now, to do that, here is an example. Here's the skid.

6 Do you guys follow me? It's coming in here and coming out here.

7 Now, a simple way to do that is to have what's called an
8 energy control procedure that is just focused on this particular
9 hazardous area.

10 How that would operate would be you'd close the valve
11 there, right here. Do you see that valve? You close that, stop
12 the flow coming in.

13 Then you would close this valve up here to stop it coming
14 out.

15 Then open the vents, open there and there.

16 Now, on our diagram we've simplified things, as you can
17 see, because there are multiple -- two vents that are coming up
18 over there on there and there is some additional valves. These
19 are the red valves, here. That would be a simple, appropriate
20 energy-control procedure.

21 What is done in that to do it properly, usually, and what
22 should be done is what's called -- you've heard us talking
23 earlier about this lockout/tagout procedure.

24 How that should be done would be there's first an
25 installer who would go out, and down there at ISO valve 1, ISO,
26 you guys saw that, he would go out and he would be following
27 directions to a LOTO sheet, and it would say close ISO valve 1.

28 He would close ISO valve 1, and then he puts a lock on it

1 so no one else can do it, and then he puts on one of these tags
2 and tags it. That's why it's called a lockout/tagout procedure.
3 You lock it and you tag it.

4 Then you initial the tag -- and this is the important
5 thing. You put a time on the tag when you're doing that first
6 step so that if anyone is reviewing it, they know this stuff is
7 done in order.

8 Now, so he would do that there. Then he would do it on
9 the second one, following the sheet. Then he would do two and
10 three and open the valves, putting a lock and a tag on each.

11 The first person would be the installer who would install
12 this. Because this is so hazardous, the appropriate, safe way
13 is to have a separate person then verify. So there should be
14 just one installer, not different people doing different things,
15 and there should be one verifier, then, that goes through, looks
16 at the tags, checks the time, makes sure it was done in order,
17 makes sure everything is good.

18 Then a supervisor is supposed to walk the line, they call
19 it. The supervisor doesn't initial anything but just confirms
20 that everything is done in order on this and everything is safe
21 to go.

22 Then they can tell workers, okay, go ahead in the filter
23 tank. Take that big lid off. Now it's time to work.

24 That is an energy control procedure and how it should be
25 done.

26 The Diamond Generating Corporation's plant there had no
27 separate energy procedure. They had it combined with all the
28 other systems I showed you on that skid on the long list.

1 Instead of four or six steps, which is the energy control
2 procedure, their sheet had 21 steps or more that included
3 different sections of that skid, where workers would have to go
4 to the ammonia section, this section, that section. They had no
5 separate energy control procedure.

6 Now, just as a review, it makes sense -- I mean, it's
7 required, in this lockout/tagout procedure there is a single
8 installer, that there is a single verifier who then follows
9 through, that there are times on those tags so that when someone
10 is reviewing it, were they done in order, and a supervisor logs
11 the LOTO.

12 That's the appropriate way to do these things. That's
13 what's done. You're going to hear a lot about this coming up in
14 what's coming.

15 Now, another thing, not only wasn't there a separate
16 energy control procedure, none of these valves were marked.
17 None of them were marked. Workers -- I'm going to talk about
18 their training, how they were trained on this initially. They
19 were shown what to do. They had to know how it was.

20 There was no -- there was one hands-on training. I don't
21 want to get ahead of myself. I'm going to show you what the
22 records show on training in a minute.

23 But unmarked were the valves on this.

24 Let's move to undertaking safety at the Sentinel Energy
25 Center. That's what we've been talking about in voir dire,
26 undertaking management and safety at the Sentinel Energy Center.

27 Exhibit 368 -- I don't have the big board. It's all
28 wrapped up. If you can do it quietly. It's just we have a big

1 board of this. It will make it easier for you to follow who's
2 who testifying in this case.

3 But this is Diamond Generating Corporation.

4 Their corporate offices are in this highrise on the 27th
5 floor in Downtown L.A.

6 At the time when this plant started up and they were
7 hiring managers, these were the people that were involved in the
8 plant up until the explosion.

9 Satoshi Hamada was the CEO.

10 Bohan -- he goes by Bo -- Buchynsky was the senior vice
11 president of engineering up to today, he was, 2011 through 2019.
12 This happened in 2017.

13 Paul Shepard is the vice-president of portfolio and asset
14 management. He's still there today doing that.

15 Audun Aaberg, vice-president of operations and
16 maintenance.

17 Wayne Forsyth, he was in operations, and he was the main
18 safety man at Diamond Generating Corporation.

19 Michael Kromer, vice-president of operations. He came in
20 after Mr. Aaberg retired.

21 So how Diamond Generating Corporation is set up, I told
22 you they have 14 different power plants. They're up here.
23 They're the corporation at the top.

24 What they do then is they set up a wholly owned -- I mean
25 they wholly own DGC Ops. It's 100 percent. They own
26 100 percent of the stock in DGC Ops. DGC Operations is this
27 corporation that, then, are the hands-on day-today people that
28 run all the power plants. I didn't draw them all, but they're

1 in New York. They're in Massachusetts. There are like four
2 right around here. There are two in Mexico. So that's how
3 Diamond Generating Corporation is set up.

4 So when they were setting up this Sentinel Energy plant,
5 they had to hire a manager, Diamond Generating Corporation did.

6 These guys here, with the exception of Mr. Forsyth, these
7 five gentlemen here hired this man as the plant manager of that
8 plant that's in the background, which is the Sentinel Energy
9 Center. His name is Tom Walker. He no longer works for
10 Sentinel Energy or for Diamond Generating Operations.

11 During the course of this, as we said, we had a few of
12 these documents that open the window to the truth. We learned
13 he was the manager.

14 We asked them -- when we take a deposition, they say he
15 no longer works for us. Then we had the COVID issues.

16 MR. SCHUMANN: Argumentative and improper opening, your
17 Honor.

18 THE COURT: Sustained.

19 MR. BASILE: We found him. He was back in North
20 Carolina, was it?

21 Mr. Sullivan and I flew back there in January and told
22 them that we were going to -- since he's back there and COVID
23 issues and all of that.

24 MR. SCHUMANN: Improper opening, your Honor.
25 Argumentative.

26 THE COURT: Sustained.

27 MR. BASILE: We were taking his deposition to play for a
28 jury for trial testimony. That's what we did.

1 So we went back to North Carolina and we videotaped his
2 trial testimony since he's back there that we'll be playing for
3 you this afternoon, we believe.

4 Now, he was hired as a Sentinel plant manager. His hire
5 date was August, 2012. He hired by Diamond Generating
6 Corporation, and most importantly he reports directly to Diamond
7 Generating Corporation's VP of operations and maintenance.

8 First that person was Audun Aaberg. Then after he
9 retired it was Michael Kromer, who are Diamond generating
10 corporate executives. Those were his bosses. That's who he
11 reported to.

12 They gave him -- Mr. Walker told us when we deposed him,
13 and you're going to hear his testimony -- he said that Diamond
14 Generating Corporation gave him safety policies to be used at
15 the plant. And he was instructed to use the safety policies
16 that Diamond Generating Corporation gave him to develop safety
17 procedures for the plant is what they gave him.

18 Taking their policies, he developed -- or people there
19 developed the lockout/tagout safety policy which defines some of
20 the things I told you, single installer, single verifier, but
21 also defines what training is required. It also defines what
22 reviews of the safety system is required. That's what I want to
23 talk about.

24 But the interesting thing about this, and the reason the
25 date is up here, is because you're going to learn from one of
26 their own people that when they reviewed this with this
27 explosion happening in 2017, they found it highly unusual that
28 the safety procedure that went into effect in 2013 had not been

1 updated or changed in four years when this happened.

2 So what was in this? In that training, in the
3 requirements of their own standards, there are requirements for
4 lockout/tagout training that I went through, that it be done
5 initially upon hire. When someone is hired, they had to go
6 through initial training.

7 The initial training had to be basically two steps. What
8 is a lockout/tagout -- kind of a longer version of what we did
9 here this morning. What is a lockout/tagout for and how do you
10 do it. What's the purpose of it, single installer, keeping the
11 times on the tag and all that. That would be the initial
12 training you would have.

13 Then you'd have annual training, a refresher, because
14 what went wrong this year, what went right. Where are we going.
15 Let's keep people up to date, let's keep people in tune on
16 what's happening. Annual training.

17 And then hands-on training is what is so important, that
18 you actually take them out to the equipment, the people that are
19 doing it, and walk them through it. That's what it takes to be
20 a qualified installer, a qualified person. A safety system
21 operates appropriately that way.

22 And from their own standards and in the industry, if they
23 change the procedure, you have to train. If we change something
24 different, you have to have training.

25 With the complexities of everything, you can see why all
26 that stuff is important.

27 Now, we asked for all the training records. We went
28 through all the training records. And here's what the training

1 records showed that they produced.

2 They had initial training in 2013. That's when the plant
3 opened. And the records of that training showed there was a
4 75-minute training on nine different policies. One of those
5 policies was the lockout/tagout. So we know that lockout/tagout
6 training certainly wasn't 75 minutes on that one, but it was
7 covered.

8 Then on March 28th of 2013, just when the plant -- before
9 it was opening, there was a three-hour LOTO training.

10 One of the sheets of the people who attended that.
11 That's 2013, four years before this explosion. That's when that
12 was done.

13 Then there was a 45-minute LOTO training in April of that
14 same year, 2013. The records for 2014, no documented LOTO
15 training for the whole year of 2014. No documented LOTO
16 training for 2015.

17 Then in January of 2016 there was general training via a
18 PowerPoint presentation and a handout. It was one of those -- I
19 think some people spoke of them during the jury selection, where
20 you just sit and watch a PowerPoint. It wasn't hands-on. It
21 was just a general, like it's time to look at this and go over
22 it and check it. A good thing to do, but nothing specific to
23 what was going on here. It was just check the boxes, take the
24 test and let's go.

25 Same thing here. They did an online training on the
26 5th of January, 2017, where a whole bunch of guys went online,
27 watched an online video or slide show, read, you know, this is
28 the purpose of a LOTO, this is what it does. Nothing

1 plant-specific on any of those trainings. Nothing
2 plant-specific on those trainings.

3 Also contained in there is a requirement of an annual
4 review of the whole system. This is the most important part.
5 Is our safety system that we have in place working. Is there an
6 issue with it, is there a problem with it, do we need to make
7 changes, do we need more training?

8 That's why in their own standards it says that the plant
9 manager is responsible for performing an annual review audit of
10 the current and previously issued LOTOs in the program. It's
11 supposed to be done annually.

12 He shall not delegate the task to another employee.
13 That's important. Good standard to have. Good policy.

14 And the annual lockout/tagout audit shall include a
15 review of random LOTOs from the previous 12 months and also a
16 review of the current active LOTO. This is the annual review.

