

1 instructions from the Court that punitive damages
2 should be awarded in this case, set forth the amount
3 below." And then there's a line for Black Label
4 Media and No Exit.

5 Proceed to question number 9. Question
6 number 9, "Was James Razo an employee of No Exit
7 Film?" Answer yes or no.

8 And there is a line for the jury
9 foreperson to sign.

10 All right. Ladies and gentlemen, the
11 lawyers will argue their case now. It is an
12 opportunity for the lawyers to discuss the evidence
13 and the law as I've instructed you. The plaintiff
14 will go first, and then defense counsel will have an
15 opportunity to respond, and then plaintiffs' counsel
16 will have a reply.

17 All right. Mr. Hunt, you may proceed.

18 MR. HUNT: Thank you, Your Honor.

19 Good morning. We had a chance about
20 three weeks ago now to talk at jury selection. And
21 what I'd like to do now is just spend a little bit of
22 time -- you all have dedicated a week of your lives
23 to this case. And what I would like to ask for is
24 just your permission to speak with you for a little
25 bit longer about kind of what we've heard and about

1 why we're here. Would that be okay?

2 I was thinking about what -- what to do,
3 what to talk about. You know, I had -- there's all
4 these slides, we have all these pictures, pictures of
5 the fork in the road, pictures of the Raptor, and we
6 went through a whole lot of that in opening
7 statement. But, you know, what I thought was, you've
8 been here for five days. You've been an incredibly
9 attentive jury. The last thing that you need is for
10 me to show you the pictures again; tell you what
11 you've heard for the last four days. That's not what
12 you need. You all know what the evidence in this
13 case is.

14 What I want to not forget and what I want
15 to talk about a little bit this morning is really why
16 we're here, the heart of this case, the heart of this
17 case being James Razo and his family. And when we're
18 talking about that, one of the things that we also
19 visited about in jury selection was that there were a
20 hundred people, at least, who were called. Not all
21 of them showed up. And of the people that did show
22 up, we talked to them, and we said, "Here's what kind
23 of case this is. Here's what you're going to be
24 doing if you're a juror." And there were some people
25 that were honest with us and said, "You know what,

1 I'm out, not my case, not going to do it, can't be
2 there." And there were other folks that didn't --
3 didn't get chosen to be on this jury. But for
4 whatever reason, whether when the process started or
5 not it was something you wanted to do, you did get
6 chosen.

7 You are the jury that gets to decide this
8 important case. And because you showed up, because
9 you were willing to devote your time, and because you
10 all said, "I can decide this case based on what I
11 hear in the courtroom," the State of New Mexico gives
12 you incredible power. It gives you the power to hold
13 accountable what, up until today, has said "It's not
14 our fault. We're not accountable. It's just the way
15 things are. It's the way it operates. Everybody
16 knows it. It's not our fault." You now get to
17 decide, because you were willing to be here and
18 devote this time, whether or not that's in fact true.

19 You know, we were in the courtroom
20 yesterday, Bill Witthans was the expert, and he was
21 testifying. And he was testifying and he said, "You
22 know, I've been telling people about safety. I've
23 been telling them about it. You know, what I tell
24 them is when that pressure comes rushing at you and
25 everybody is yelling at you on the radio and they're

1 screaming left and right, what I tell them is, 'man,
2 you just got to ignore it, you just power through,
3 one foot in front of the other.'"

4 And do you remember, I asked him, I said,
5 "Well, Mr. Witthans, do you go -- do ever go try to
6 deal with that at the source? Do you ever try to
7 take care of that so that doesn't happen?"

8 And his answer was, "What am I supposed
9 to do about that? I can't go to the producers.
10 They're not going to listen to me."

11 The producers are going to listen to you,
12 this jury. You have the authority and the power to
13 make them listen.

14 And I want -- the jury instruction that
15 you've all heard the most -- right? -- the recess
16 instruction, "Don't talk to anybody about the case,
17 don't talk to your friends and family about the
18 case." You know, you get to talk to each other, but
19 the instruction, I think you're not even supposed to
20 talk to your spouse or your folks at home about the
21 case.

22 Today you're going to be released from
23 that instruction. You're all going to get to go home
24 later today after reaching a verdict, and for the
25 first time and hopefully -- hopefully all of us --

1 tomorrow and the next day are able to get together
2 with our friends and our families, and they're going
3 to say, "Hey, I heard you were on a jury for the last
4 week. What was that case about?" And you're going
5 to have complete freedom now to talk to them about
6 that and you get to decide what the answer to that
7 is.

8 When they say, "What was that case
9 about?" how are you going to answer that? Was it a
10 case about a company that talked about safety but
11 didn't put it into practice? Was it a case about an
12 industry that believes it doesn't really have to play
13 by the same rules as everybody else? Are you going
14 to tell them, "You know what, it was a case about a
15 movie company that put pressure on a guy that was
16 just trying to do his job and trying to do it the
17 best way he could. And they let him down. They put
18 him in a terrible position, and they blamed him from
19 start to finish."