17 It points out the advantage of it shall be to ascertain
18 the knowledge level of each person involved, to ascertain if
19 everyone has been trained up to date that's involved in this,
20 and it should be reviewed and correct any deviations. If there
21 is more than one installer out there, we have to correct that.
22 More than one verifier. Are the times on the tags. They have
23 to look at those things. If it's not right, we have to get it
24 right. That's what this annual review is supposed to be.

25 So it would be like this. These are the LOTO sheets
26 here.

27 The manager would look at is this being done.

28 Now, I'm going to point this out to you now but there's

1 going to be more coming. This is the line on that sheet where
2 they've gone down and the installer is to initiate -- when he
3 does his isolation of valve one, when you do that, you put your
4 initials on this and you initial the tag also and it's done.
5 It's supposed to be one installer.

6 Well, if you're auditing this, you're going to go, well,
7 wait a minute. It looks like there is more than one installer
8 there. Look at those initials. Over here, wait, there's more
9 than one verifier. That should be a red flag.

10 Now, each year -- I mentioned earlier each year each of
11 these get shut down one at a time, and they have those
12 procedures for shutting them down one at a time. They usually
13 do that in the cooler months of the year. In late December
14 through March is usually when that's done.

15 So there would be -- because there are eight of them,
16 there would be eight of these procedures filled out each year
17 for each unit, and these are what are supposed to be reviewed by
18 the plant manager each year to see if this system is in place
19 and working.

20 It would be something like this. It would be what we
21 have here. This is the date of the outage, 2/13/14. This is
22 when they would do the outage. So it's usually about one a
23 week. They would do one of those plants per week. So there are
24 eight, basically, for each year.

25 This is from February 14th. The next week they did unit
26 one. The next unit two, unit four, unit five, six, seven,
27 eight. So they would do that and there would be a sheet like
28 this for each.

1 Now, I haven't pointed this out yet, but each sheet for
2 all these years that have these directions on it is a Diamond
3 Generating Corporation document. It says Diamond Generating
4 Corporation on it. It does not say Diamond Generating
5 Operations. It says Diamond Generating Corporation on the
6 documents that were being used on this.

7 So what if an audit -- well, let me tell you this.

8 There was never an annual audit done. The manager never
9 did it. The system was never reviewed. There are no records of
10 it being done. That system was not done. Had it been done, you
11 would look for these things. You would take the sheet from the
12 2/23/14 and you would look, is there a single installer, is
13 there a single verifier. And then you get the tags that are
14 taken off and attached to it after it's all done. Were the
15 times on the tags? Were the people installing and verifying it,
16 were they up-to-date with their training, thereby qualified on
17 it? And the verifier, too.

18 Those are the things you would look at.

19 We'll probably have a witness in here that goes through
20 this, but if they had done a proper audit, it would have shown
21 all these red flags on each of those that something is cooking,
22 something is building, something is wrong.

23 But what did they do, Diamond Generating Corporation?
24 They had hired the manager and given him policies to provide
25 procedures, and the manager was reporting directly to Diamond
26 Generating Corporate officers, Audun Aaberg, and he did an
27 annual review of the manager.

28 The manager, Tom Walker, told us when he had his annual

1 review they had free access to everything. They could look at
2 the LOTO sheets. They could ask if he did annual reviews. They
3 could review anything. It was an open office there.

4 In fact, these officers would come out to the plant
5 there. They would come out. And they reviewed him annually.

6 Here's what the annual review showed. The responsibility
7 here on the sheet -- and you're going to see the whole sheet.
8 The responsibility is ensure safe operation of employees and
9 contractors during the mobilization and the beginning of
10 commercial operation.

11 This was his first review after that first year of 2014,
12 5/7/14. It was after they did those first audits -- or not
13 audits, the first LOTOs and shutdown.

14 What did they give him? Exceeds safety. Diamond
15 Generation Corporation said he was exceeding safety.

16 The next year, same thing. We go through. When we go
17 through them here, it takes some time. You folks will have to
18 pay attention as we go through these, but we'll show you the red
19 flags. Still all these red flags popping up.

20 But what happens? What is Diamond Generating Corporation
21 doing? The next year it's the same thing.

22 There's his annual review coming again. Now it's
23 Mr. Kromer. Mr. Kromer took over from Mr. Aaberg, and he does
24 an annual review of him. Again, no annual audits being done.

25 His responsibility, plant safety, exceeds standards.

26 Again, he said it's an open book. They could come to
27 look at everything.

28 I might add, Mr. Walker, when we took his testimony that

1 you're going to hear this afternoon, he said, well, when you had
2 the annual review, what happened afterwards?

3 He said I got a bonus and a raise each year. I got a
4 bonus and a raise each year.

5 What did that mean to you? Did that mean you're doing a
6 good job, keep up what you're doing?

7 He said, yeah, I thought I was doing a good job. He got
8 a bonus and raise every year.

9 So in this one -- so what were they looking at when they
10 were doing this review? What were they looking at? They gave
11 us an insight to what they were looking at.

12 They put in his review here. "Over the past year
13 Sentinel, the plant, did not have a recordable injury as of
14 December 31st and has gone 1,235 days without a reportable or
15 recordable injury." That's what's on his review.

16 So, naturally, I had to ask Mr. Walker -- we asked him
17 what is a reportable injury?

18 He said a reportable injury is when someone gets hurt at
19 the plant and has to go to the urgent care or the hospital. As
20 long as no one was gone to the urgent care or the hospital, it's
21 all we need to know.

22 As you're going to see, someone ended up going to a
23 different place.

24 So 2017 is more of the same thing, more of these red
25 flags.

26 Now, this is where the 46,000 reviewed documents started
27 popping up.

28 The summer before this happened -- this happened in March

1 of 2017 -- Mr. Kromer right here, Mr. Kromer, the VP of
2 operations and maintenance at Diamond Generating Corporation,
3 decides -- it seems like they're going to have a review of the
4 safety procedures.

5 Now, remember, up until this time, this is how it was
6 operating. We would close that valve, we close that valve, we'd
7 open this one, we'd open this one.

8 What the workers got used to doing, and since they
9 weren't having formal training or anything and there were new
10 workers getting hired, what everybody got used to doing was
11 listening, because it made a very loud sound coming out under
12 pressure where they opened that up, a very loud sound.

13 So the workers for four years doing this part of the
14 plant this way would do this. And then they'd hear all this gas
15 coming out the top in a very loud sound. I mean, some
16 workers -- you know, most of them were wearing hearing
17 protection. So when that sound stopped, they would know the
18 vessel was empty then. It comes out.

19 So that's how they were doing it.

20 So what comes up, Kromer sends this email to the plant.
21 These are plant managers around. Tom Walker, Carpenter. These
22 are running different plants around here.

23 He says, "What's the status of safety procedures?
24 September is just around the corner and would prefer to have
25 your comments under consideration before we go live."

26 There's going to be more in this link that's gone on, but
27 I want to show you some of the ones that are in the highlight
28 for this.

1 He doesn't hear back from them, and there is like an
2 email problem, sending it to the wrong email, I think.

3 He writes to them again and says, "What's the status? I
4 haven't seen anything about safety procedures." Michael Kromer
5 involved, haven't seen anything about safety procedures.

6 Tom Walker, the plant manager, on the 29th, a couple days
7 later, responded to Michael Kromer about the safety procedures.
8 He says, "I've reviewed about a third of those revisions and
9 found errors that need to be corrected."

10 He sends that to Kromer. They're talking about changes
11 in the safety procedures.

12 This is safety procedures. And Mike is Mike Kromer right
13 here, and he's saying, "Please provide" -- this is from an email
14 chain, the to and from. You can see this is from Mike Kromer
15 right here. This is just coming out. We'll have the whole
16 email for you guys to see. Just pointing it out here.

17 It says, "Please provide the proper verbiage for changes
18 in track change mode. I want to be clear, I'm not modifying
19 these procedures. You guys need to provide the necessary
20 changes so that they may be accepted or rejected. Regards,
21 Mike."

22 He wants to see what they're doing on the site. Give
23 them to me. I'm going to reject them or accept them. Let's do
24 it. They're reviewing these safety procedures.

25 One of the biggest safety procedures that we know is --
26 (inaudible).

27 Come January, now -- so they're going back and forth with
28 those procedures and changes -- they have a quarterly meeting at

1 the corporate headquarters in L.A., 27th floor of that highrise.
2 And they have a quarterly meeting where the managers come in to
3 give a quarterly report all the time. And they send out an
4 email, okay, the quarterly meeting is coming up. Get your
5 reports ready.

6 This is the e-mail that goes out saying get your reports
7 ready.

8 It says:

9 "As you know, we have the quarterly
10 operations meeting next Friday, the 27th.
11 Following the presentations, I would like
12 to have a separate meeting which will
13 include myself, Mike Kromer," the head over
14 there, "the plant managers. And a rough
15 agenda is provided below."

16 This, I believe, is sent by a man named Adam
17 Christodoulou. You may hear from him. Some of the emails say
18 Adam Christodoulou is working for Diamond Generating
19 Corporation. Some say he is working with Diamond Generating
20 Operations, both. You can listen to them and you can decide.
21 They are both kind of one at this point.

22 So they're going to have a meeting with an agenda.

23 Well, what's on the agenda? This is just about six weeks
24 before the explosion when they're having this quarterly meeting
25 there. What's on the agenda? Updates. They've been emailed
26 about the safety procedures. They are at the meeting, updates.

27 Can you see? Can you guys see that?

28 "Updates. Safety procedures. How are we going to

1 communicate when a change has to be made?" That's on there.

2 Now we're back in North Carolina. We talk to Mr. Walker.
3 We show him this. Did you have quarterly meetings? Yes. And
4 you look at this. This is on the agenda? Yes, it was. The
5 agenda says talk about changes in safety meetings? Yes.

6 He was still represented at that time by Diamond
7 Generating Corporate lawyers, just so you know the picture. I'm
8 not there by myself questioning him.

9 MR. SCHUMANN: Argumentative, your Honor, improper.

10 MR. BASILE: Just laying the foundation.

11 THE COURT: One moment.

12 Sustained.

13 MR. BASILE: Thank you, your Honor. Just laying a
14 foundation who was there.

15 THE COURT: It was sustained, counsel.

16 MR. SCHUMANN: Thank you, your Honor.

17 MR. REID: Thank you.

18 MR. BASILE: Now, I asked him, was this on the agenda?

19 Yeah, it's on the agenda.

20 What was talked about?

21 I don't recall.

22 Well, do you usually talk about items like that?

23 Yes, we do.

24 Are they all usually covered?

25 Yes, they are all covered. It's important to cover them.

26 What was talked about, changes in safety procedures?

27 I don't recall.

28 You'll see his testimony this afternoon.

1 So here's how it was. Here's how the procedure was for
2 four years.

3 Close that first valve down there, close that second
4 valve, open the vent, open the vent. That's how it was.

5 What happens? What are they changing? What's going on?

6 Here's the sheet on the left that they were using
7 basically for four years for this. The yellow and blue are
8 those four steps I've been outlining for you, the yellow and
9 blue.