20 And then your friends or your family are
21 going to say, "Okay. What did you guys do?"

22 That's what you're going to get to
23 decide. How you answer that today will have ripples
24 throughout -- can have ripples all the way out to
25 where these movies are made. The ones that are made

1 here; the ones that are made out there; the ones that
2 are made everywhere.

3 And, ultimately, I want, very shortly --
4 you've heard the instructions, and I want to go
5 through some of those with you. Here in an hour and
6 a half, you guys are going to walk through that door
7 one more time, you're going to go into your room, and
8 the judge is going to give you the instruction. And
9 you're really going to have about two jobs to do.
10 One of them is you're going to pick a foreman. And
11 the other is for each and every one of you to talk to
12 each other, to tell each other why you feel the way
13 you do about the case; why, on these questions, you
14 believe that Black Label Media, No Exit was
15 negligent; why you believe the answers to these
16 questions are the way they are.

17 And you heard the judge give you an
18 instruction before: Respect each others' opinions,
19 respect each others' views, but don't compromise your
20 views. The instructions say 10 out of 12. We hope
21 it's unanimous. A unanimous verdict speaks louder.
22 But the law says that it only has to be 10 out of 12,
23 and there's good reason for that. You may get back
24 there and there may be one or two people that simply
25 don't believe the same as everyone else, and that's

1 okay. Listen to them, respect their views, but
2 understand, if you get to a point and it's 10 of you
3 that are in agreement on any issue, then that's okay.
4 That's enough.

5 So I want to look at -- Judge, I think I
6 have asked for permission on the doc cam.

7 THE COURT: I went ahead and sent that to
8 you. Did you send it again?

9 MR. HUNT: I did.

10 Well, this will come up and, when it
11 does, you will get a chance to see it. But this is
12 the special verdict form I want to talk about. You
13 heard the judge ask it. This is really --
14 ultimately -- it's this form here, and we'll try
15 again -- can I try one more time, Judge?

16 THE COURT: It's up. So we just need to
17 turn on --

18 MR. HUNT: How about the cap?

19 THE BAILIFF: Yeah.

20 THE COURT: There you go.

21 MR. HUNT: We didn't have to call IT for
22 that. Well, maybe it did -- it's still not -- are
23 you there now?

24 THE COURT: Let me try again.

25 MR. HUNT: So these instructions -- so

1 that's -- that's not real good, is it?

2 Okay. We'll stick with this. That's --
3 let's see. One more -- all right.

4 So this is going to be the document that
5 you, as a jury, get to fill out together. And the
6 very first question is "Was Black Label Media
7 negligent?" And then it goes down and it says, on
8 number 3, "Was No Exit negligent?"

9 So I want to talk about that for a
10 minute. What did we hear the last three or four
11 days? What we heard was that Black Label Media
12 was -- they were the company. They were in charge of
13 the budget; they were the production company; they
14 formed No Exit Film as a subsidiary company to do
15 this movie. It was Black Label Media's show, no
16 question about it.

17 And when Black Label Media got involved
18 in the show, what did they do? It starts at the top.
19 You heard multiple people talk about movies are time
20 and money. Did they allocate money for a safety
21 representative? Unquestionably no. Yes, they had a
22 fire safety person, as they needed, obviously; a fire
23 safety person that could talk about the show, the
24 firefighters on the show, how that needed to go and
25 to make sure that they didn't set the hill on fire.

1 But was there a safety representative who
2 was in charge overall of making sure that this was a
3 safe set? Brian Henington, you saw his deposition
4 testimony, he testified clearly, "I was not an
5 overall safety person. I was there for fire." You
6 heard Mr. Witthans talk -- testify yesterday, "Yeah,
7 on productions, a lot of times the studio sends a
8 safety rep." They chose not to do that here. A \$65
9 million budget and they chose, on a remote location,
10 with stunts, with fire, with all the hazards that
11 were there, that a safety person wasn't necessary.

12 You get to decide what the standards are
13 in this community. Cases are tried in the place
14 where they occur because a Santa Fe, New Mexico, jury
15 gets to decide what standards apply in this
16 community. You, as the conscience of this community,
17 have the authority to say, when you have this kind of
18 production, you need to have safety representatives,
19 and you need to do more than talk about safety.

20 Black Label Media also chose not to
21 authorize scouting trips. We heard David Santos
22 testify that he called the first assistant director
23 or called key grip -- I don't remember which it was.
24 I don't want to misstate that -- and said, "Hey, can
25 I go up there this weekend? Can I go look at this

1 place so I make sure I'm ready to go Monday morning?"

2 And he was told, "No, that's not in the budget."

3 And then Bruce Franklin came and said,
4 "Yeah, well, that sounds simple enough, but we would
5 have had to pay four or five guys, and we thought,
6 you know, Monday morning's good enough."