10 On the right side it's now changed. It's the yellow and
11 blue are the steps, but there is a new ISO valve 2, not the old
12 ISO valve 2 that was used. They're changing it. I'll show you
13 that in a second. They're making it further down on this list,
14 not all together, further down. So there is a big gap between
15 it.

16 And that area in between here is different areas of that
17 skid where worker has to go, but these ISO valves are all
18 closed.

19 Here it is. Here's the change.

20 You remember it used to be this valve, this valve to open
21 the vents. Now they're changing it to this valve, open the
22 vents, and then this valve in the same area, the same area,
23 close. But they're throwing in 14 or so many other steps where
24 they're going to have to run everywhere else first. They're
25 used to just being at the skid, and so they're just going to do
26 that. Well, where's ISO valve 2? Let's do it.

27 You have to remember on these days -- I'm going to be
28 talking about what they're actually like, that there are outside

1 contractors coming in. It's a very busy day. I'll get to that.
2 But I want you to follow the change they're making.

3 So it would be now this and then open the vent. You see
4 that sound would still be coming out, where the workers had been
5 used to just listening to the sound, the sound coming out. So
6 they would still hear some of it coming out, and then it would
7 stop, and they'd been conditioned for four years with no
8 training, no follow-up, no annual, that's it. They hear the
9 sound going out and they begin to think that's right.

10 Mike Delaney was working that day. He was one of the
11 guys that -- you're going to see there were three different guys
12 who were -- Daniel Collins and two other guys were working this
13 LOTO. There should have been only one. But that's how they
14 allowed the system to develop into what workers said was just
15 like -- we were just doing it on triable knowledge, following
16 other people and that.

17 Michael Delaney, who is out there that day -- and how
18 that day works, when they're having these shutdowns, these
19 workers that are going through these shutdowns, that's not their
20 normal job. They are usually operators helping run the plant.

21 When they have the maintenance, they have to bring in
22 extra workers, more people there at the time to do it. And
23 there are as many as 25 outside contractors waiting for this to
24 be shut down so they can come on board and do the work.

25 So there is pressure. There is hustle. There's stuff
26 that has to get done on this.

27 Mike Delaney was one of the ones working that day. And
28 we saw his name and initials on the sheet and we wanted to take

1 his deposition.

2 I think most of you probably know, but a deposition is a
3 statement under oath, just like they're testifying in court
4 where they're represented by the other side. They are there
5 representing them and the questions.

6 So Mr. Sullivan was taking his deposition and asking him
7 about ISO valve 1 coming in and how the system works and what do
8 you know and listen to what he said. Oh, and who he is? I just
9 told you this. He was an operator. He participated in the
10 LOTO. He was hired in 2015. He had no plant-specific LOTO
11 training, no documented plant-specific LOTO training.

12 He was not familiar with how the system even operated,
13 but he was sent out from their job safety meeting in the
14 morning, as they call it, to work on this LOTO sheet. He was
15 not a qualified worker per their own standards.

16 When we talked to him, here's what he said.

17 "Q. Now, closing isolation valve
18 number 1, it's my understanding that
19 valve blocks the flow of gas from that
20 line that goes into the fuel filter so
21 that it can't go into the tank; is that
22 right?

23 "A. Can I say something?

24 "UNIDENTIFIED SPEAKER: Sure.

25 THE WITNESS: I was not familiar with
26 this whole fuel system, what valves. I
27 don't know what valve. I did not know
28 what valve did what or what valve was

1 what at the time."

2 MR. BASILE: So here are the complexities of it. There
3 are the two changes.

4 Another worker on this same day working on this same
5 shift -- remember, they have to have extra people. When you get
6 that shutdown for that, they had a maintenance worker, a nice
7 guy, Albert Palalay. Hopefully we'll get to him today, too.
8 But he was working there.

9 We asked him, you know, what did you know? Did you know
10 there had been a change in this procedure? What was your
11 training like and all that?

12 His initials are on the sheet too that went down that
13 day.

14 Albert was a maintenance mechanic. He wasn't an operator
15 of the system or anything. He was hired in 2014. And I believe
16 2014 was that first year they had no documented LOTO training.

17 He participated in a LOTO. No plant-specific LOTO
18 training where you're out there going through it.

19 He's not qualified. He's out there working that day.

20 Here's what he has to say.

21 "Q. What is the maintenance, from your
22 understanding, that these tests were done
23 out of sequence that day?

24 "A. From when I had walked away to go
25 get ear plugs, I mean, not -- I mean,
26 from when I went to get the ear plugs to
27 get back, I don't really remember like
28 following with him because -- instead of

1 running around, the way the skids are for
2 fuel, we hop sides, went from one side of
3 the package to the other, and didn't just
4 follow -- we were trying to do the stuff
5 closest to us instead of doing -- going
6 in order.

7 "Q. So basically just kind of taking
8 advantage of the steps that were in sort
9 of the same area of proximity?

10 "A. Yes.

11 "Q. Does the steps overall, if you do
12 them in sequence, they require you to
13 move around the skid a fair bit. Is that
14 a fair statement?

15 "A. Yes."

16 MR. BASILE: So you hear what he's saying there. When
17 they changed that order, he was doing the ones that were closest
18 and staying there. You guys see that.

19 So it's right here. You see, the steps were in order
20 here before and now they're out of order. All of these steps in
21 between when they're going to have to run around all these other
22 places when this happens right there, so he said, hey, ISO valve
23 2. This says ISO valve 2. ISO valve 2 is right here. Before
24 we go do all this, they do it. No training, no one was told.

25 Juan Gonzalez, who no longer works for them, is back
26 in --

27 MR. SULLIVAN: Wisconsin.

28 MR. BASILE: Wisconsin. We did his deposition with the

1 other side also on the phone through Zoom and asked him about
2 this change that happened. Here's what he has to say.

3 He was an operator. He was hired in 2013, had the
4 original training. No hands-on training, though, he says.

5 Not informed of the change that happened.

6 And he's not qualified by having any up-to-date training.
7 Here is he what he says.

8 "Q. Before Daniel was killed, you were
9 never advised that isolation valve
10 number 2 was being changed to a different
11 valve; isn't that true?

12 "A. Yes.

13 "Q. Before Daniel was killed, you were
14 never advised that the order in which
15 isolation valve number 2 was going to be
16 closed had changed; isn't that true?

17 "A. Yes.

18 "Q. Now, of course, since you had never
19 been told about the changes, you were
20 never trained about the changes before
21 Daniel was killed; isn't that true?

22 "A. Yes."

23 MR. BASILE: Here's a summary of the change.

24 It was 1, 2, and then on this side over here now they're
25 changing this ISO valve 2 to being down here in the lower right.
26 They're not telling anybody why it's changed, how it's changed,
27 anything. They just put it up there.

28 They had the meeting six weeks before with on the agenda,

1 "How we are going to inform people about changes."

2 So over on this side you see this was only draining that
3 much and the pressure is still in.

4 Mr. Lane is going to testify in this case, who is a LOTO
5 expert. He has designed LOTO programs in different power
6 plants. He's worked on nuclear submarines. He's trained people
7 in LOTO. He's established LOTO systems and LOTO programs and
8 all of that. He's reviewed this. He's reviewed the red flags.

9 The evidence will show that it's his opinion that this
10 was, right here -- it's his opinion that this was a dangerously
11 different change because the valve is not being marked, because
12 of the lack of training, because of the multiple -- the whole
13 system's failure.

14 Let's put it this way. It was a dangerously different
15 change would be his opinion.

16 So there have been key factors we've been talking about
17 here, folks. And you remember the safety system to develop,
18 train and review. We've covered the training and we've covered
19 the review.

20 And those were these factors, four years of the red
21 flags, the change in procedures weeks before the workers were
22 not told. And now we learn the same thing nearly happened three
23 years before.

24 This is what's called a near miss. A near miss in a
25 complex system of safety like this has to -- you must have a
26 strong near miss reporting system. And you must have it so that
27 if there's a near miss, something goes wrong, someone's starting
28 to open the top of the lid before the pressure is out and

1 someone stops it and catches it and says, whoa, you have to shut
2 that down and do a root cause analysis. Why did that almost
3 happen? How can we make sure it doesn't happen again?

4 Here's what happened. The skid had unmarked valves. And
5 they were going through one of these shutdowns in the first
6 year. The correct way is once the LOTO is installed and a
7 supervisor walks the LOTO, he has to do all of that before
8 anyone can do any work on it.

9 So we assume that that was done, but Mr. Gonzalez is
10 setting up, getting ready to take the lid off here. This gauge
11 is not a pressure gauge for the tank. That's not a pressure
12 gauge for the tank. That measures some other flow.

13 He's setting up to take the lid off, and his sleeve
14 catches on the way up there on a release valve and gas goes out.

15 At the same time a supervisor of this LOTO, who is going
16 to be our first witness, Dennis Johnson, was coming by and heard
17 the sound and stopped it and said, whoa, stop. Don't do that.

18 Mr. Gonzalez didn't realize how dangerous it was because
19 he hadn't had the training. He stopped him from doing that. He
20 said, wait, let's get down off the ladder, walk around the other
21 side of the tank. And there was a gauge and the gauge showed
22 there was still a lot of pressure in the tank.

23 So Dennis Johnson, whose office at the time was -- and
24 job at time was going to various plants, and his office was at
25 the highrise in L.A., just says to Mr. Gonzalez, oh, just tell
26 your supervisor here.

27 There was no follow-up. There is no anything. They just
28 shut it down and start it over the next day and did it right,

1 got it right.

2 There is no how did that happen. How did that happen?
3 What do we need to do to make sure it never happens again.

4 Three years before Daniel Collins is doing the exact same
5 thing. They did nothing.

6 So we asked him about it. This is Mr. Gonzalez. He's up
7 on the right side here.

8 "Q. I want you to take us back to the
9 moment when that near miss occurred.

10 "A. Well --

11 "Q. Were you up on the ladder yet?

12 "A. Yes, I was. This was the first --
13 our first outage. It was 2014. It was
14 the first outage of the season. We had
15 been through one. I can't remember
16 exactly how many units we had done up
17 until that time, but being on that unit,
18 I was on the ladder. I was taking the
19 insulation cover off the top. I either
20 hit my arm or my shirt got caught up on
21 the relief valve handle and it blew gas
22 right at that time.

23 "Dennis Johnson was coming out of
24 the PCM, which is the motor control
25 center. And he heard the gas release and
26 he asked me what was that. I said, well,
27 there is gas coming out. So he said
28 stop. We took a look at the gauge and

1 the gauge still showed pressure inside
2 the vessel itself.

3 "Q. Do you remember how much pressure
4 was in the vessel?

5 "A. Between seven and 800 pounds.

6 "Q. And you were just getting ready to
7 remove the bolts on that lid, weren't
8 you?

9 "A. Yes.

10 "Q. And but for your sleeve getting
11 caught on that release valve, you would
12 have continued to remove the bolts on the
13 lid; isn't that true?

14 "A. That is true.

15 "Q. Now, before you started work on the
16 tank, you thought that the tank had been
17 drained of high pressure; isn't that
18 true?

19 "A. Yes.

20 "Q. You were up on the ladder getting
21 ready to remove the lid, just like Daniel
22 Collins was on the date that he was
23 killed; isn't that true?

24 "A. Yes."

25 MR. BASILE: So in spite of that four years before, there
26 was never a line at any time added on that sheet to say check
27 the pressure gauge, must be zero filter tank pressure. All that
28 needed to be done was a line added on here to say "check the

1 pressure gauge." For four years, it was never on there.

2 So this has been building. March 7th, Daniel Collins up
3 early, liked to go to the fitness center and work out before
4 work in Hemet, comes to work. It's the annual shutdown.

5 The system had now evolved into, you know, different
6 verifiers, different people doing different things, and the
7 workers thinking this is how we do it, because there are new
8 workers that came on and everything. That's how they do it.

9 He goes out with Albert Palalay and Daniel Delaney and
10 they're trying to do this LOTO. This is where they're working
11 on that.

12 So while they're doing this, different items, different
13 things. Twenty-five outside contractors waiting to come on
14 there and what to do. Something unusual happens, though. They
15 hear gas venting over here near the turbine package. They hear
16 a loud sound over there happens during the turbine package,
17 which in a proper safety system, if something doesn't sound
18 right, if something is unusual, you shut the whole thing down.
19 Whoa, wait, stop, check that out. Let's see what's happening.

20 What they did was one of the bosses said anybody know
21 what that sound is?

22 Daniel said I'll go check it out. They were around here.

23 He goes over here to check out the unusual sound and
24 there is a gauge over there for the system, and that gauge at
25 that time would be zero. It's where the sound was because
26 something vented. There was a gauge there of zero.

27 He comes back over and they say did you check the gauge.
28 And he said, yeah, it was zero.

1 So there is still this pressure to get this done and
2 everything. And he does what Juan Gonzalez did. He's setting
3 up, doesn't know of that change, had heard the stuff venting.

4 He is on top of that 150-pound item, lid, taking the
5 screws out.

6 Tom Walker is in the office and he testifies that he
7 hears a sound that you just should never hear. It's like whoop.

8 He leaves his office immediately. And as soon as he's
9 walking out, other workers are running towards him saying Danny
10 is dead. He was literally -- excuse me -- blown to pieces.
11 Right there with this safety system.

12 So they did a root cause analysis after this happened,
13 not after the near miss, after this happened. Diamond
14 Generating Corporation calls in from one of their plants in New
15 York. One of their managers, Ben Stanley, says come investigate
16 this.

17 Mr. Stanley flies out and its corporate executives, Paul
18 Shepard gets on the phone. We want you to come out and look at
19 this.

20 It's not any Diamond Operations. It's Diamond Generating
21 Corporation, get out here, Ben, and take a look at this.

22 Mr. Stanley does an investigation, interviews people,
23 looks at LOTOs, looks at sheets, does the whole thing like this.

24 It's called a root cause analysis. We've talked about
25 some of that, about the employee fatality on March 6th.
26 Completes a report a little over a month later. He is out there
27 like the next day, the 7th or 8th. He comes out real quick.

28 This is him. He is one of their plant managers from

1 Valley Energy Center in New York. Twenty years of experience
2 with high-pressure natural gas. He has ten years in a senior
3 management role. He was assigned by the vice-president of asset
4 management, Paul Shepard, to do this investigation.

5 Here's what you're going to hear. We went back to New
6 York and took his deposition, statement under oath. Then we
7 went through his report. And we're going to be playing that.
8 Probably when you come back from the 4th of July, you'll hear
9 all what Mr. Stanley said.

10 But this is just a summary.

11 "Q. Okay. And in the report you spoke
12 of the systems failure and the culture of
13 complacency, right?

14 "A. Yeah.

15 "Q. That was the -- I guess we'll call
16 them failures that you found?

17 "A. Yes.

18 "Q. And they certainly contributed to
19 the death of Daniel Collins?

20 "A. Absolutely."

21 MR. BASILE: So what's the defense in this case?

22 You've heard some of it, I think. But the defense is we
23 had nothing to do with it. We had nothing to do with it. It's
24 our wholly owned subsidiary. We have different layers of
25 investors, this and that. We had nothing to do with it.

26 But, as I pointed out here, they own 100 percent of
27 operations which operates this. They provided safety policies.
28 They hired the plant manager. They reviewed the plant manager.

1 They got daily reports from the plant on production, on how much
2 electricity was being produced for them to sell, daily reports
3 on that.

4 In the daily reports they mentioned safety. They had
5 free access to the -- all that stuff. I'm not going to go over
6 it again. You guys can hear it for yourself.

7 We checked. Corporations are required to file with the
8 Secretary of State of the State of California a statement of
9 information, official document with the State of California.

10 Starting in '04 Diamond Generating Operations has to file
11 these annually.

12 Who do they list as their manager? They ask you, the
13 Secretary of State wants to know, hey, you're this LLC company.
14 Well, who's your manager. Diamond Generating Corporation is
15 listed as their manager with the filings with the Secretary of
16 State. That's Diamond Generation's who's who. That will be
17 there for you to follow.

18 Now, here's another defense you're going to hear.
19 They're going to say, you know, it's kind of set up like this.
20 Diamond Generating Corporation -- if this is a Sentinel Energy
21 plant, Diamond Generating Corporation gets 50 percent interest
22 in the plant. They have to go through different layers, how
23 they have the corporate structure and everything set up like
24 that. They had 50 percent.

25 Then there were two other groups of investors that each
26 had 25 percent. So there are two different groups. The
27 50 percent Diamond Generating here. There is an asset manager
28 named Mark McDaniel right here, who was the asset manager for

1 these two groups of investors to make sure their investors -- I
2 think it was a hedge fund company and someone else. There are
3 two groups of investors. He was out there at the plant. He was
4 there at the plant.

5 Part of their defense is saying, well, CPV, Mark
6 McDaniels, he was the one who was in charge of safety. He was
7 the one that was supposed to be in charge of safety.

8 We have a 30, 40-page agreement with McDaniels. There is
9 one paragraph in there that says CPV is in charge of safety.

10 But the case is about who undertook safety at the plant,
11 first of all. That's going to be one of their defenses.

12 They also had, Diamond Generating Corporation -- what's
13 the matter?

14 They had their own asset manager at the plant, Paul
15 Shepard. He was the asset manager.

16 These asset managers are basically exactly what they're
17 saying. They're asset managers. They're kind of like
18 accountants but for business people. They're watching the
19 books. They're watching that. Paul Shepard is the asset
20 manager for Diamond Generating Corporation that's keeping an eye
21 on this.

22 So we hear this and we scratch our head, but we heard it
23 before we talked to Mr. Walker. So we asked Mr. Walker -- we
24 didn't. Actually you can listen to it. Another lawyer asked
25 him.

26 Mr. Walker, you're the plant manager. What did
27 Mr. McDaniel have to do with safety?

28 Here's what he said.

1 "Q. Were you aware as part of that
2 agreement the asset manager, who I
3 believe we discussed was Mark McDaniel at
4 the time, was responsible to review
5 safety at the plant?

6 "A. Not that I recall, no.

7 "Q. Do you remember Mark McDaniel ever
8 inquiring about safety?

9 "A. Not that I recall."

10 MR. BASILE: So, folks, you can judge for yourself about
11 that.

12 So in summary, Diamond Generating Corporation, the
13 evidence will show that they were negligent in their oversight
14 of safety from the systems failure, lack of supervision of the
15 plant manager. There is his performance reviews. Lack of
16 training that we talked about. All those red flags.

17 This is the systems failure, unsafe LOTO procedure, no
18 line on it to check the pressure, confusing, the near miss that
19 was ignored. And failure to communicate safety changes at the
20 corporate level there in L.A. on that meeting, that agenda, to
21 discuss the changes that never got to the workers.

22 They are also going to say that Daniel should have looked
23 at the gauge. And the workers are going to say, first of all,
24 no one ever looked at the gauge because you had that sound.

25 Secondly, the only place the place to get the ladder to
26 get up on that -- you can't see the gauge. You see, the gauge
27 is on here. It's back in here, right here. And I got it --
28 there. It's like that.

1 So it's far away from where the ladder is and it's not --
2 all they had to do was put the line on there. They have all
3 these steps.

4 They're going to say, oh, he should have looked at the
5 gauge. Don't forget with the unusual venting that day he did
6 look at the gauge.

7 They're also going to come up with, oh, his nickname was
8 Brushfire. He worked real fast. They had to tell him to slow
9 down all the time.

10 We'll show you his performance reviews, and you can
11 decide if anything was ever covered before he was killed or if
12 it's just brought up after he was killed as a defense and
13 excuse. We're going to show you that.

14 Nonetheless, we also asked Mr. Walker, well, what was
15 Daniel like as a worker. Gee, if he's a bad worker and all the
16 hurry up and rushing, we've got to always slow him down and he's
17 rushing, like now they're trying to say he is, this is what
18 Mr. Walker said about Daniel Collins.

19 "Q. Can you describe for me Daniel as a
20 person after he started working at the
21 plant and you had to spend more time with
22 him and get to know more about him than
23 the information you learned at the
24 initial interview?

25 "A. Danny was a very funny, very
26 entertaining guy. He was hard working.
27 He strove for excellence. He tried to do
28 the best he could."

1 MR. BASILE: So I want to tell you about the other part
2 of the case. I've taken a lot of time to do that. I'm going to
3 move through this quickly, but you can get a flavor for that.

4 It's a value of two special relationships.

5 This was shortly before Daniel passed away. Here's --
6 he's at Ontario Reign hockey game with his son.

7 So we're going to be showing you -- you're going to have
8 to evaluate what's the value of what was lost. We talked about
9 that. We need to know what it was to see what the loss -- the
10 price of what was taken.

11 So we're going to present people that knew him. You're
12 going to learn that they were married in 1992. He was still in
13 the Navy. He spent 25 years in the Navy. He could have come
14 out after 20, but he spent 25.

15 He had a tour in Iraq. He had two tours in Afghanistan.
16 He worked in the Bagram prison in Afghanistan. He had several
17 West Pac tours of different shifts. He was looking forward to
18 retirement, to say the least.