7 Monday morning was not good enough for
8 lots of reasons. If safety had been a priority on
9 this show, more than something that shows up on a
10 piece of paper, those expenses would have been
11 authorized.

12 It starts at the top with Black Label
13 Media, and it continues on. And it continues on with
14 what happened during the run, meaning there's been --
15 you're going to hear, "Well, James Razo didn't do
16 enough. He should have asked more questions, talked
17 to more people, demanded more things, pounded his
18 fists on the table."

19 Well, let's talk about what happened in
20 reality. What happened, in reality, is that he did
21 everything he could. He called two weeks before the
22 show started; had a conversation with Trevor Fulks.
23 You may remember some testimony about him saying, "I
24 talked to Trevor on the phone. We talked about the
25 location a little bit. We talked about what the job

1 was going to entail. I mentioned to him that I
2 needed a chance to scout it. That's when we decided
3 to source it with the map tracks because we might
4 need those." So he got information early on.

5 Then when he started driving, he called
6 again, sent the e-mail to Tammy Allen, "Hey, send me
7 the call sheet. Send me the information for those
8 transportation guys so we can call them."

9 It didn't happen. And part of the reason
10 it didn't happen was because of the way this show
11 operated.

12 What happened on Monday morning? Monday
13 morning, Mr. Razo shows up, no precall, no get there
14 early. He shows up at 5:30, as he's supposed to.
15 And I know there's been some insinuation he didn't go
16 to the safety meeting or something like that. That's
17 not the testimony I recall. You will get to decide
18 that. He was there at the lunch box in the morning,
19 ready to go, as was Joe.

20 And they seek out their contact, the best
21 boy, Dave Santos. And they say, "Hey, Dave, what's
22 the plan for the day? Do you have notes? What do we
23 need to know?"

24 Dave says, "You know, I'm not sure."

25 And Dave wasn't sure because the plans

1 weren't there yet. So the idea that James Razo did
2 something wrong before he showed up on Monday morning
3 that would have told him everything he needs to know
4 is not based on the facts in this case because the
5 facts in this case, unrefuted, Monday morning,
6 Claudio Miranda, at the top of the mountain, makes a
7 call. "Hey, you know what? The sun's great. The
8 lighting is perfect. Let's get that crane up here
9 for first shot of the day."

10 If this was a safety-conscious set,
11 somebody would have told Claudio Miranda -- and that
12 somebody would have likely been Trevor Fulks -- "You
13 know, Claudio, we can't do that. We weren't planning
14 to have that up here at 7:30. It's already after
15 5:30. There's not time."

16 But that's not what happens in Hollywood.
17 The director says, "Jump," and everybody starts
18 jumping.

19 And they just want to say, "That's how it
20 works. Everybody in the industry knows that. You
21 just got to deal with it, man."

22 As a jury, you can say that's not enough.
23 It's not okay to put people in that situation over
24 and over and over. So the idea that James Razo
25 didn't do his part by not getting the information is

1 not borne out by the facts because the information
2 wasn't there. It changed that morning. And when it
3 changed, safety went out the window.

4 Did Black Label Media and No Exit --
5 you've heard all the testimony about the route. Was
6 the route planned? Was the route known? Was the
7 safe route that their expert yesterday,
8 Mr. Beauchamp, unequivocally says, "This wouldn't
9 have happened. Change nothing else, but put Mr. Razo
10 on the correct route, and this doesn't happen" -- who
11 knew about that route?

12 I think it's incredible -- incredibly
13 important about the priorities on a set when we heard
14 Mr. Sneesby testify that transportation was dropping
15 off the talent and the actors on the alternate route.
16 They knew that route. They didn't send Josh Brolin
17 and Jennifer Connelly on the route up the hill, but
18 they sent everybody in the grip department.

19 So there's no communication. That starts
20 at the top with Black Label, no communication in the
21 departments. And that communication, that's what a
22 safety rep does: Makes sure that there's
23 communication between departments, makes sure that
24 routes are marked, makes sure that when James Razo, a
25 day player, shows up on the set Monday morning, he's

1 not put in this situation.

2 And, obviously, there's so much more than
3 that, right? There's Dave Santos asking to scout.
4 There's James Razo, Monday morning, once he learns
5 that everything's gone out the window and now you're
6 first up at the top of the mountain, he tries. He
7 says, "Well, I need to scout. Ask -- get on the
8 phone. Let me talk to Trevor. We've got to figure
9 this out."

10 And he's told, "No." He's told, "You
11 don't have time." He's told, "You don't have time to
12 look at the tracks. You don't have time to go up the
13 mountain. Follow Dave. Don't worry. We'll give you
14 a guide."

15 That's unreasonable in the circumstances
16 of this case, and it's unreasonable in such a way
17 that it's -- the unreasonableness of it, or whenever
18 we say that, compounded so much as the route -- as
19 the drive went on. It really tells you almost
20 everything you need to know.