19 They had Chris while he was still in the Navy. This is
20 Chris shortly after his birth.

21 This is them close in time. They were at a wedding
22 together. Very close people. You'll see that for yourself.

23 You're going to learn that they got married in '92, and
24 Denise gave me a card that Daniel wrote in for their first
25 Christmas. He wrote like a long poem in that in '92.

26 Then -- I'm looking through stuff -- he wrote a poem to
27 her on the Valentine's Day before this happened. He is still
28 writing her love poems 25 years later.

1 Then separately you evaluate this relationship.

2 You know, when we're real young we don't recognize our
3 father yet or anything. This is probably about the age where
4 you start realizing you have a dad. They were living in North
5 Park in San Diego. Daniel was home on leave and he loved taking
6 him to Balboa Park.

7 Chris followed his dad into the service, and when Chris
8 got this special recognition in aviation pin his dad scrambled
9 to get back. You can pick someone to pin you and he had his dad
10 pin him, Daniel.

11 This was Daniel's last deployment before he retired. He
12 came back. Whenever the ships come in, they work their dress
13 whites.

14 So you'll be putting a price on something priceless
15 that's not going to be -- because that's going to be your job.

16 Daniel was the center of a lot of people's lives.

17 After you hear everything -- I'm sorry. After you hear
18 everything, you're going to see that the evidence in this case
19 will compel a verdict holding Diamond Generating Corporation
20 fully accountable for what was taken in the tens of millions of
21 dollars for each of those relationships, but that will be in
22 your hands.

23 Thank you very much for your attention when we're
24 presenting this case.

25 THE COURT: Thank you, counsel.

26 Mr. Schumann -- or is it Mr. Reid that will be --
27 Mr. Schumann, if it's okay with you, we'll take a ten-minute
28 break. It looks like we went about an hour and 20 minutes.

1 MR. SCHUMANN: Yeah.

2 THE COURT: We'll return at 11:30.

3 Again, same admonishment. You haven't heard any evidence
4 yet in this case, so please do not discuss the facts of the case
5 or any other parties with each other. We'll see you at 11:29.

6 Thank you.

7 (The following proceedings were held
8 outside the jury's presence.)

9 THE COURT: We are now outside the presence of the jury.
10 We'll be back in a couple minutes. Anything, Mr. Schumann?

11 MR. SCHUMANN: Yes, your Honor. Would now be the time to
12 raise the nonsuit or do we do it after the break?

13 THE COURT: We can do it after the break. Let's just
14 maximize our time here.

15 Again, as always, there is no rush. You'll have 30
16 minutes. We will break at 12:00, but obviously you're welcome
17 to pick back up. I thought it best to let everyone stretch
18 their legs and reset so you can have their full attention.

19 MR. SCHUMANN: Sure. I would like to make sure I do the
20 nonsuit motion before I start my opening.

21 THE COURT: Are you going to reserve your opening?

22 MR. SCHUMANN: I have to file a nonsuit motion, whether
23 it's now -- I can do it verbally now or I can do it when we come
24 back before I start up.

25 THE COURT: All right. Let's do it when you come back in
26 about five minutes, then.

27 MR. SULLIVAN: Your Honor, there is one issue with an
28 exhibit that they told us they were going to use that we gave

1 them notice we were objecting to it.

2 They apparently intend to use a caption from the first
3 amended complaint that has all the prior defendants listed on
4 there, which is a direct violation of the Court's standing order
5 about not introducing any evidence of the fact of or the amount
6 of any settlement.

7 THE COURT: Mr. Schumann?

8 MR. SCHUMANN: That's not correct.

9 I'm going to use a declaration that's in that complaint.

10 MR. BASILE: We haven't seen that.

11 MR. SCHUMANN: It's in your complaint. It's the
12 declaration in the first amended complaint from your expert.

13 THE COURT: Are you using a legal pleading, though, as an
14 exhibit?

15 MR. SCHUMANN: No, it's an impeachment document. It's
16 the expert's declaration that Gemma and Mott MacDonald --

17 THE COURT: If it's an attached exhibit, I'm probably
18 going to overrule the objection. If it's an actual pleading
19 with the caption with all the parties' names on it --

20 MR. BASILE: It's what it says is the problem.

21 MR. SCHUMANN: I won't show the caption, just the portion
22 of his declaration about what the expert is saying.

23 MR. SULLIVAN: It's 352, your Honor, because letting in
24 the declaration, they're going to see that there were a prior
25 defendant in this case because in order to file a lawsuit
26 against an architect, you have to attach a declaration that
27 there is some merit to it.

28 So they're trying to just back door it in an effort to --

1 MR. BASILE: Totally misleading.

2 MR. REID: Your Honor --

3 THE COURT: Let me stop here. You're asking me to rule
4 on an exhibit I haven't even looked at. So if you would like,
5 if you want to have it on the ELMO, just so you know, I'm
6 looking at real time, I'm also handling other things, and then
7 also have this screen. I'm looking at this screen. I'm looking
8 at whatever you have in this screen up here? That way I can see
9 the jurors.

10 If you want to put something up on the ELMO, I'll take a
11 look at it.

12 MR. SCHUMANN: That's okay. I'm withdraw the document.
13 I'll just do my talking.

14 MR. BASILE: You're withdrawing it?

15 MR. SCHUMANN: The document, I am.

16 MR. BASILE: The declaration, I mean. Is it going to be
17 presented?

18 MR. SCHUMANN: I'm not going to present the declaration.

19 MR. REID: Your Honor, may I enter the well and
20 photograph their trial board?

21 THE COURT: Of course.

22 MR. REID: Thank you.

23 MR. BASILE: It's already an exhibit.

24 (Recess.)

25 (The following proceedings were held in open court
26 in the presence of the jury.)

27 THE COURT: Members of the jury are back.

28 Counsel, I know there is a pending motion. The Court

1 does have a decision on it. I will let you know once you
2 complete your opening, but I do have it written down.

3 MR. REID: Thank you, your Honor.

4 THE COURT: Mr. Schumann, as I mentioned. No rush. I
5 apologize that your opening may be interrupted, but we'll break
6 at 12 and you'll have whatever time you need afterwards if you
7 need it.

8 Permission to use the well.

9 MR. SCHUMANN: Thanks.

10 THE COURT: Mr. Schumann, we'll make sure it's turned on
11 for you.

12 MR. SCHUMANN: Thanks.

13 Members of the jury, thank you for being here.

14 This is a tough case. I know you've heard something
15 about a horrible death of an individual. That's not good.

16 I'm going to try to tell you what the evidence will show.
17 You've seen some clips of what has been said out of context or
18 in context. I'm going to tell you what I think the evidence
19 will tell you.

20 It will tell you that this is a case about personal
21 responsibility. It's a case about accepting responsibility for
22 your own actions. It's a case about human error, multiple human
23 errors and a horrible outcome therefrom. It's a case about not
24 taking your dangerous job serious enough to do it perfect every
25 time.

26 It's a sad case about a truly wonderful person that
27 everyone who comes in here to testify about will say he was a
28 great man and he did not deserve the outcome that he got.

1 There's a lot of evidence for me to go through, so I have
2 a long list. I have to kind of go slow and take my time. I
3 can't rush it. It's a long case, lots of witnesses. It's, as
4 you saw, a big power plant and it's serious stuff.

5 A lot of the people that you heard about, the actors, I
6 will call them right now, all the people who didn't do it right,
7 who weren't properly trained, they are all operations employees.
8 They are all hired by the company that runs the plant. They run
9 the plant.

10 You will hear that my client doesn't run the plant. They
11 run the plant. Their supervisor tells them what to do. Their
12 managers train them for years.

13 They were the ones who did the bad acts. You will hear
14 that the findings afterwards, they were, in fact, at fault.
15 These various operators, co-workers, made mistakes. They made
16 the mistakes.

17 Unfortunately it's also about the first slide. And this
18 was Daniel Collins' statement before he started. He was going
19 to set a record for this outage. That's not how you help run a
20 power plant.

21 Can we turn that off for a second?

22 There are a lot of different parties that you have heard
23 of. And I heard them being referred to as "they." Now, they
24 are a lot of different players. There are a lot of different
25 parties. They include the plant itself. They include the
26 company that's hired; an actual company, not a fake company, the
27 actual company that's hired to run the plant.

28 The owners of the plant is a different company.

1 Then my client is an entirely different company too who
2 has ownerships in the plant and in the company that runs the
3 plant.

4 There are other players, people who built the plant,
5 people who designed the plant.

6 You will hear that they were at fault.

7 Then you will hear about all these employees, and they
8 all worked for the company that we will refer to as DGC Ops,
9 O-P-S.

10 So you will have DGC Ops, which is the employer,
11 Mr. Collins' employer and the company that runs the plant. You
12 will hear about CPV Sentinel or Sentinel. That's the owner of
13 the plant and the plant is called Sentinel. It's confusing.
14 I'll put it up and we'll have a board so you can all see it.
15 But Sentinel is the plant. Operator is Ops. CPV Sentinel owns
16 the plant. And then our investor owns portions of both.

17 So the owner of the plant -- can we turn this thing off?

18 The owner of the plant, CPV Sentinel, they built the
19 plant. They hired Gemma and they hired Mott MacDonald to build
20 this plant.

21 As they were about to invest this amount of money into
22 building this plant, they hired another company, CPV Management.
23 And they were hired specifically to oversee the construction of
24 the entire plant, the creation of all safety systems, the
25 creation of the lockout/tagout, making sure that the entire
26 computer room, which was the size of this room, is properly fit
27 with whatever needs to be at a power plant.

28 This particular company, and we refer to them as

1 management -- they specifically were hired to do all the tasks
2 that plaintiffs' counsel claims my client somehow did.

3 You will see a contract -- I might as well show that one
4 now -- the asset management agreement.

5 So this is the asset management agreement between the
6 owner of the plant, CPV Sentinel, and they hire CPV Sentinel
7 management.

8 Let's go to the next one.

9 They specifically hire them. Okay, so the project
10 company, the owner, desires to retain asset manager to provide
11 certain administrative and asset management services to the
12 project company in connection with the construction management,
13 construction, operations of the project. And the asset manager
14 desires to accept such retention, meaning the asset manager
15 agrees to perform such services.

16 Let's go to the next one.

17 The company that builds it appoints the asset manager to
18 perform the services in accordance with the terms of this
19 particular contract. The asset manager accepts the appointment.

20 The owner appoints the asset manager as the agent for the
21 entire project, having such authority as may be necessary for
22 it, meaning for the management company, to perform its services.

23 Basically, it can do whatever it needs to do to make this
24 power plant proper, operational, safe.

25 Let's go to the next one.

26 The owner allows the asset manager to retain basically
27 whatever professionals that that manager believes need to be
28 hired.