21 They're driving up the hill. On the
22 radio, every five minutes, "Where are you? Get up
23 here."

24 Every ten minutes, "Get up here. Where
25 are you?"

1 It's chaos. And the intensity increases,
2 and everybody feels it. They did not bring you --
3 obviously, Trevor Fulks is not here. We're not
4 trying to take advantage of that. But there were an
5 entire grip department that was on that radio. They
6 didn't bring you a single witness to tell you that
7 what we've alleged is untrue. Not one. There are at
8 least ten other people in the grip department that
9 haven't testified that could have, had they had
10 something different to say than what you've heard.

11 And frankly, Dave Santos and those guys,
12 they're No Exit and Black Label's witnesses, not
13 ours. Everybody agrees. That's who Trevor was.
14 That's what he was doing. That's the position that
15 Claudio Miranda and Black Label Media put him in, and
16 that's what they expected of him. In some ways, he
17 was also doing his job because that's what's expected
18 there for the person in that position. But it's
19 unreasonable, and it can stop. And you can say, it's
20 unacceptable.

21 Now, these questions, we certainly take
22 the position that the answer to these questions: Was
23 Black Label Media negligent? Yes.

24 Was No Exit Film negligent? Yes.

25 And then there's a question, was any

1 negligence of No Exit Film -- and it's the same
2 question for Black Label Media, was any of their
3 negligence a cause of James Razo's injuries and
4 damages?

5 You've gotten the causation instruction.
6 And they may say, "Well, James decided to drive up
7 the hill; so he was the cause." The instruction
8 says, there can be multiple causes. A cause is
9 something connected enough that it results in the
10 harm. The negligence of Black Label Media and No
11 Exit Film meant that the time pressure was there,
12 meant that James Razo was on that part of the hill.
13 If No Exit Film and Black Label Media had done their
14 jobs, James Razo never would have been on that part
15 of the hill, and this wouldn't have happened. That
16 is causation.

17 So certainly, when you get to that part
18 of the jury instruction, cause under the jury
19 instructions --

20 THE BAILIFF: Excuse me.

21 MR. HUNT: Sure. Yeah. Of course.

22 Look at the jury instructions, what it
23 talks about -- and I know that I have it, but I don't
24 need to show it to you, at this point. Well, I -- I
25 probably don't need to, but that's the instruction.

1 "An act or omission is a cause if it contributes to
2 bringing about the injury or harm if it wouldn't have
3 occurred without it."

4 What wouldn't have occurred, in this
5 case, if the negligence of No Exit and Black Label,
6 if they had planned the route, given the time to
7 scout, done all the things that we claim they should
8 have, James Razo never would have been on that part
9 of the hill and this incident would not have
10 happened.

11 And it says, "Of course, it need not be
12 the only explanation, nor the reason closest in
13 time." It's sufficient if it occurs in combination
14 with other causes. That's why we've got kind of the
15 dominos. The dominos, in this case, got started even
16 before James Razo ever showed up on Monday morning.
17 It got started way before that.

18 And on the jury instructions, I want to
19 talk to you about a couple of other issues on this
20 part of the case. One is -- there was a jury
21 question about Chapman/Leonard, why they weren't a
22 party in the case. And there's some stuff that we're
23 allowed answer, and there's some stuff that we're
24 not. And the judge thought it best to just let that
25 go, and we can talk to you.

1 You've heard no evidence from a single
2 witness in this case suggesting that Chapman/Leonard
3 did anything wrong. Defendants didn't bring any
4 witnesses to tell you that there was something wrong
5 with the Raptor. Didn't bring you any witnesses to
6 say it was Chapman/Leonard's decision whether or not
7 there was a scout day, whether or not there was prep
8 time. Those are decisions that are made by Black
9 Label Media and No Exit. So the parties that are
10 responsible are the ones that are in front of you.

11 And ultimately one of the questions that
12 has been wrestled with all week -- and we've talked
13 about this way back in jury selection, and we've
14 talked about it throughout -- and you're going to get
15 a chance -- there's a jury instruction down here --
16 down there, at that part of the question, number 7,
17 you're going to be asked, "Compare the percentages
18 between these three entities." And you're going to
19 get to make a decision on that.

20 You're going to get to make a decision
21 about James Razo's conduct, in relationship to Black
22 Label Media and No Exit Film. And you know, you've
23 heard us talk about it for three or four days. We've
24 shown you -- we showed you the timeline, earlier in
25 opening. Black Label Media had eight weeks where

1 they paid the director of photography to plan this.
2 They had a director scout where they went out there
3 where they were supposed to plan this. They had a
4 second scout where they were supposed to plan this.
5 They came out a week before where they were supposed
6 to plan this. They had all the time in the world to
7 make sure, when things got heated, the plan was
8 already in place. And they failed.

9 James Razo, almost from the minute he
10 shows up on set, is under the gun. We think the time
11 issue matters when you're deciding percentages of
12 fault.

13 And it also matters on -- kind of talking
14 about -- let me see if I have my -- I'm not finding
15 my diagram, but that's okay. When you're comparing
16 the responsibilities here and you're comparing the
17 responsibilities from all the failures on behalf of
18 No Exit and Black Label, scouting, prepping, route
19 planning, marking it, putting people under time
20 pressure, not to mention refusing the advice of the
21 locals.

22 John Sneesby came in and testified, he
23 walked off the set after this happened because he
24 said this was an unsafe environment. He sounded like
25 he essentially almost -- I don't want to say pleaded,

1 but repeatedly got on the radio, "Don't send them
2 that way. Send them to the right. Send them to the
3 right. It's safer." Because if he said "safer," he
4 thought that would get their attention, but it was
5 refused.

6 "Get off my radio. Go the way I told
7 you. It's my radio."

8 Ultimately, when you weigh all of those
9 factors together -- you know, I told you -- and you
10 also got the jury instruction that it is the
11 defendants' burden to prove that James Razo is
12 negligent.

13 Now, we talked to you in opening, and I
14 said, "You know what? Ultimately, James Razo was the
15 driver. All the pressure in the world was on him."

16 And their expert also said -- and we kind
17 of talked to him about that. Well, one, he said,
18 "What pressure does it make people make bad
19 decisions."

20 And, two, we said, "Well, what do you do?
21 What do you do when all that pressure comes?"

22 He says, "Well, you put your head down.
23 You put one foot in front of the other. And you get
24 the job done. That's what's expected."

25 And that's what James Razo was doing.

1 But you get to decide on negligence. I
2 think I told you in opening statement, 20 to 25
3 percent is what we thought for Mr. Razo, quite
4 honestly. After sitting here for four days and
5 listening to the testimony that came in, basically
6 unrefuted, even their expert at the end, when he was
7 saying, "Oh, gosh, I thought he just went up the
8 wrong way. If that was actually the designated way,
9 yeah, I don't know."

10 So you get to decide. We think it's
11 absolutely, at the most for Mr. Razo, 20 percent.
12 But you get to decide that issue. And we leave it
13 with you, and we trust you with it. It's yours.
14 If -- if -- I mean, it's our view that, if you
15 decided that, if you decided it was 20 percent for
16 Mr. Razo, then our position is it would be 60 for
17 Black Label Media, 20 for No Exit, and 20 for
18 Mr. Razo. But you get to decide those things.
19 That's what this jury does. And listen to each other
20 and listen to the evidence and the facts of this
21 case.

22 Now, there is --

23 And, Judge, how much time have I used?

24 THE COURT: You've used 30 minutes.

25 MR. HUNT: Okay.

1 THE COURT: So you still have 15 minutes.

2 MR. HUNT: All right.

3 I want to talk to you about two other
4 things. One of them is the last question on the jury
5 verdict form is "Was Mr. Razo an employee of No Exit
6 Film? Yes or no?" And you're going to see the jury
7 instruction on that.

8 And yesterday we gave you -- or the judge
9 gave you accepted facts. And what these accepted
10 facts include is that Mr. Razo had no signed
11 agreement, that he was a day player who would show up
12 and once his equipment was no longer needed, he was
13 done, and that he brought his equipment and he was
14 the only one allowed to drive and operate the
15 equipment.

16 Critically -- this was a deposition
17 testimony and it was one of the ones that we read
18 into evidence, which is just horribly boring, but you
19 guys still paid attention. This was the corporate
20 representative, really the head person at Black Label
21 Media, Molly Smith. And her testimony
22 unequivocally -- this is testimony on behalf of the
23 corporation. When she's not in a courtroom trying to
24 get out from under accountability, she says they were
25 not employed by No Exit, meaning Joe Datri and James

1 Razo. That testimony has also been unrefuted, and
2 it's binding on the corporation.

3 The testimony in the case has been on
4 this issue also from Ms. Schwartz yesterday. That's
5 the jury question. Made a contract of hire,
6 expressed or implied, undisputed fact, no written
7 contract with No Exit.

8 Well, they're going to argue, well, maybe
9 there was an implied contract.

10 There was no contract. Unequivocally.

11 The testimony has also been unrefuted --
12 that deal memo that's been raised and flashed around
13 was not signed by Mr. Razo. He sent an employment --
14 he sent a deal memo that listed independent
15 contractor -- employee and independent contractor to
16 show them his wages, to show them his rate.

17 Ms. Schwartz said, "The work being done
18 is essentially that of the employer." The employer.
19 If what they're alleging -- No Exit, their work is
20 making films. Their work is production. Their work
21 is movies, putting things on the screen.

22 James Razo's work was driving a crane.

23 Chapman/Leonard's work was renting cranes
24 and providing crane operators.

25 Whose work was it essentially of that

1 Mr. Razo was doing? Chapman/Leonard. Independent
2 work. Independent of No Exit.

3 And then, finally, the employer has the
4 right to control the details of the work.

5 Ms. Schwartz, "No Exit doesn't have the
6 right to control how he does his job, meaning how he
7 operates his equipment. That is correct."