1 So if you need to hire ten safety managers, a hundred
2 safety managers, you can do so.

3 Let's go to the next one.

4 The asset manager is authorized to arrange and contract
5 for independent third-party permits, engineering and inspection
6 services.

7 Let's go to the next one.

8 Other services, basically whatever you need. You're the
9 boss of this entire project. We're not, says the owner. The
10 owner says I'm not the boss of it. I'm investing in it. And
11 you know how to do this. You've told us you know how to do it.
12 You can do whatever you need to do to do it right.

13 Let's go to the next one.

14 The asset manager will provide -- sorry about this.
15 Okay. So construction management services is what the asset
16 manager agrees to. So basically throughout the entire
17 construction, years of building of this project, the manager
18 will provide the construction management services.

19 Next.

20 The asset manager, the manager, will attach monthly
21 reports. He'll oversee and monitor the safety programs of each
22 contractor on site. That includes Ops, right? Ops is hired to
23 be on-site to run the entire plant. The asset manager has the
24 right to oversee and monitor the safety programs for Ops, for
25 the electrical vendor, for any vendor or anyone who is on-site.

26 Next.

27 The asset manager is the representative for the project
28 company, meaning the owner, and shall oversee the operating

1 agreement pursuant to the operator. I'm sorry. That's a little
2 confusing.

3 But basically he has the right -- again, just confirming
4 that he has the right to do whatever he needs to do. It's
5 legalese, sorry.

6 Let's go to the next one and see.

7 He will provide monthly reports.

8 Next one.

9 He shall manage all government approvals, because there
10 is a lot with a power plant, a lot of involvement by government
11 to make sure this thing is built properly and runs properly.
12 Regulatory affairs, et cetera.

13 Next.

14 He will be responsible to supervise and manage the
15 operator, Ops. That's the manager's job. Ops will be
16 responsible for day-to-day compliance at the project, et cetera.
17 That's the manager's job. He, this company, hired to run Ops.
18 This company was hired to run Mr. Collins and his co-workers.
19 That's what you will hear.

20 Next.

21 Let's go to the next.

22 I think that might be the end of it.

23 Okay. So you will also hear that Mr. Collins was well
24 trained. He knew what to do. He had done this on numerous
25 occasions. He had worked there for four years. He was an
26 installer. He had been trained to follow each step on this
27 lockout/tagout sheet, all 21 steps. You follow them one by one.

28 You see that we'll actually have the tags. We'll have

1 the sheet. You'll see that you take the sheet, you take the
2 locks, you go out with your verifier. The verifier comes with
3 you.

4 Okay. I'm now doing number 1. It is 6:37 a.m. I'm
5 closing number 1. I put the lock on it so no one can open it.
6 I initial it. I time it.

7 The verifier says, yes, that's what this person did. I
8 confirm it. I initialed it. I signed it. I dated it.

9 Then you go to step number 2.

10 Mr. Collins knew to follow the order. Unfortunately
11 Mr. Collins was going to set a record that day, and
12 unfortunately he brought with him a person who was not qualified
13 to be an installer -- I mean, a verifier. Someone who had not
14 been trained to be a verifier.

15 You saw his deposition testimony of Albert Palalay, "I
16 didn't really know what the order properly was." So he brought
17 with him the wrong person.

18 Mr. Collins unfortunately knew who to bring with him, but
19 he picked someone he shouldn't have picked. He had been trained
20 to pick the right person.

21 This goes not just, oh, hey, do you want to get a coffee
22 kind of thing. This is you have to be a verifier to be able to
23 verify.

24 He then tells the verifier, hey, I'm going to do
25 something. Can you vent these two?

26 Mr. Palalay starts venting.

27 Mr. Collins then goes to do something that's not next in
28 the sheet. He leaves Mr. Palalay, who doesn't know what he's

1 doing. He knows a little bit about it. He's there for six
2 minutes. It's freezing, 6:30 in the morning. It's cold. It's
3 loud.

4 He closes and walks in to get his jacket and ear plugs.
5 When he comes out, the tags are hung. Collins moved to
6 something else.

7 I'll go through the list with you -- the root cause
8 analysis they showed you, we'll go through almost all the
9 unfortunate mistakes that were made.

10 So the installer, let's talk about who the installer is,
11 if we can go to that slide.

12 Okay. This is the installer and this is in the procedure
13 handbook that they've been trained on.

14 "What is an installer? The installer shall
15 isolate locked out and tagged out
16 components, drain, pressurize and/or
17 deactivate the components, hang locks and
18 lockout/tagout tags and sign all installed
19 lockout/tagout tags."

20 That's his job.

21 Let's go to the verifier.

22 "The verifier shall walk out" -- meaning
23 walk out is like go verify it, walk with --
24 "he shall walk out the lockout/tagout and
25 verify all components have been properly
26 isolated, tagged, drained, pressurized
27 and/or deactivated."

28 Meaning you have to verify as a verifier what the

1 installer did. You can't verify it if you're not with the
2 installer. If you have to go to the restroom or get ear plugs,
3 you're not with the installer. That's the first redundancy in
4 the system.

5 The second is that after they are done with following it,
6 signing it, doing all the things, hanging all the tags, locking
7 it, they now must tell the plant manager. And this was Jason
8 King at the time.

9 And the plant manager -- let's go to the next one.

10 The work supervisor verifies the isolation and
11 de-energizing of the component equipment prior to the start of
12 the job.

13 The verifier -- I mean the manager here, Jason King, is
14 supposed to be told I'm done with my job. You can go check it.

15 Mr. Collins did not tell Mr. King that he was done. No
16 one told Mr. King that Collins was done. That was Collins' job,
17 to tell Mr. King I am done, will you please go out and double
18 check my work, which would be the second double-check after the
19 verifier.

20 Mr. King would then go out, sheet in hand, with the dates
21 and times and all and confirm step number 1 was done, as you
22 said it was. Step number 2 was done. Step number 3. That was
23 not done. That was another unfortunate mistake. No one told
24 Mr. King.

25 Okay. We are going to show the all the unfortunate
26 mistakes and issues that occurred. The list is long so we'll go
27 one at a time.

28 Let's do the next.

1 So as I talked about, Mr. Collins selected Palalay, who
2 is not qualified to be a verifier.

3 We talked about the verifier's job, creates a second step
4 in making sure nothing goes wrong.

5 The verifier has to make sure all the steps are done
6 properly and in order. He initials the sheet, the tags, et
7 cetera.

8 You will hear that Robert Ward, co-worker and Ops
9 employee, told Mr. Collins in the control room, this giant room,
10 that's isolation valve 2, which you heard about, had been moved
11 on the sheet. So just remember, we talked about it. It's later
12 on in the sheet. That's what he told Mr. Collins, and he's
13 testified to this.

14 Mr. Delaney that you saw overheard Mr. Collins say, I'm
15 going to set a record for this outage.

16 Mr. Delaney will testify that he did not admire Collins'
17 hard-charging attitude and preferred to work slowly and
18 carefully.

19 You will hear that during a previous outage earlier,
20 Mr. Collins had said the same thing to the plant manager, Thomas
21 Walker.

22 Mr. Collins did not perform the role of installer
23 properly, as he had Palalay operate the key valves when he was
24 only supposed to verify. That was Mr. Collins' job.

25 The verifier cannot touch any of the equipment. You're
26 only supposed to watch, see that it's done right, sign and
27 initial.

28 The installer cannot ask the verifier to do this.

1 Mr. Collins then told Mr. Palalay to close isolation
2 valve 1, start the venting process. Again, Mr. Collins' job.
3 Not Mr. Palalay's job as Mr. Palalay was the redundancy in
4 confirming it was done.

5 Mr. Collins then left Palalay. Again, you can't leave
6 your buddy -- and he went to do something else.

7 Again, this is a key, unfortunate part. Because Palalay,
8 not properly trained, and it removed the verification step.

9 Then Palalay leaves. Unfortunately when he closes the
10 vents, he leaves 700 pounds of pressure in the chamber. So he
11 has only done this for a few minutes. It's vented down from 900
12 to about 700.

13 You will hear all this evidence. We have all this
14 evidence. It's in the control room. It's all recorded, the
15 times, the dates. It's all recorded. It's like a big plant.
16 There is no secret as to what happened and the order in which it
17 happened.

18 Vented for six minutes rather than the usual ten to 15.

19 Five more minutes to get his ear plugs and jacket. That
20 five more minutes would have ended the venting.

21 You will hear, unfortunately, that's the missing five
22 minutes.

23 You will hear from Robert Ward, coworker, ops coworker,
24 that the custom and practice is to watch the gauge which is on
25 the filter as it's venting. You have your ten to 12 minutes of
26 venting and you can literally stand there and watch and see it
27 go doo, doo, doo, doo.

28 Mr. Collins was aware of this process. He's done it

1 before on previous outages. And had he done the job, he would
2 have been the one watching.

3 He did not tell Mr. Palalay to watch and make sure it
4 went to zero.

5 So, pursuant to the LOTO tags that we have, it says that
6 Mr. Collins closed isolation valve 2, which was step number 14,
7 at 6:36 a.m. That is unfortunately not possible. You will hear
8 that's not possible.

9 You will hear that someone -- I don't want to use --
10 someone signed someone else's name to the verification sheet.
11 And you will hear Palalay saying I didn't sign it. Someone
12 signed my name for me.

13 Mr. Palalay will testify that he did not see Collins
14 close the valve. Thus he couldn't verify that he closed the
15 valve.

16 So this is what the evidence will show, that Collins
17 signed the tag for himself and also for Mr. Palalay.

18 This was the critical error, one of the critical errors
19 that left 700 PSI in the filter skid.

20 You'll hear Mr. Palalay testify that he was not present
21 when Mr. Collins closed the manual isolation valve, step nine,
22 or opened one and two, steps ten and 11.

23 Afterwards Mr. Collins had Mr. Palalay initial the sheet
24 and the tags; after it was done, not as it was being done.

25 There were these valves called maintenance valves. When
26 they were opened, there was an unusual venting of gas, something
27 that should not happen. It was a noise, a loud, loud noise.
28 The whole plant heard it and caused people to say what's up.

1 That should have been a warning to both Collins and his
2 co-workers to double-check the pressure in the system. Just go
3 look at the pressure or look inside the control room. No one
4 double-checked it, not Mr. Collins and not Mr. King.

5 During this time Mr. Walker -- Mr. Ward walked over to
6 the skid and saw Mr. Collins and Mr. Delaney, who you also saw,
7 and showed them that the closing of isolation valve 2 had been
8 moved down the sheet.

9 This was during the process. Mr. Ward second time tells
10 Mr. Collins, hey, reminder, valve 2 is further down the sheet,
11 just as he had told him before he started the process.

12 Unfortunately, it was not heard or ignored. We don't
13 know.

14 So when Mr. Palalay returned from getting his jacket and
15 ear plugs, Mr. Delaney was there with Mr. Collins and
16 Mr. Delaney vented a small portion of the system.

17 Again, Mr. Delaney was not the verifier, had not been
18 chosen to be the verifier. Mr. Collins had chosen someone else.
19 This was not Mr. Delaney's job.

20 The boss was Mr. Collins. He knew how to do this. He
21 was in charge of the entire lockout/tagout procedure.

22 No one instructed Mr. Delaney to watch the gauge as he
23 finished the venting.

24 The venting happened to be a small portion only.

25 THE COURT: Mr. Schumann, I apologize.

26 MR. SCHUMANN: Sorry.

27 THE COURT: You're starting a new slide, correct?

28 MR. SCHUMANN: Yes.

1 THE COURT: We'll break there. It's the noon hour.

2 Thank you, members of the jury. We'll resume at 1:29.

3 Again, please do not discuss the facts of the case. You
4 have not heard any evidence yet or any of the parties involved.

5 Please have a nice lunch. We'll see you at 1:29.

6 Please, counsel remain.

7 (The following proceedings were held

8 outside the jury's presence.)

9 THE COURT: We are now outside the presence of the jury.
10 I apologize, Mr. Schumann. We brought the jurors back in at
11 11:29, so I wanted to address your motion for nonsuit after
12 plaintiffs' opening pursuant to CCP 581c.

13 So this is not considering anything you mentioned in your
14 opening statement.

15 Based on plaintiffs' opening statement and their
16 proffered evidence, the Court is not making any determination on
17 the credibility of the witnesses or weighing any of the proposed
18 evidence discussed in that opening. That motion is denied.

19 MR. SCHUMANN: Okay. May I address some issues or no?

20 THE COURT: When you mentioned it the first time, you
21 just said you were bringing a motion for nonsuit, but you didn't
22 address any grounds. That is why the Court was kind of paused
23 for a moment.

24 MR. SCHUMANN: I didn't know if that was the time to say
25 my grounds.

26 THE COURT: Sure. If you would like to state your
27 grounds.

28 I think there was miscommunication between us.

1 MR. SCHUMANN: There must have been. I apologize, your
2 Honor.

3 So the grounds would be that there's been no evidence of
4 either negligent undertaking or an exception to Privette.

5 The arguments were that their expert will testify that it
6 was a dangerously different change and that there was negligent
7 oversight. That's neither negligent undertaking nor an
8 exception to the Privette rules.

9 There is no alter ego cause of action, so he continues
10 claiming that what Ops employees did is akin to Diamond
11 Generating being in charge of those employees. So that wouldn't
12 apply either.

13 I'll make it as simple as that. That's as simple as it
14 can be, your Honor, because I just don't see or hear any
15 evidence for negligent undertaking or an exception to Privette.

16 THE COURT: Thank you. As I previously mentioned, the
17 Court can't weigh the evidence or make any determinations in
18 terms of credibility.

19 Based on at least what was proffered, the motion is still
20 denied. I don't want to rule further on it because then we're
21 getting into weighing the evidence and credibility.

22 MR. SCHUMANN: Yes, no worries. Thank you, your Honor.

23 THE COURT: Your motion was timely brought, though. I
24 know I'm ruling on it now during your opening, but it was timely
25 brought.

26 MR. SCHUMANN: Great. Thank you, your Honor.

27 THE COURT: We are in recess. Counsel, if you want to
28 come back about ten minutes prior.

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(At 12:00 noon, a recess was taken until 1:30 p.m.
of the same day.)

1 CASE NUMBER: PSC1901096
2 CASE NAME: COLLINS V. DGC
3 PALM SPRINGS, CALIFORNIA WEDNESDAY, JUNE 29, 2022
4 DEPARTMENT PS2 MANUEL BUSTAMANTE, JUDGE
5 REPORTER: DAVID A. SALYER, CSR 4410
6 TIME: 1:22 P.M.

7 -o0o-

8 (The following proceedings were held
9 outside the jury's presence.)

10 THE COURT: Let's recall the matter of Collins versus DG
11 Corporation. We're outside the presence of the jury. All
12 counsel and parties are present with the exception of
13 Mr. Sullivan, who might be knocking on the door. We'll wait for
14 a moment.

15 MR. BASILE: We can proceed, your Honor.

16 THE COURT: There he is.

17 Okay. Is there anything we need to discuss before
18 continuing with Mr. Schumann's opening?

19 MR. SCHUMANN: No, your Honor.

20 THE COURT: Thank you. Mr. Reid?

21 MR. REID: No, your Honor.

22 MR. BASILE: No, your Honor. We're fine.

23 THE COURT: Mr. Basile, there was something we discussed
24 last Monday.

25 Mr. Schumann, ultimately I leave it to you and Mr. Reid.
26 The Court did note that the board over here remained during your
27 opening. I understand Mr. Reid took a photo of it, so you're
28 aware of what's on it.

1 Would you like it to stay up while you're doing your
2 opening or should Mr. Basile take it down?

3 MR. SCHUMANN: Yeah, please take it away.

4 THE COURT: Okay. Thank you.

5 MR. REID: If you want to just flip the page down and
6 cover what's on the --

7 THE COURT: And the same thing.

8 The same with the other boards. You're welcome to use
9 it. But once you're concluded, if you could turn it away.

10 MR. BASILE: Do you think I'll be able to use this spot?
11 It might be a little awkward.

12 THE COURT: It's a smaller courtroom, but we might be
13 able to move it back into this space here. Yes, that's fine.

14 As long as, counsel, you'll have to be able to walk past
15 the Collins and you should be able to see from that angle.

16 MR. REID: I apologize. I left something in the hall.
17 I'll be right back.

18 THE COURT: Of course.

19 So the record will reflect the boards have been taken
20 down. And that was it. That's all the Court had.

21 There is one other thing. We are still waiting for those
22 exhibit binders.

23 MR. SULLIVAN: They are right there.

24 MR. BASILE: They need them.

25 MR. SULLIVAN: We'll bring them up.

26 MR. SCHUMANN: And one more thing, your Honor.

27 If we could get an order to get copies of the exhibits
28 that were being used by plaintiff in their opening. I'd like to

1 request copies of the exhibits -- I mean of everything that was
2 shown to the jury.

3 THE COURT: Well, ultimately, it's just opening
4 statement. So the Court did make its own notes in terms of what
5 exhibits each side --

6 MR. BASILE: We gave them the list too, your Honor. They
7 have the list.

8 THE COURT: I won't have him turn over his PowerPoint
9 presentation or anything, but if you would like to make a
10 numeric list.

11 MR. BASILE: I already did.

12 THE COURT: I'll ask you to exchange that.

13 MR. BASILE: It's done.

14 MR. SCHUMANN: Yes. I have the exhibit numbers. It was
15 more the documents, the PowerPoint, whatever was shown to the
16 jury that I have not seen.

17 THE COURT: You haven't seen you mean in terms of it like
18 now?

19 MR. SCHUMANN: Until right now.

20 MR. BASILE: I understood your order, your Honor, was to
21 give them our exhibits and I didn't need to give them the
22 PowerPoint, so I followed the Court's rule.

23 THE COURT: The only time I have seen that is in capital
24 cases, really.

25 I'll decline that request, but the exhibits, of course,
26 because that could be a future motion potentially if it's not
27 introduced. But the PowerPoint, no. That goes for both sides.

28 I notice a lot of yours, Mr. Schumann, they were

1 PowerPoint slides with bullet points, but less so on the exhibit
2 side thus far. So I wouldn't ask you to turn that over either.

3 MR. SCHUMANN: Okay. Thanks.

4 THE COURT: Counsel, neither of you requested it. During
5 the playing of plaintiffs' deposition testimony, if you would
6 like, these lights can be turned down. I didn't see anything
7 where it interfered, but it's an option you have.

8 (The following proceedings were held in open court
9 in the presence of the jury.)

10 THE COURT: We are back on the record in Collins versus
11 DG Corporation with all members of the jury minus one alternate.
12 So we will get started here in a moment.

13 I think the jurors came in at 1:28. Now it's 1:29.

14 We can't proceed unless everyone is together.

15 JUROR GAIPA: He was in the bathroom the last time I saw
16 him, if that helps.

17 (Juror Benitez enters courtroom.)

18 THE COURT: Thank you. All members of the jury and all
19 three alternates are now back. We're still on the record.

20 One thing I was going to mention, this courtroom is a
21 little bit different than others. In fact, the jury box is
22 recessed into the wall. In terms of acoustics, if at any
23 point -- the attorneys obviously have put a lot of preparation
24 into this -- if you cannot hear them or if they're playing some
25 type of audio and you can't hear because, again, you're recessed
26 into the wall, just raise your hand.

27 I'm looking here at exhibits on this monitor, constantly
28 keeping an eye on them. So then that way if we can let the

1 attorneys know, they would appreciate that.

2 Mr. Schumann, whenever you're ready.

3 MR. SCHUMANN: Thank you, your Honor.

4 Before we move on, I think I wanted to clear up some
5 facts that you will hear that I don't know if all of us have
6 cleared up for you yet.

7 So unless you know what a filter skid is or in a power
8 plant how it operates, you probably don't know. What you'll
9 hear is that this filter that we have been talking about, this
10 tower, it cleans the gas from particles and water because the
11 turbine does not like particles or water. So this is a cleaning
12 process. There is a filter in there like a car filter or HVAC
13 filter. And every year it has to be cleaned out.

14 Part of the process of an outage, as they call it, is to
15 take that rectangular area where the turbine is and where the
16 filter is and shut the whole thing down, close off all the gas
17 from coming into that area.

18 So when they do this shutdown, it takes about four to
19 five days to do the whole thing.

20 Part of the process is turn off the gas to the entire
21 system because it's not just the filter that has to be cleaned.
22 It's all the different areas of all the pipes before it goes
23 into the generator that has to be worked on. So it's a big long
24 process.

25 All right. So with that, back to the next area.

26 So, again, from the evidence from the control room, what
27 you will hear is that steps 12 and 13 were done at 7:00 and
28 7:15, 16 to 21 were done at 7:10, again indicating that these

1 steps were done out of order or the time was improperly placed
2 on the verifier's portion or the installer's portion.

3 Then at 7:10 Mr. Collins finishes the tags and verifying
4 the LOTO and his coworker in the control room asked if he can
5 start his work.

6 Collins says yes.

7 Then at this time there is another unusual venting of
8 gas, something that doesn't normally happen in any of these
9 outages.

10 There was another warning to the entire group something
11 is up. Unfortunately no one, again, goes to check the pressure
12 gauge.