8 They had an obligation to provide him a
9 safe worksite. They had an obligation to provide him
10 with the resources to do his job, meaning the time.
11 That's what they took away.

12 And, finally, this instruction, the
13 critical part and why they're arguing this, "An
14 employer is not liable to an employee for injury
15 sustained during the course and scope of employment."

16 The employment issue is no more than No
17 Exit's attempt to be held unaccountable and,
18 therefore, Black Label Media's attempt to be found
19 unaccountable. And, unequivocally, Black Label Media
20 is not his employer. There's no jury question for
21 that. That's already been decided. Ultimately, when
22 you get to that question on the special verdict form,
23 we believe that the answer to that question is also,
24 down here, no.

25 And that was one -- you heard the judge

1 say -- and you can see this in the instructions --
2 you know, the burden of proof. We've talked about
3 that. More likely than not. Is it more likely than
4 not true that No Exit and Black Label were negligent?
5 Is it more likely or not true that they caused
6 injury?

7 The defendants are the ones that have to
8 prove it's more likely true that Mr. Razo is
9 negligent and it's more likely true that they were
10 his employer based on these standards that we just
11 showed you, which, notably, the jury instruction has
12 nothing to do with payroll, has nothing to do with
13 Cast & Crew, a payroll company that issues documents.
14 That's not part of this instruction.

15 Now, I want to talk to you about one
16 other issue, which is really -- even though I've
17 probably talked about these for too long, because
18 it's probably the most important, which is really why
19 we're here. We're not just here for a philosophical
20 debate about right or wrong. We're not just here to
21 get a root cause analysis of this. When No Exit and
22 Black Label refused to report this to OSHA, they took
23 away the ability to have that kind of accountability.

24 Now what we're here for -- in an American
25 courtroom, we don't believe in "an eye for an eye"

1 justice. But we also don't believe turning a blind
2 eye when somebody's been injured and harmed because
3 of negligence. So what we're here for, what your job
4 is, is to act as appraisers and to look at what has
5 been taken from James Razo and his family.

6 When Black Label Media and No Exit came
7 to New Mexico, they made a promise. They made a
8 promise that when they came and they brought jobs and
9 they brought their money, that they would also bring
10 safety. And they broke that promise. And now,
11 because they broke that promise, there's a debt.
12 There's a debt that's owed to the Razo family. And
13 you'll get the jury instructions about the different
14 types of damages, and these are all damages that,
15 under New Mexico law, are required.

16 THE COURT: Mr. Hunt, as requested, you
17 have ten minutes on your time.

18 MR. HUNT: Thank you, Judge.

19 So let's talk about the damages that have
20 been proven so far. These are the figures that are
21 from the reports: Dawn Cook, the medical expense
22 report; Dawn Cook's life care plan, based on the
23 present value as accounted for by Brian McDonald; and
24 the work -- the past wages claim.

25 Now, defendants did not dispute the wage

1 claim at all. They told you at one point that a
2 Mr. Ganderton was going to come testify, an
3 economist. They chose not to bring him to testify.
4 They have that right, but that's because they
5 basically conceded that. The medical expenses, the
6 1,359,000, nobody came into court and refuted that
7 either. They conceded that number.

8 Now, they brought you Dr. Davis, and she
9 gave some other numbers. I don't remember what they
10 were. I had never seen them until she told us in
11 deposition -- in testimony, when she kind of wrote
12 them on a piece of paper. "Well, I think it should
13 be half that."

14 You get to decide that. You get to
15 decide whether or not the evidence that you have --
16 and you'll have the life care plan in your doc -- in
17 your papers -- whether or not that life care plan is
18 something that should be honored, something that this
19 jury, ultimately, in accordance with what
20 Dr. Terrazzino said -- with James Razo, if he's able
21 to get lifetime medical sufficient, then he can live
22 a full life. But he needs the medical. And you have
23 the opportunity to provide that.

24 Now, all this does is pay other people
25 for medical care and get him back to square one from

1 a wages standpoint.

2 The instructions also talk about lost
3 enjoyment of life; pain and suffering; nature,
4 extent, and duration of injuries. Now, I ask you to
5 think about it like this. I want you to assume six
6 and a half years ago, somebody knocks on James Razo's
7 door.

8 "James, we've got a deal for you. You're
9 going to get to work in the movie industry for your
10 entire life. We're going to pay you the wages that
11 you get from operating a crane. We're going to pay
12 you those for every hour, 24 hours a day, for your
13 whole life."

14 James says, "Okay. Well, tell me about
15 that. What's the job?"

16 "You're going to be on a work set, and a
17 3,000-pound crane is going to fall on your back.
18 It's going to crush your pelvis. It's going to cause
19 internal injuries so significant that they're not
20 going to be real sure you're going to live. It's
21 going to cause spinal cord damage when it breaks your
22 neck.