13 Collins was asked by Mr. Kim -- you will hear his
14 testimony -- if everything was fine. Collins says yes.

15 Unfortunately he doesn't go look.

16 Collins' boss and Ops employee Jason King -- I talked to
17 you about him earlier -- he asked twice if the LOTO was done
18 correctly and will testify that Mr. Collins told him yes,
19 ultimately reassuring Mr. King that everything was under
20 control.

21 You will hear from Jason King that no one told him that
22 the LOTO was ready. He is the guy who will lock down and
23 double-check -- actually triple-check. He is the
24 triple-checker -- that it's done. That would have been the
25 third redundancy.

26 Then it's finished -- alleged to have been finished.
27 It's finished. And they bring the sheet and the box into the
28 control room. No one should have been working on this until

1 this was verified by Mr. King.

2 Unfortunately, Collins tells the people he is he working
3 with that it's done, it's finished, you can start with your
4 work, unfortunately knowing that it hadn't been verified.

5 Then at 11:00 he goes to the filter skid and gets his
6 ladder up and is about to start working on removing the top so
7 he can get to the filter. And there is a pressure gauge just to
8 the right of his ladder. Unfortunately, he doesn't look at it,
9 which is part of the process. It's part of the procedures in
10 the booklet that he's been trained in.

11 So let me show you. We have a video that we want to show
12 you of how it's supposed to be done.

13 If you can queue up the video.

14 Okay. Can I pause it with this?

15 THE TECHNICIAN: I will pause it.

16 MR. SCHUMANN: Can you go back?

17 So this is a birds-eye view of the filter skid, it's
18 called, right? It's this thing and the -- we're going to fly
19 into it.

20 Over here is the control room and the main buildings. So
21 you'd walk out and walk over to the skid.

22 Over here you have the LOTO sheet with all the items. So
23 there's the -- it shows that you would have to close the valve
24 and you put a lock on it so no one can open it. You put a tag
25 on it, sign it, time it.

26 You open the filters to vent out the system. You wait
27 the 12 to 15 minutes until the pressure is gone. You close it.

28 So these are two people walking next to each other on the

1 green line, the verifier and the installer.

2 There are a lot of steps. Everything has to be locked
3 and tagged and timed.

4 This is just below the turbine.

5 This is isolation valve 2.

6 THE COURT: One moment, Mr. Schumann, until we have
7 everyone.

8 Okay.

9 MR. SCHUMANN: So that is a sped-up process. I know it
10 still took four minutes, but that is a sped-up process showing
11 you everything that has to be done. You follow the sheet, one
12 at a time, nothing happens. It's a safe procedure.

13 Okay. So after the incident, there was a root cause
14 analysis. People say stop. Let's find out what happened.
15 Bring investigations in and let's queue up the root cause
16 analysis.

17 Okay. It's a long document. You'll see the document.
18 You'll have it in the jury room.

19 It talks about the incident. It talks about what
20 happened, the date, unit five.

21 It talks about the parties.

22 Let's go to the next one.

23 I'm sorry. I can go back.

24 It talks about what Jason King observed, discussing the
25 venting with Collins as to why the venting sequence sounded
26 different.

27 Was that me? Palalay, Kim and King all confirmed, had
28 brief conversation. Unfortunately there was an assumption and I

1 don't know what they say about assumptions. Let's go to the
2 next one.

3 So the conclusion is or was that the LOTO was not
4 followed, and it goes through the various steps. I don't want
5 to repeat my 18 points.

6 But this analysis, determination is what the findings
7 were. The findings were what I've gone through in terms of who
8 the installer was, what the installer is supposed to do.

9 Let's go to the next one.

10 Okay. This document you will have to read and go through
11 and understand everything that was supposed to have been done
12 and was not done, by whom, et cetera.

13 Let's go to the next one.

14 Actually, go back one. I'm sorry. Go back one. Just
15 highlight the bottom -- the last one.

16 Thank you.

17 I highlighted the section, "Neither performed their
18 verifications correctly." That part of their findings.

19 This is about Delaney and Palalay, they were involved.
20 Those two Ops employees unfortunately also failed their portion
21 of the job.

22 Let's go to the next.

23 Yes, thank you.

24 The plant manager failed. Everyone failed. There are
25 lots of human errors, lots of human errors.

26 You will hear from the one and only human factors expert
27 who will testify that if you just follow the LOTO, it's safe for
28 everyone, including Mr. Collins and including his co-workers, et

1 cetera.

2 All right. Thanks.

3 Let me just see. Yeah, go ahead.

4 Although the list of steps set forth as EPCs and the
5 equipment lockout/tagout sheet, if followed correctly and in
6 sequence, safely isolate and vent the lines. There is no
7 separate procedure or steps, et cetera, et cetera.

8 Okay. Thank you. That's it.

9 All right. So what happened after the six months we
10 heard about earlier? What happened was the plaintiff claimed
11 that Mott MacDonald, the engineer and designer, and Gemma Power
12 Systems, the construction company that built the plant, that the
13 system --

14 MR. BASILE: Excuse me, your Honor. I have to object.
15 They are not a party to this case.

16 THE COURT: One moment. Overruled.

17 MR. BASILE: Thank you.

18 MR. SCHUMANN: Their expert -- they had an expert who
19 claimed in declaration form that the construction company and
20 engineering management -- the engineering and designers
21 constructed this entire facility negligently and in a dangerous
22 format.

23 The expert claimed that this system had hidden defects in
24 it that no one could know about, that only the designer and the
25 construction company knew about, and that that's what caused
26 Mr. Collins' death.

27 You will hear that my client, Diamond Generating
28 Corporation, also referred to as DG Corp, and I will try to --

1 these are a lot of names, so we'll try to say them properly
2 every time and stick with the same, but some of the witnesses
3 might use a different terminology -- can you turn that one on?

4 Thanks.

5 Just to clear it up -- I'll help clear it up a little
6 bit. So I created this little document. It doesn't seem to
7 work.

8 THE COURT: The top one.

9 MR. SCHUMANN: What we have is up top is we have Mott
10 MacDonald, the designer, and Gemma, the construction company.
11 They build the plant, all right?

12 They are hired by CPV Sentinel, who is the owner of the
13 plant.

14 At the time that CPV Sentinel builds this plant, they
15 hire the management company, CPV Sentinel, the contract that I
16 showed you earlier. They hire them at the time of construction
17 to oversee these people, to oversee the plant and to oversee the
18 Ops, the operator who operated the plant.

19 CPV Sentinel hires the operator to operate the plant.
20 That is who Mr. Collins worked for.

21 My client, Diamond Generating Corporation, DG Corp, is an
22 investor in the process, a part owner of CPV and an owner of --
23 a shareholder of DGC.

24 That is the layout of how the facility, the plant, came
25 to be.

26 You will hear from plaintiffs' expert that the claim is
27 now that this incident was my client's fault, that my client
28 somehow had a duty to run the operation, that my client somehow

1 controlled all the employees of the separate company DGC Ops.

2 You will hear testimony that my client asked questions,
3 that they were interested, and likely so, should have been, as
4 owner, right, in what was going on.

5 But you'll also hear that DGC Ops ran the entire process.
6 They ran it as they and the management company saw fit. That
7 was their job. It was a job that they were specifically hired
8 to do.

9 My client was not hired to run the operation, to run the
10 plant at all.

11 You heard counsel say that because my client had a logo
12 on the LOTO sheet, that that meant that they had control over
13 how the process ran.

14 What you'll hear is you'll hear testimony from the Ops
15 manager saying I put -- I took a form and I created the LOTO. I
16 took a blank form that I brought with me and I created the LOTO.
17 I created the 21 items or however many I wanted to use for each
18 outage. I created it. No one else did. I did it, me, an ops
19 employee.

20 You will hear that the manual called the SMP-3 -- I don't
21 know why they use these names, but the manual for the outage was
22 created by Mr. King, and it was approved by the owner, CPV
23 Sentinel, and by the management company, CPV Sentinel
24 Management. They approved the manual, the SMP-3 manual it's
25 called.

26 That is the manual upon which you then base how you do
27 these steps. The manual is like the big document. The LOTO
28 sheet is the little tiny one-pager you use because you already

1 know what's in the big document. You can't bring the big
2 document with you every time you go do something.

3 You will hear testimony from Mr. King and Mr. Walker that
4 neither one of them requested my client's authority to put my
5 client's logo on the document.

6 You will hear testimony that the LOTO, the sheet and the
7 order in which it was created was printed out a couple days
8 before by Mr. Collins' friend and coworker Robert Ward.

9 He is the one who also told him twice and reminded him
10 that they hadn't moved item number 2, or valve number 2, to item
11 14 instead of where it had been on another occasion, a decision
12 they made.

13 You will hear no evidence that my client had anything to
14 do with changing valve number 2 or any which way they decided to
15 do this LOTO sheet.

16 You will hear testimony that Mr. Collins had been
17 reprimanded before to slow down. He was going too fast. Don't
18 cut corners. There is no need for rushing. Everyone who is
19 going to come testify to knew Mr. Collins will be sad that he's
20 gone. He was a good guy, they will say, and unfortunately
21 that's what happened to him. That was the end. It was an
22 unfortunate mishap of multiple human errors caused by him and
23 his co-workers.

24 At the end of the day I'll be asking you to let my client
25 out of the case.

26 Thank you.

27 THE COURT: Thank you, Mr. Schumann.

28 Okay. Members of the jury, you have heard opening

1 statements from each of the parties as to what they expect the
2 evidence will show. That evidence will begin here shortly.

3 We have a quick logistical matter to take care of. We
4 are going to switch court reporters.

5 It has something to do with court-provided and private.
6 So that will begin here in a moment before we start witness
7 testimony.

8 If you would like -- it should just take about two
9 minutes. If you would like to stand, stretch and then we'll
10 begin with your first witness, correct, Mr. Basile?

11 MR. BASILE: I'll be judicial notice and moving some
12 documents into evidence and then going right to the witness.

13 THE COURT: Yes. Okay.

14 MR. REID: When would you like Mr. Johnson to come in
15 here?

16 THE COURT: That's your first witness, Mr. Basile?

17 MR. BASILE: Yes, your Honor.

18 THE COURT: If you would like to bring him in now. Then
19 we will go ahead and go off the record here and we'll go back
20 and switch court reporters.

21 MR. REID: Thank you.

22 One thing about the court reporter, your Honor.

23 THE COURT: He can't leave until we stop talking.

24 MR. REID: I understand. One thing about the court
25 reporter, we stipulated yesterday to not have the video
26 testimony transcribed. Unfortunately, we have to withdraw that
27 stipulation.

28 THE COURT: All right. We'll rule on that in a moment.

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Thank you.
(Recess.)
(The remainder of the p.m. session reported by
Demetria Kotter, CSR 12602.)

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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 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-titled case,
pages 1-80, and that the foregoing is a true and accurate
transcription of my stenotype notes and is the whole thereof.

DATED: July 1, 2022.



DAVID A. SALYER, CSR No. 4410

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