23 "But you're going to survive. You'll be
24 in a hospital for almost two months. You're going to
25 have ten surgeries in the next five years and

1 probably another ten in the 20 after that. But don't
2 worry. We're going to pay you \$60 an hour."

3 And James is going to say, "Well, what
4 about -- what about my head?"

5 And they're going to say, "Oh, we forgot
6 to tell you. You're going to suffer a brain injury.
7 That brain injury is going to leave you so that your
8 decision-making is not what it once was. Your memory
9 is not what it once was. The pain is going to be
10 there 24/7, sometimes worse than others. Your body's
11 basically going to be battling with itself. But
12 don't worry. We're going to pay you 60 bucks an hour
13 for your whole life.

14 "You're also going to be depressed
15 because the life you loved" --

16 I mean what -- they had it made, didn't
17 they? I mean, it was so beautiful. Hearing about
18 New York and about just making it together, you know.
19 Just doing it together. Every day.

20 And that's not going to be gone, but it's
21 never going to be the same.

22 And James is going to say, "You know
23 what? I don't think I want that job."

24 And they're going to say, "Well, there's
25 other parts of it, too. Because of the nerve damage,

1 your bowels, your bladder, pretty much everything
2 below there is just not going to work. So you're
3 going to have accidents all the time. You're going
4 to have a hard time walking. Your ability to connect
5 with other humans, other people you love, is never
6 going to be the same."

7 The testimony has been, honestly,
8 completely one-sided on this issue. And we ask you,
9 when you're filling out this jury verdict form -- I
10 can tell you that if James Razo and Susan Weinmuller
11 were asked to take that job with the full extent of
12 the harm as it's been in this case, there's no way
13 they'd take that job. No way. Nobody would.

14 But they weren't asked. They didn't have
15 that option.

16 So when you get to that part of the jury
17 verdict form and it asks for the damages suffered by
18 James Razo, it's almost \$11 million for the medical
19 expenses and the wages. In a normal case, two to
20 three times the medical expenses and wages and the
21 hard numbers is a reasonable amount. In this case,
22 that's a big number. And if you calculate the job,
23 \$60 an hour for the rest of his life, including when
24 he's sleeping, because there's no relief there, this
25 number comes to 33 million when you add that together

1 with the wages and expenses.

2 And of course that's a lot of money. But
3 it's a lot of harm for a lot of damage for an entire
4 life. A life that will never be the same. James is
5 basically trapped in a body; it won't let him out.

6 You have a chance to do something for him
7 in addition to the money, which is so important for
8 the quality of life and for accountability, but
9 hearing a jury tell him that Black Label Media and No
10 Exit were responsible and that there is
11 accountability is so important.

12 And you'll get to this part of it for
13 Susan Weinmuller. We'll leave that to your
14 discretion. Susan is the rock of that family. Thank
15 God James has her in her life -- in his life. Her
16 harm is massive. It's millions. You know what she
17 goes through holding that family together. Holding
18 that family together in a house full of people -- and
19 I'll say this to Susan because she knows it -- but a
20 whole lot of the time alone.

21 And it's rare in cases that juries have
22 the opportunity to give punitive damages, but this is
23 one of those cases. And the punitive damages -- when
24 Trevor Fulks made the decision to ignore somebody
25 saying what's safe, when the cumulative conduct from

1 beginning to end of Black Label Media shortcutting
2 safety, cutting corners, and cutting budget, they
3 were reckless.

4 "Reckless" means -- and you'll see this
5 in the jury instructions -- disregard of a person's
6 safety. Disregard of a person's safety. When you
7 add all the conduct together, they did not account
8 for safety. It was more important to please Claudio
9 Miranda and Joseph Kosinski, the director, than it
10 was for people to be safe. And they've come into
11 this courtroom, and they said, "That's just the way
12 it is in Hollywood."

13 Punitive damages is intended to deter
14 conduct of others similarly situated.

15 You have a chance to tell Hollywood,
16 that's not how we operate in New Mexico. If you want
17 to come use our land, use our people, take advantage
18 of our tax credits -- we paid them \$9 million of
19 taxpayer money to film here -- make sure they know
20 that they'd better bring safety, not just cameras.

21 On the punitive damages, they were paid
22 \$10 million to -- or 9 million to do this set in New
23 Mexico. We think they should pay that back plus
24 interest. 15 million against Black Label Media.

25 And as to No Exit, use your discretion.

1 Do what you think is right and do what you think
2 people will take notice of and listen to.

3 Thank you for your time.

4 Do I have at least two minutes left for
5 rebuttal?

6 THE COURT: I'll give you two minutes for
7 rebuttal.

8 MR. HUNT: Thank you, Judge.

9 We appreciate you being here.

10 MR. TEBO: Your Honor, just before we
11 start, may Mr. Hunt and I approach for just a second?

12 THE COURT: You may.

13 (A discussion was held off the record.)

14 THE COURT: Mr. Tebo, you may proceed.

15 MR. TEBO: Thank you, Your Honor.

16 Well, for the third time, I'll say good
17 morning, ladies and gentlemen. This is the third
18 time I've had the chance to talk to you directly, and
19 it's the last time I'm going to have a chance to talk
20 to you directly.

21 If you remember, when jury selection was
22 going on and I stood up and talked to you about what
23 was happening and why you were called, it was about a
24 controversy. And that's what we call it. And you've
25 had a whole week to listen to the controversy.

1 On behalf of myself and Mr. Schmehl and
2 Andrew Bernard, who I think you heard some testimony
3 from, and Black Label and No Exit, all I can say is
4 thank you. I apologize. Having a hard time
5 breathing. All I can say is thank you for being
6 here. You know, we have to be here because of the
7 jobs we play; you're here because of the purpose you
8 play. And it's the only way to resolve this.

9 So thank you very much. I appreciate
10 your attention, and I appreciate your time. And,
11 quite honestly, I look forward to you deliberating,
12 rendering a decision, and going home. Thank you.

13 Thank you, Your Honor.

14 THE COURT: Thank you, Mr. Tebo.

15 And, Mr. Hunt, I can give you a couple
16 minutes.

17 MR. HUNT: Thank you, sir.

18 Thank you, Jury. I think I heard two
19 things. I heard "We're not here to blame James," and
20 I heard 45 minutes of blaming James and taking no
21 responsibility for their own actions and telling you
22 there was some bad accidents way back in the Twilight
23 Zone, but Hollywood is better now.

24 Is that your experience? Is that what
25 you've seen? Or do you get a chance to tell them

1 what's expected?

2 And then, of course, you were very, very
3 briefly -- I mean, they've almost, in my view, given
4 up on the idea of the employment issue. You heard
5 about 30 seconds of it. And I frankly think that
6 when Ellen Schwartz got presented with this letter --
7 it's Exhibit 31 in plaintiffs' -- where she's
8 completely disavowing James Razo, completely not
9 accepting, certainly, any responsibility for his
10 actions, saying, "He wasn't our guy. You gave him to
11 us. You sent him on it. You pay us \$6,000 back" --
12 \$65 million film and they wanted \$6,000 back because
13 Susan had to go stay in a hotel while James was in
14 the ICU -- I frankly think it's appalling that this
15 letter was sent in September of 2016. And I frankly
16 think it tells you everything you need to know about
17 what No Exit and Black Label Media values, and it's
18 not human life.

19 What I ask you for now is your courage.
20 Your job is not easy in any way. Two weeks ago, none
21 of you had no idea you would be sitting on a case
22 with this kind of gravity with a chance to do
23 something special, with a chance to send a message to
24 frankly an industry that needs it. Chances like this
25 don't come around very often. For all of us in this

1 courtroom, every single one of us, a chance like this
2 may never happen again.

3 When you write down your verdict, make it
4 a verdict you can be proud of because I'll guarantee
5 you, none of us, none of us, however it comes out,
6 are ever going to forget today. Be proud of the work
7 that you've done. We've trusted you from the
8 beginning. James and Susan and Dari were willing to
9 say, "You know what? We're going to trust a Santa Fe
10 jury. We believe in this system. Our story needs to
11 be heard."

12 They didn't want to report it to OSHA and
13 tried to sweep it up the rug. But, thank God, we can
14 come into a courtroom in America and present this
15 case to 12 people from Santa Fe, New Mexico, to get
16 to hear this case. And you get to decide the
17 outcome.

18 And the last thing I'll leave you with --
19 I don't think you can see this real good. It will --
20 anyway, this is the movie poster from No Exit -- I'm
21 sorry -- from "Only the Brave." And it says, "It's
22 not what stands in front of you; it's who stands
23 beside you."

24 I saw this about three weeks ago when I
25 was getting ready for this case, and I sent it to

1 James. I'm sorry. And I said, "I'll stand beside
2 you, James."

3 But I don't have the power to do
4 anything. You do. You have a chance today knowing
5 what stands in front of James, which is a lifetime of
6 walking through that fire, you have a chance to say,
7 "We stood beside him because he was worthy of our
8 verdict and because Black Label and No Exit were
9 wrong and they need to be accountable."

10 Thank you for being here. Respect each
11 others's opinions and be brave.

12 THE COURT: All right.

13 Ladies and gentlemen, members of the
14 jury, it's now time for you to retire to the jury
15 room and to render a verdict in this case. I'm going
16 to provide you with the final instructions that I
17 read to you as well as the special verdict form and
18 the exhibits that were introduced into evidence.

19 Mr. Raymond, you were our alternate. So
20 when the other 12 members of the jury retire to the
21 jury room, I'm going to ask that you remain in the
22 courtroom, and I'll have some additional instructions
23 for you.

24 JUROR: Yes, sir.

25 THE COURT: Okay.